



27 May 2019

Boggabri Coal Mine (09_0182 MOD 7)

1. INTRODUCTION

1. On 19 December 2018, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a modification request (**Modification**) from Boggabri Coal Operations Pty Ltd (**Applicant**) to modify five elements of the existing Project Approval 09_0182 (**Project Approval**) for the Boggabri Coal Mine (**Project**).
2. The Project is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**Transitional Regulation**), and the Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's delegation of that function to the former Planning Assessment Commission (**PAC**) by instrument of delegation dated 14 September 2011, given that the Commission is to be taken to be the same legal entity as the Planning Assessment Commission, pursuant to clause 7 of the Transitional Regulation.
3. The ability to modify transitional Part 3A projects under Section 75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) has been discontinued; however, as the request for this Modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.
4. The Department referred the Modification to the Commission as a modification under Section 75W, stating in its referral letter that:

"Due to the high level of public interest in the application, the Department considers the Independent Planning Commission should determine the application under the Minister's delegation of 14 September 2011."
5. Professor Mary O'Kane AC, Chair of the Commission, nominated Professor Snow Barlow (Chair), Professor Zada Lipman, and Dr Ian Laverling to constitute the Commission determining the Modification.
6. The Commission has considered the nature of the proposed modification and agrees with the Department that it is within the scope of Section 75W of the EP&A Act, as it would not:
 - increase the approved mining footprint or approved mining methods;
 - increase the approved maximum extraction rate;
 - alter the approved transportation methods for operational purposes;
 - increase the maximum transport rate; and
 - increase the approved environmental impacts of the Project.
7. The Commission's role is to determine the Modification for which approval is sought, specifically, deciding whether it meets the criteria for approval under the EP&A Act. It is not open to the Commission to re-assess the overall development.

1.1 Site and locality

8. The Boggabri Coal Mine is located approximately 15 kilometres (km) north east of Boggabri, in the Narrabri Local Government Area (LGA) (see **Figure 1**). Under the existing Boggabri Coal Mine Project Approval, the Applicant has approval to extract up to 8.6 million tonnes per annum (Mtpa) of run-of-mine (ROM) coal until December 2033, and operate a train loading facility, coal handling and preparation plant (CHPP) and rail loop and spur line. The Applicant also has approval to transport up to 10 Mtpa of coal from the site by rail – comprising up to 8.6 Mtpa from the Boggabri Coal Mine and up to 3 Mtpa from the adjoining Tarrawonga Coal Mine, operated by Whitehaven Coal Mining Pty Ltd (**Whitehaven Coal**).

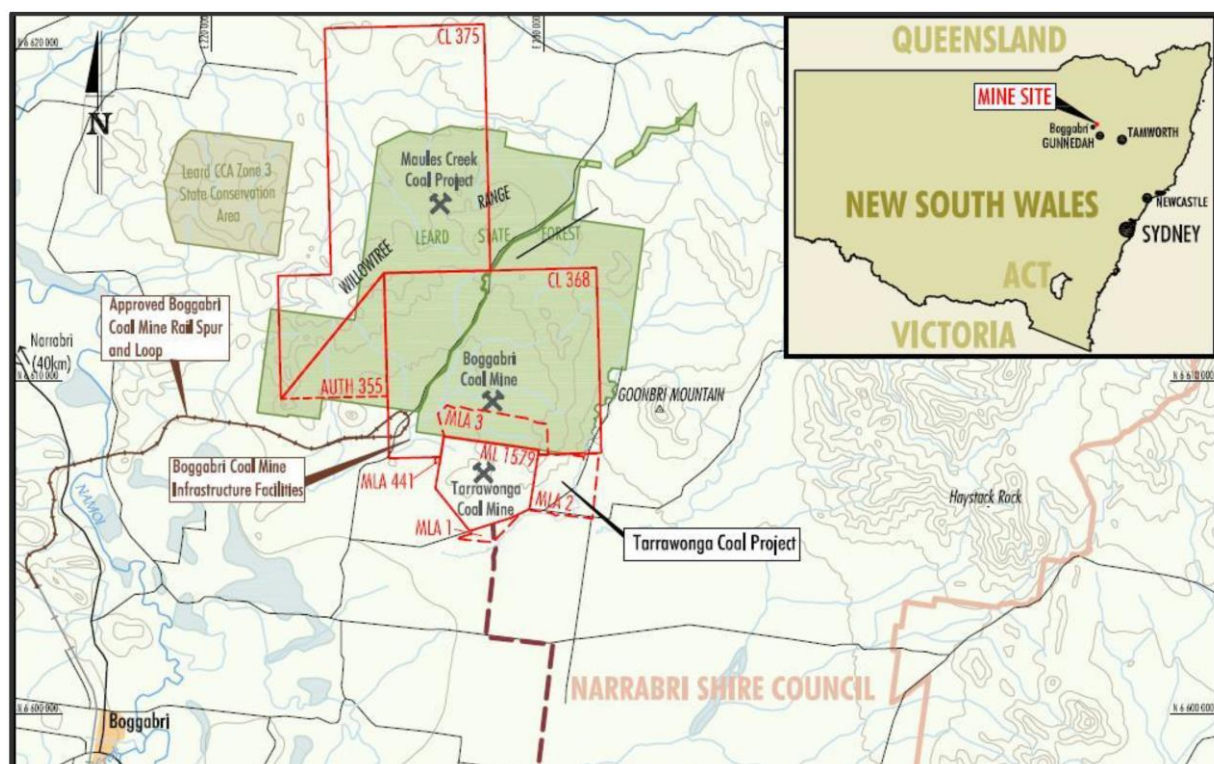


Figure 1: Boggabri Coal Mine location

1.2 Background to Modification

9. The Department's Modification Assessment Report, dated 18 December 2018 (**Modification Assessment Report**), states that current operations at Boggabri Coal Mine were approved under Project Approval by the PAC on 18 July 2012, under Part 3A of the EP&A Act. The Project, as currently approved, allows the Applicant:

"...to extract up to 8.6 million tonnes per annum (Mtpa) of run-of-mine (ROM) coal until December 2033 and operate a train loading facility, coal handling and preparation plant (CHPP) and rail loop and spur line.

The approval also allows Boggabri Coal to transport up to 10 Mtpa of coal from the site by rail, comprising up to 8,6 Mtpa from the Boggabri coal mine and up to 3 Mtpa for the adjoining Tarrawonga coal mine, operated by Whitehaven Coal Mining Pty Ltd (Whitehaven Coal)."
(page 2)

10. According to the Applicant's Environmental Assessment, dated 31 August 2018, Project Approval 09_0182 has been modified on five previous occasions between March 2014 and July 2017 as outlined in **Table 1**.

Table 1: Summary of Project Approval history

Approval / Modification No.	Approval Date	Summary
09_0182	18 July 2012	<ul style="list-style-type: none"> • extraction of up to 8.6 Mtpa of ROM coal until the end of the December 2033; • processing of up to 3 Mtpa of ROM coal through the CHPP; • the construction and operation of the Boggabri train loading facility, rail loop and rail spur line; and • transportation of up to 7 Mtpa of product coal by rail.
1	Withdrawn	
2	17 February 2015	<ul style="list-style-type: none"> • expanding existing ROM and product coal stockpiles; • relocating the existing haul road to the open cut; • increasing the throughput of the Boggabri CHPP from 3 Mtpa to 3.5 Mtpa • transportation of 10 Mtpa of coal on the Boggabri rail loop and rail spur line including up to 3 Mtpa coal from the neighbouring Tarrawonga Coal Mine, subject to agreement between the mine owners (in addition to the 7 Mtpa approved for the Boggabri Coal Mine); and • disposing additional reject material generated from the processing of Tarrawonga Coal Mine coal at the Boggabri Coal Mine.
3	17 March 2014	<ul style="list-style-type: none"> • construction of two permanent access roads linking the Kamilaroi Highway to the Boggabri private haul road; • temporary storage of overburden material at a former quarry and reuse of this material during construction of the rail spur; • use of the Daisymede Laydown Compound for vehicle, equipment and material storage; and • use of temporary in-put fuel storage facilities.
4	23 March 2015	<ul style="list-style-type: none"> • additional mine infrastructure; and • revision to the Project boundary.
5	30 August 2016	<ul style="list-style-type: none"> • construction and operation of a bore field; and • increase the CHPP throughput from 3.5 Mtpa to 4.2 Mtpa.
6	7 July 2017	<ul style="list-style-type: none"> • transport up to 8.6 Mtpa from the Boggabri mine by rail with the capacity of the Boggabri rail loop and rail spur line capped at 10 Mtpa.

1.3 Summary of Modification

11. The Modification before the Commission for determination proposes to modify five elements of the existing approval. These are summarised below:

- **Secure biodiversity offsets through alternative mechanisms and extend timeframe:**
The Project Approval only allows the Applicant to secure its offsets through a conservation agreement under Section 69B of the *National Parks and Wildlife Act 1974 (NP&W Act)*. The Applicant is seeking to modify the approval to allow offsets to be secured using contemporary mechanisms under the *Biodiversity Conservation Act 2016 (BC Act)*, and/or by transferring the offsets into the National Park Estate. Additionally, the Applicant is seeking to extend the date for which the security arrangement must be finalised to February 2020.
- **Use an approved stockpile area for its product coal:**
The Project Approval includes a dedicated stockpile area for coal from the adjoining Tarrawonga Coal Mine. The Applicant is seeking approval to stockpile its own product coal within the approved area to improve operational efficiencies.
- **Undertake drilling and exploration activities within the approved disturbance area but not in the native vegetation corridor:**
Ongoing exploration drilling and investigations within approved mining areas is standard practice for mining operations. Although implicit in Project Approval, these activities were not expressly identified in the description of the Project. To put the matter beyond doubt, the Applicant is seeking to expressly include exploration drilling and investigations as approved activities in the Project Approval.
- **Transport small tonnages of coal by road for testing and marketing purposes:**
The Project Approval requires all coal to be transported by rail. The Applicant is seeking approval to transport small tonnages (i.e. less than 200 tonnes/year) of coal by road for testing and/or marketing purposes, to ensure client specifications are met.
- **Realign a small section of the Project boundary:**
There is an overlap of the Boggabri Coal Mine Project boundary and the Tarrawonga Coal Mine Project boundary in their respective Project Approvals. The Applicant is seeking to remove this overlap and to make it clear that Whitehaven Coal is responsible for implementing all the regulatory obligations within the overlapping area under the Tarrawonga Coal Mine Project Approval (11_0047 Modification 5). This would also ensure the boundaries of the Boggabri Coal Mine Project Approval and Tarrawonga Coal Mine Project Approval are consistent with the mining leases for both projects.

1.4 Stated need for Modification

12. The Applicant has stated that the Modification is required to articulate within the Project Approval works that are currently allowed, though not explicitly articulated. Additionally, clarification regarding the overlapping project boundary with Tarrawonga Coal Mine is required, as the shared boundary has been modified by Tarrawonga Coal Mine.
13. The Applicant has stated that it considers the proposed Modification is administrative in nature, as it would not have an environmental impact.

2 THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION

2.1 Key steps in Department's consideration of the Modification

14. In assessing the merits of the Modification, the Modification Assessment Report states the Department has considered:
 - the existing conditions of approval;
 - the previous environmental assessments for the Project;
 - Modification and supporting information;
 - advice from Government agencies;

- public representations received;
- applicable government policies and guidelines; and
- requirements of the EP&A Act.

2.2 The Department's Modification Assessment Report

15. The Department's Modification Assessment Report identified each element of the Modification and assessed the key impacts associated with each of its five elements. In regard to each of the five elements, the Department concluded that:

- **Secure biodiversity offsets through alternative mechanisms and extend timeframe and realign a small section of the Project boundary:**

"...the realignment of the boundary and the changes to the biodiversity offsets security mechanism are administrative in nature and would not change the impacts of the project. The additional biodiversity security mechanisms strengthen the existing requirements, by including the option to transfer to National Park Estate and aligning with contemporary security options under the BC Act." (page 10)

- **Use an approved stockpile area for its product coal:**

"...impacts associated with the use of the coal stockpile have already been assessed and approved, and the Department is satisfied that storing coal from Boggabri coal mine instead of the Tarrawonga coal mine would not change the impacts associated with the use of the stockpile area." (page 10)

- **Undertake drilling and exploration activities within the approved disturbance area but not in the native vegetation corridor:**

"...exploration and drilling activities within the approved project disturbance area may be considered part of standard mining operations. Any change to the approved impacts of the project resulting from these activities would be negligible and could be managed under the existing management plans for the mine." (page 10)

- **Transport small tonnages of coal by road for testing and marketing purposes:**

"...the transport of coal samples would involve a very minor increase in traffic, and any additional impacts associated with this traffic would be negligible." (page 10)

16. In summary, the Department's Modification Assessment Report concluded that the Modification *"would involve a negligible increase in the environmental impacts of the project."* (page 11)

3 THE COMMISSION'S MEETINGS AND SITE VISIT

17. As part of its determination, the Commission met with various stakeholders as set out below.
18. The Commission notes that while it did not meet with or receive a submission from Narrabri Shire Council, in Narrabri Shire Council's advice to the Department it stated that it has no major concerns with the proposed changes to the Boggabri Coal Mine Project Approval; however, it would like to see the maximum total volume of sample coal per year capped at a level that is reasonable and the route to be restricted to the private former haul road back to the Kamilaroi Highway.

3.1 Meeting with the Department

19. On 11 April 2019, the Department met with the Commission on the Modification, and elaborated the five elements specified in paragraph 15 above. The Department provided background to the Modification, along with details of its assessment, including why it considered the Modification to be administrative and why it was not publicly exhibited. A copy of the meeting notes was made available on the Commission's website on 18 April 2019.

3.2 Meeting with the Applicant

20. On 11 April 2019, the Commission met with the Applicant. The Applicant provided the Commission with a detailed presentation regarding all five elements of the Modification.
21. At the meeting, the Commission questioned the Applicant regarding the delays in securing the offsets required and questioned whether the proposed extension would be enough time to secure the offsets required.
22. Further, the Commission requested that the Applicant provide the Commission with a history of securing its biodiversity offsets and provide details of what work is still required to secure the offsets. This information was provided to the Commission by the Applicant on the 18 April 2019 and was made available on the Commission's website on the same day.
23. A copy of the meeting transcript was made available on the Commission's website on 18 April 2019.

3.3 Public meeting

24. To hear the community's views on the Modification, the Commission held a public meeting at Boggabri Golf Club, located at Gunnedah Road, Boggabri, on 12 April 2019. A list of the six speakers that presented to the Commission was provided on the Commission's website. A transcript of the public meeting, as well as a copy of the material that was tendered at the public meeting, was made available on the Commission's website on 18 April 2019.
25. The public was provided with the opportunity to provide written comments to the Commission until 26 April 2019. All comments received were made available on the Commission's website on 29 April 2019. A summary of issues raised by speakers at the public meeting and in written comments to the Commissions is outlined below.
 - Biodiversity offsets:
 - concerns that the biodiversity offsets process in NSW is a struggling and unviable system;
 - could the offsets would be secured by the requested timeframe, given that the offsets should have been secured by December 2014;
 - questions raised as to whether the Regional Boggabri Tarrawonga Maules Creek Biodiversity Strategy Stage 3 (due in December 2018) is in place;
 - concerns that this Modification will set a precedent of modifying conditions rather than securing the offsets;
 - concerns that the native vegetation corridor located between Boggabri Coal Mine and Maules Creek Coal Mine will be mined, noting that this corridor is part of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* approval (EPBC 2009/5256); and
 - concerns about the ongoing protection of the Critically Endangered Ecological Community White Box Grassy Woodland.
 - Drilling and exploration activities:
 - concerns that the exploration drilling activities would have an impact on

- biodiversity and that the native vegetation corridor will be mined;
 - concerns the Environmental Assessment does not provide details of the location of the exploration bores, or assessment of the impact of the drilling;
 - questions raised as to why the drilling depths are deeper than the approved depth of the mine;
 - concerns that the drilling may impact on water resources, particularly groundwater resources, and why this has not been assessed;
 - questions raised as to why the Applicant is seeking a Zone 11 entitlement;
 - questions raised about the status of the Regional Water Strategy; and
 - concerns raised as to why the Department of Industry (Dol) – Lands & Water did not comment on the Modification.
- Transport of coal samples:
 - concerns that there has been a failure to consider the cumulative traffic impacts associated with this Modification and the assessment of transport impacts with the adjacent Tarrawonga Coal Mine;
 - concerns about the frequency of the proposed transport of coal samples; and
 - questions about the need for the modification given that the existing consent allows for road transport of up to 200 tonnes of coal with the approval of Roads and Maritime Services (RMS) and Narrabri Shire Council.
- Process:
 - questions raised as to why the Department chose not to exhibit the modification;
 - concerns that the Modification is not ‘minor’ or ‘administrative’, because there are community and environmental impacts associated with it;
 - concerns regarding the changes to NSW Government agencies, including that the Office of Environment and Heritage (OEH) is being dissolved, and what that means for the current conditions;
 - questions as to why the draft recommended conditions of approval are available on the Commission’s website, as it gives the impression that the determination has already been made;
 - consideration that the Environmental Assessment should address the impact of the mine on climate change and should provide offsets for Scope 3 emissions;
 - concerns that the Applicant has breached its conditions of approval; and
 - concerns regarding the Applicant’s comments about the delay in determining the Modification and the Commission holding a public meeting.

4 ADDITIONAL INFORMATION

26. The Commission received:

- additional information provided by the Applicant, dated 18 April 2019 and 14 May 2019;
- additional information provided by the Department, dated 15 May 2019; and
- further comments from the community.

27. All of this additional information was published on the Commission’s website by 15 May 2019.

5 THE COMMISSION’S CONSIDERATION

5.1 Material considered by the Commission

28. In this determination, the Commission has carefully considered the following material (**Material**):

- original Project Approval (09_0182) and subsequent modifications;

- the Environmental Assessment prepared by Umwelt Environmental Consultants, dated 31 August 2018, and its accompanying appendices;
- the Department's Modification Assessment Report, dated 18 December 2018, Draft Notice of Modification and Draft Consolidated Project Approval;
- public representations received by the Department during its assessment;
- Government agency advice received by the Department during its assessment, including from:
 - the Division of Resources & Geoscience (**DRG**);
 - Environment Protection Authority (**EPA**)
 - Narrabri Shire Council; and
 - OEH;
- information presented at the Commission's meeting with the Applicant on 11 April 2019;
- information presented at the Commission's meeting with the Department on 11 April 2019;
- presentations at the Commission's public meeting on 12 April 2019; and
- written comments received by the Commission both at and following its public meeting, up to and including 26 April 2019;
- additional information provided by the Applicant, dated 18 April 2019 and 14 May 2019;
- additional information provided by the Department, dated 15 May 2019.

5.2 Biodiversity Offsets

5.2.1 Applicant's consideration

29. The Applicant undertook an assessment of the proposed amendment to the biodiversity offset security arrangements required under Condition 47 of Schedule 3 of the Project Approval. The assessment concluded that the amendment would provide the Applicant with contemporary mechanisms to secure the offset.
30. The current Project Approval requires under Condition 47 of Schedule 3 that:

"The Proponent shall make suitable arrangements to provide appropriate long-term security for the offset areas:

- (a) *For the areas included in Table 15 as owned, under option or committed by the Proponent, the long term security shall be provided by way of the Proponent entering into a conservation agreement or agreements pursuant to section 69B of the National Parks and Wildlife Act 1974, recording the obligations assumed by the Proponent under the conditions of this approval in relation to these offset area, and registering the agreement(s) pursuant to section 69F of the National Parks and Wildlife Act 1974. The conservation agreement(s) must be registered by December 2014 unless agreed otherwise by the Secretary after consultation with Chief Executive of OEH. The conservation agreements must remain in force in perpetuity.*
- (b) *For the areas included in Table 15 as Crown Reserve Land and Additional Land managed for Corridor Enhancement, the long-term security shall be provided by a form of binding agreement acceptable to the Secretary that records the obligations assumed by the Proponent under the conditions of this approval in relation to these offset areas. These arrangements must be in force within 12 months of the approval of Stage 2 of the Leard Forest Mining Precinct Regional Biodiversity Strategy, or other date agreed by the Secretary, to the satisfaction of the Secretary."* (page 24)

32. The Applicant states in its Environmental Assessment that:

“This Modification would not result in any potential impacts as new biodiversity offset security arrangements will be determined on their merits under the biodiversity offset frames and policy that is available at the time. This proposed modification will not alter the land or associated biodiversity values agreed to be used for the offset strategy approved under the Boggabri Project Approval. The objective of this proposed modification is to contemporise the range of offset security mechanisms available to be applied to the currently agreed and approved offset strategy.” (page 24)

33. In response to questions from the Commission regarding the proposed extended timeframe for securing the biodiversity offsets, the Applicant provided the Commission with details as to the delay in securing the biodiversity offsets. The Applicant states in its correspondence to the Commission, dated 18 April 2019, that:

*“a staged process has been used to identify suitable BOAs [Biodiversity Offset Areas] and in the preparation of the Leard Forest Mining Precinct Regional Biodiversity Strategy (**Regional Strategy**). Most of the delays have been caused by factors outside Boggabri Coal’s control including:*

- significant delays to the various stages of the Regional Strategy which critically informs the requirements of Boggabri Coal’s biodiversity offset strategy (**BOS**) and biodiversity management plan (**BMP**);*
- delays to and changes to the offset area for possible inclusion in the National Parks and Wildlife Services (**NPWS**) reserve estate;*
- significant delays in obtaining confirmation from Crown Lands as to the areas suitable for acquisition; and*
- substantial changes to the biodiversity conservation legislation in NSW and corresponding conservation mechanisms available to secure the BOAs in perpetuity.”* (pages 1 to 2)

34. Further, in its correspondence to the Commission, dated 14 May 2019, the Applicant states:

“The proposed modification to Condition 47 to permit alternative security mechanisms for the Biodiversity Offsets will not change, alter or diminish Boggabri Coal’s offset obligation and there will be no change to the biodiversity impacts of the Project Approval...”

The extension for the registration of the agreement until February 2020 is to align with the EPBC Approval requirement for registration for offset areas. This requirement does not delay or put on hold [Boggabri Coal Mine’s] existing biodiversity obligations under the Project Approval, which it is continuing to comply with.” (page 4)

5.2.2 Department’s consideration

35. The Department states in its Modification Assessment Report that under the current Project Approval the Applicant has only one security mechanism arrangement available to it to secure its biodiversity offsets, under the NPW Act. The proposed Modification would provide the Applicant with additional security mechanisms that are available since the BC Act was enacted. These mechanisms include biodiversity stewardship agreements, as referred to in Division 2 of Part 5 of the BC Act, and conservation agreements, as referred to in Division 5 of Part 5 of the BC Act.

36. The Department sought advice from OEH on the proposed Modification. OEH advised that it is supportive of the Modification, though it would like the conditions to clearly state the mechanisms that it considers are acceptable for securing the offsets, which include:
- a biodiversity stewardship agreement under the BC Act;
 - a conservation agreement under the BC Act; or
 - transfer of land to National Parks estate under the NP&W Act.
37. Additionally, OEH advised that extending the date for which the security arrangement must be finalised to February 2020 is a reasonable timeframe.
38. The Department notes the concerns raised by the community in the comments received, that the modification would remove or reduce the Applicant's offsetting obligations. In its Modification Assessment Report, the Department considers that *"the offsetting obligations do not change as a result of including alternative security mechanisms"* (page 7) and concludes that *"the modification would strengthen the protection of the approved offsets for the project."* (page 7)
39. In that regard, the Department proposed amending Condition 47 of Schedule 3 as follows:
- "The Proponent shall make suitable arrangements to provide appropriate long-term security for the offset areas:*
- (a) *For the areas included in Table 15 owned by the Proponent, the long-term security shall be provided by way of the Proponent:*
- *entering a biodiversity stewardship agreement pursuant to Part 5 Division 2 of the BC Act;*
 - *entering a conservation agreement pursuant to Part 5 Division 3 of the BC Act; and/or*
 - *transferring land to National Parks estate under the National Parks & Wildlife Act 1974.*
- The agreement or transfer of land must be registered by February 2020 unless agreed otherwise by the Secretary after consultation with the Chief Executive of OEH. If conservation or stewardship agreements are made to secure the land, the agreements must remain in force in perpetuity.*
- (b) *For the areas included in Table 15 as Crown Reserve Land and Additional Land managed for Corridor Enhancement, the long-term security shall be provided by a form of binding agreement acceptable to the Secretary that records the obligations assumed by the Proponent under the conditions of this approval in relation to these offset areas. These arrangements must be in force within 12 months of the approval of Stage 2 of the Leard Forest Mining Precinct Regional Biodiversity Strategy, or other date agreed by the Secretary, to the satisfaction of the Secretary."*

5.2.3 Public comments

40. The Commission heard concerns from speakers at the public meeting and received written comments regarding the impacts of the Project. These concerns are outlined in paragraph 25.

5.2.4 Commission's consideration

41. The Commission notes the concerns raised by the community regarding:
- the extension of time to secure the biodiversity offsets;
 - that the amendment to the conditions will reduce the protection of the biodiversity

- offsets; and
 - doubts whether the offsets will be achieved by the proposed date.
42. The Commission notes that there has been a significant delay with securing the offsets by the Applicant; however, it acknowledges that the process for securing offsets can be lengthy.
 43. The Commission notes that OEH is supportive of the proposed Modification, and that the proposed conditions will contemporise the Project Approval and provide the Applicant with the same range of biodiversity offset security mechanisms as would be afforded to the Applicant if the Project Approval were granted today.
 44. Additionally, the Commission notes that the extension of the timeframe for securing the biodiversity offsets to February 2020 would align the Project Approval with the EPBC Act approval (EPBC 2009/5256) requirement for registration for offset areas, as stated by the Applicant in paragraph 34, and is supported by OEH.
 45. The Commission accepts the conclusions of the Department outlined in paragraphs 38 above, that the proposed conditions would strengthen the protection of the approved biodiversity offsets for the Project.
 46. As such, the Commission accepts the Department's amendments to Condition 47 of Schedule 3, as outlined in paragraph 39 (above) and considers that this condition adequately addresses the concerns raised by the community for the reasons outlined above in paragraph 45.
 47. Notwithstanding its consideration in paragraph 42, the Commission does continue to have strong concerns about the delay with securing the offsets, and urges the Applicant, OEH and the Department to expedite matters to ensure offset arrangements are finalised by February 2020, as required by the amended Condition 47 of Schedule 3.

5.3 Coal stockpile area

5.3.1 Applicant's consideration

48. The Project currently has allocated a stockpile area for the storage of coal from Boggabri Coal Mine and a stockpile area for coal from the adjoining Tarrawonga Coal Mine (which was approved as part of Boggabri Coal Mine Modification 2 on 17 February 2015). However, to date, a commercial arrangement has not been reached between Boggabri Coal and Whitehaven Coal; therefore, the allocated stockpile area for the storage of Tarrawonga Coal Mine's coal has not been used.
49. The Applicant is requesting in this Modification to amend the Project Approval so that coal from the Boggabri Coal Mine can be stored in the stockpile area allocated for Tarrawonga Coal Mine. **Figure 2** shows the stockpile area (in purple) that is the subject of this Modification.

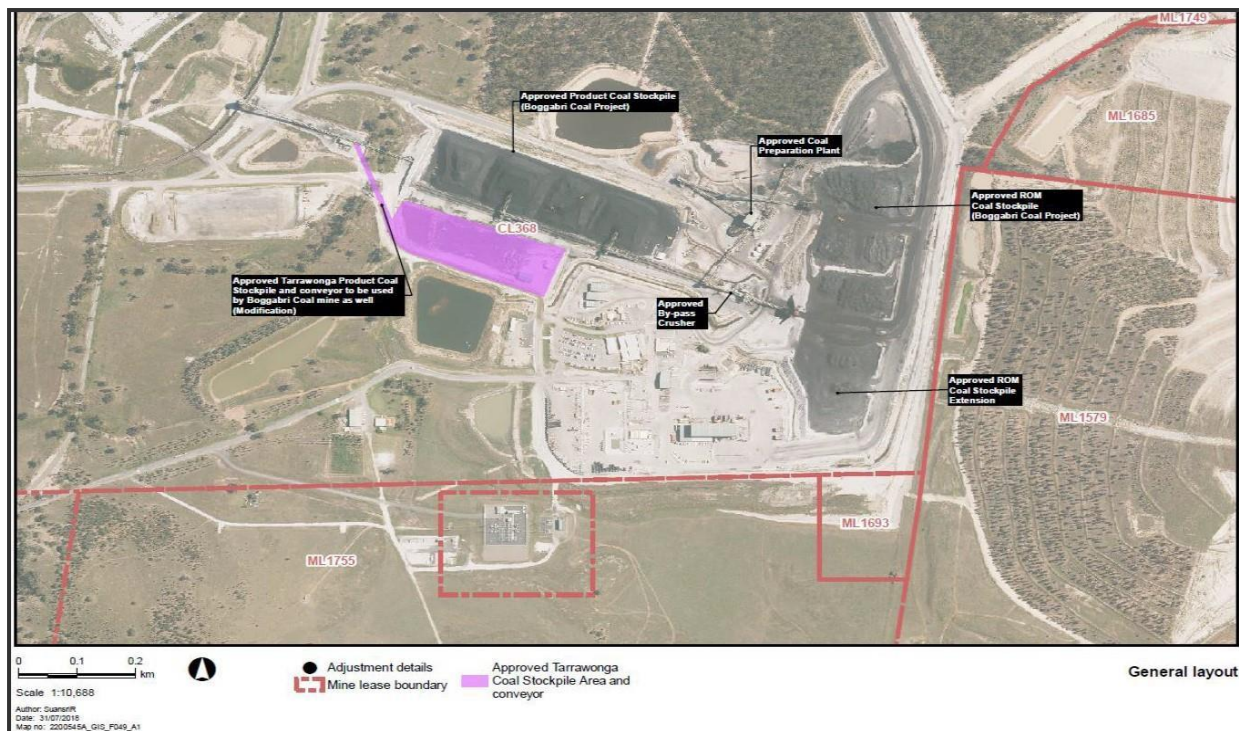


Figure 2: Boggabri Coal Mine stockpile areas

50. The Applicant's Environmental Assessment concludes that the Modification:

"...would not result in the alteration of the extraction rates, capacity of the coal handling and processing plant or other requirements under the current Boggabri Project Approval. This proposed Modification will enable BCOPL [Boggabri Coal Operations Pty Ltd] to utilise the completed product stockpile area for Boggabri Coal Mine product coal by removing the current constraint in the Boggabri Project Approval that limits the use of the stockpile area for Tarrawonga Coal Mine product coal only. At present, due to the absence of a commercial agreement this stockpile area is unused which is an inefficient use of this approved and partially constructed infrastructure resource..."

No new impacts or changes to existing approved impacts are predicted as a result of this proposed modification." (page 28)

51. The Environmental Assessment further states that:

"should an agreement be reached with TCPL in the future, the stockpile area would be able to be utilised by Tarrawonga Coal Mine as well as Boggabri Coal Mine, subject to the existing coal handling and coal transportation tonnage constraints contained within the Boggabri Project Approval." (page 28)

5.3.2 Department's consideration

52. The Department notes in its Modification Assessment Report that the dedicated stockpile area for handling Tarrawonga Coal Mine coal is not currently being used as Tarrawonga Coal Mine transports its coal by truck haulage to its CHPP near Gunnedah.
53. The Department states that *"the impacts associated with the use of the area to stockpile product coal by Boggabri Coal have already been assessed and approved (Boggabri Coal Mod 2), and the infrastructure is partially constructed."* (page 8)

54. The Department concludes that *“the use of this area to stockpile Boggabri product coal instead of coal from the Tarrawonga Coal Mine would provide additional operational flexibility and efficiency for Boggabri Coal and would not change the approved impacts of the project.”* (page 8)
55. The Department has proposed updating the definition of EA (i.e. Environmental Assessment) in the Project Approval to include the Environmental Assessment for this Modification which includes the stockpiling of Boggabri Coal Mine coal on the Tarrawonga Coal Mine stockpile area.

5.3.3 Commission’s consideration

56. The Commission notes that the assessment of the impact for the use of the Tarrawonga Coal Mine stockpile area was undertaken as part of the Boggabri Coal Mine Modification 2 assessment, as stated by the Department, and considers that further assessment is not required as part of this Modification.
57. The Commission accepts both the Applicant’s conclusions (paragraph 50) and the Department’s conclusions (paragraphs 53 and 54) that the amendment will not increase the rate of extraction or handling of coal product; and rather that it allows the Applicant to make use of the Tarrawonga Coal Mine stockpile area for Boggabri Coal Mine’s coal.
58. As such, the Commission accepts the Department’s proposed changes to the definitions in the Project Approval, as summarised in paragraph 55, because it will allow the Applicant additional flexibility and efficiencies in the operation of Boggabri Coal Mine.

5.4 Drilling and exploration activities

5.4.1 Applicant’s consideration

59. The Applicant states in its Environmental Assessment that drilling and exploration activities are necessary mining activities. These exploration activities:

“...refine the understanding of geological structures, geotechnical and coal quality characteristics, understanding of hydrogeological conditions and also to improve the understanding of the overlying or underlying strata, within the Project Approval area. There are a number of geophysical exploration techniques, as well as drilling and sampling techniques that may be required including:

- *seismic, gravitational, magnetic, electrical and electromagnetic testing*
- *cored and open-hole drilling to the basement of the coal basin*
- *in-fill drilling*
- *limit of oxidation drilling*
- *down-hole testing including gas sampling and testing*
- *geotechnical investigation and testing techniques*
- *the establishment of access tracks.”* (pages 28 to 29)

60. The Applicant's Environmental Assessment further states that these drilling and exploration activities have been previously undertaken in line with the requirements of the *Mining Act 1992* and Boggabri Coal Mine's Mining Operations Plan (**MOP**). The Applicant states that these activities are not expressly included in the description of works in the approval. The Modification is to expressly include these activities in the definitions of the Project Approval.

61. The Applicant's Environmental Assessment goes on to state that the:

"Potential impacts resulting from undertaking exploration activities include sediment and erosion impacts, vegetation clearing, noise and dust impacts and aquifer interference.

*Whilst these activities are generally low impact activities in the context of the nearby mining operation, the potential impacts will be managed and controlled in accordance with the extensive program of environmental management measures approved for the Boggabri Coal Mine, as outlined in **Section 2.1**, and having regard to the relevant mining industry best practice guideline "Exploration Code of Practice: Environmental Management" (Department of Industry, 2015)." (page 29)*

62. The Applicant's Environmental Assessment concludes that the drilling and exploration activities proposed will have minimal environmental impacts, given that the exploration area is within the Boggabri Coal Mine's approved disturbance area.

63. Further, in its correspondence to the Commission, dated 14 May 2019, the Applicant provided a figure (**Figure 3**) that overlaid its approved drilling program area in the MOP against the other Project Approval boundaries, and clarified that:

"...there is no drilling planned to occur within the [native] vegetation corridor, pursuant to the conditions of the Project Approval." (page 3)

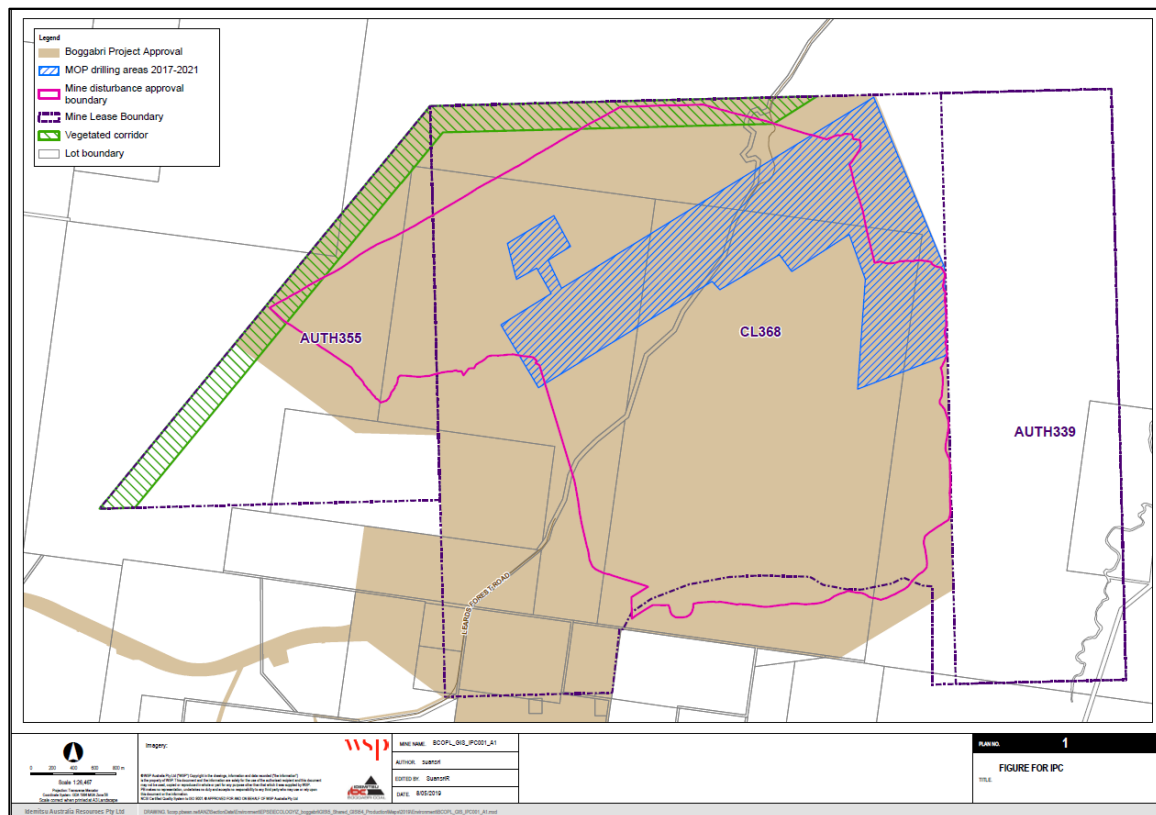


Figure 3: Boggabri Coal Mine approved drilling program area

5.4.2 Department's consideration

64. The Department states in its Modification Assessment Report that:

"...the proposed exploration activities represent standard practices for open cut coal mines and are necessary to inform ongoing mining activities within the approved disturbance area." (page 8)

65. The Department considers that:

"...the activities can be managed under the existing conditions of approval and that the modification would not change the environmental impacts of the project." (page 8)

66. Further, in its correspondence to the Commission, dated 15 May 2019, the Department advised that:

"The exploration activities would be undertaken within the approved mine disturbance area excluding the 250 metre wide native vegetation corridor along the Boggabri Coal and Maules Creek Coal mining lease boundary."

Condition 7 of Schedule 2 of the existing approval specifically prohibits clearing in the native vegetation corridor, as follows:

The Proponent shall not clear native vegetation from any land within 250 metres of the adjoining Maules Creek Coal Mine mining lease boundary, except with the approval of the Secretary, following endorsement of OEH." (page 1)

67. Further, the Department confirmed that:

"...there would be no change to the impacts or management of the [native] vegetation corridor as a result of the modification, and that the modification would not permit clearing of vegetation for the purposes of any project related activities – mining or exploration." (page 1)

68. The Department has proposed updating the definition of EA (i.e. Environmental Assessment) in the Project Approval to include the Environmental Assessment for this Modification which includes drilling and exploration activities. The Commission notes that Condition 7 of Schedule 2 of the Project Approval specifically prohibits vegetation clearing (and by nexus these activities) in the 250 metre (m) wide native vegetation corridor (see paragraph 66 above).

5.4.3 Public comments

69. The Commission heard concerns from speakers at the public meeting and received written comments regarding the impacts of the Project. These concerns are outlined in paragraph 25.

5.4.4 Commission's consideration

70. The Commission notes the concerns raised by the community regarding the drilling and exploration activities, particularly the potential impacts to groundwater from the boreholes.
71. The Commission accepts that the drilling and exploration activities are part of normal mining operations, as these activities provide the Applicant with details that will allow it to further develop its MOP.

72. Further, the Commission accepts that the impacts associated with the drilling and exploration activities are minor in nature when compared to the impacts associated with open cut mining.
73. The Commission acknowledges the concerns raised by the community that the drilling and exploration activities might occur within the native vegetation corridor that is located between Boggabri Coal Mine and Maules Creek Mine; however, based on the statement by the Applicant, as outlined in paragraph 63, the statement by the Department in paragraphs 66 and 67, and the requirements of the existing conditions in the Project Approval, as outlined in paragraphs 66 and 67, the Commission is satisfied that that drilling and exploration activities will not occur within the native vegetation corridor as a result of the Modification.
74. For the reasons outlined in paragraph 73, the Commission accepts that the area where drilling and exploration activities would occur as a result of the Modification is within the approved Boggabri Coal Mine disturbance area but will not occur within the native vegetation corridor.
75. The Commission, therefore, accepts the Department's proposed changes to the definitions in the Project Approval, as summarised in paragraph 68.

5.5 Transportation of coal samples

5.5.1 Applicant's consideration

76. The current Project Approval requires that all product coal is to be transported by rail, and not by road, unless there are exceptional circumstances. In this case the Applicant can transport coal by road if it's agreed to by both RMS and Council and also approved by the Planning Secretary.
77. The Applicant is seeking to amend Condition 12 of Schedule 2 of its Project Approval to specifically allow for the transportation by road of coal samples for testing and/or marketing purposes.
78. In its Environmental Assessment, the Applicant states that occasionally coal samples are required to be transported by road for coal quality and marketing purposes. The size of the samples is relatively small, between 150 kg and 60 tonnes, with an individual sample being a maximum of three shipping containers (equivalent to 60 tonnes).
79. The Applicant's Environmental Assessment states that:

"The transportation of coal samples by road is not considered to be of sufficient scale to trigger the intent of Condition 12 in Schedule 3 [sic] of the Boggabri Project Approval. Condition 12 ensures that the regular transport of product coal from the Boggabri Coal Mine, being up to 8.5 Mtpa, is undertaken using the approved Boggabri Coal Mine rail loop and spur line, in order to ensure that the regular transportation of product coal is not undertaken by road.

The proposed road transport of coal samples is to be undertaken by registered transport company vehicles in accordance with normal road transport traffic regulations and RMS requirements. No additional adverse traffic impacts are anticipated from the transportation of coal samples by road." (page 30)

5.5.2 Department's consideration

80. The Department states in its Modification Assessment Report that transporting small volumes of product coal for testing to ensure it meets customer specifications is standard industry practice.

81. The Department notes the concerns raised by the community in its representations relating to the increased road traffic that would result from the Modification, though it considers that the road transportation of sample coal will not have a significant impact on traffic volumes.

82. The Department notes that the coal samples would be transported via Boggabri Coal Mine's private haul road and the Kamilaroi Highway, and states:

"In the context of total traffic on the roads, the transport of coal samples would increase the annual heavy vehicle traffic on the Kamilaroi Highway by approximately 0.008% and the total traffic by approximately 0.01%¹.

The proposed number of vehicles is very small compared to the approved traffic for [the] project. The approved operational traffic volumes as per the Traffic Management Plan for the project comprise around 527 light vehicle trips per day [mostly for staff] and 24 heavy vehicle movements per day for deliveries." (page 8)

83. The Department concludes that:

"Given the very small increases in traffic, the Department considers that the modification would result in negligible impacts on the capacity, efficiency or safety of the approved road network." (page 8)

84. The Department has recommended a condition that limits the total volume of coal to be transported by road for testing and marketing purposes to a maximum of 200 tonnes per year. This recommended condition also requires all other coal to be transported from the Project via the Boggabri rail loop and rail spur line, except in exceptional circumstances as agreed with RMS and Council, and approved by the Department.

5.5.3 Public comments

85. The Commission heard concerns from speakers at the public meeting and received written comments regarding the impacts of the Project. These concerns are outlined in paragraph 25.

5.5.4 Council comments

86. As outlined in paragraph 18, in its advice to the Department, Narrabri Shire Council requested that the Project Approval include a condition restricting the maximum total volume of coal per year to be transported by road to a level that is reasonable, and that the route be restricted to the private haul road back to the Kamilaroi Highway.

5.5.5 Commission's consideration

87. The Commission accepts the Applicant's operational need for testing and marketing of its product coal to ensure that it meets its customers' specifications.

88. The Commission accepts the conclusions of the Department, as outlined in paragraphs 80 to 83 above, that the proposed coal sample transport would result in negligible impacts on the road network due to the small number of vehicles required and the irregular frequency.

¹ Based on data provided by Boggabri Coal from highway traffic count conducted in 2017 by Constructive Solutions.

89. As such, the Commission accepts the Department's proposed condition for an upper annual limit of coal that can be transported by road for testing and marketing purposes, as summarised in paragraph 84, and considers that this condition adequately addresses the concerns raised by both Narrabri Shire Council and the community.

5.6 Project boundary realignment

5.6.1 Applicant's consideration

90. According to the Applicant's EA, the project boundaries of the Boggabri Coal Mine and Tarrawonga Coal Mine overlap along part of the southern boundary of the Boggabri Coal Mine Project Approval area.
91. The Applicant is seeking to amend the boundary between Boggabri Coal Mine and Tarrawonga Coal Mine, to align with the boundary approved as part of Tarrawonga Project Approval (11_0047 Modification 5), and the relevant Mining Leases.
92. **Figure 4** shows the area of overlap (Mine Lease (ML) 1685 and ML 1749) between Boggabri Coal Mine and Tarrawonga Coal Mine.

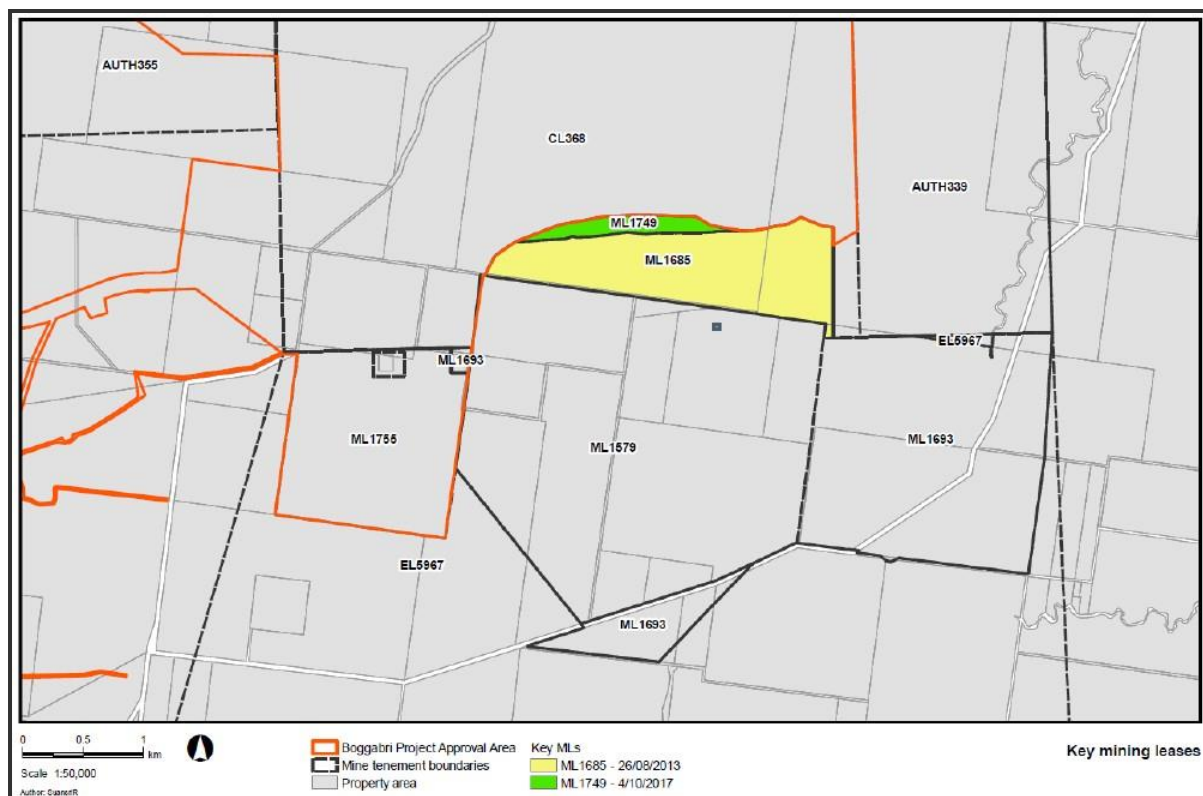


Figure 4: Boggabri Coal Mine Project Approval area and ML boundaries

93. According to the Applicant's Environmental Assessment, it signed a Common Boundary Integrated Management Plan (2015) (**CBIMP**) with Whitehaven Coal in August 2015. The Environmental Assessment states that:

"This management plan outlines strategies that will be implemented jointly by BCOPL and TCPL to rehabilitate mining and overburden emplacement areas that adjoin both mines. The plan also identifies key activities and relevant roles and responsibilities for implementation during each stage of the lease transfer. The general strategy of the lease transfer area is described in the respective Mine Operations Plans (MOPs)." (page 15)

94. The Environmental Assessment goes on to state that:

“According to the CBIMP, the area of responsibility between BOCPL and TCPL is defined by the lease boundary. As the lease boundary changes have been completed, TCPL has assumed responsibility for the rehabilitation of the area covered by the revised mining tenements and it is therefore proposed to modify the Boggabri Project Approval to reflect this change in responsibility.” (page 15)

95. The Applicant’s Environmental Assessment states that there will be no change in impacts resulting from this modification, it simply reflects the transfer in ownership of the land from Boggabri Coal Mine to Tarrawonga Coal Mine. The responsibility for the management and rehabilitation of the land will no longer reside with Boggabri Coal Mine, it will reside with Tarrawonga Coal Mine.

5.6.2 Department’s consideration

96. The Department states in its Modification Assessment Report that:

“In 2017, the Department approved a modification application submitted by Whitehaven to allow a small open extension within an area where the Boggabri and Tarrawonga mines were developing an integrated waste emplacement area between the two mines. As a result, there is an overlap in the area covered by the project approvals for the Boggabri and Tarrawonga coal mines.” (page 9)

97. Whitehaven Coal must rehabilitate the overlap area under its Project Approval (11_0047 Modification 5) for Tarrawonga Coal Mine.

98. The Department’s Modification Assessment Report states that the areas covered by ML 1685 and ML 1749, as shown in **Figure 4**, has been transferred to Tarrawonga Coal Mine.

99. The Department considers that the Modification removes any overlap between the Boggabri Coal Mine Project Approval and Tarrawonga Coal Mine Project Approval, clearly delineates the responsibility between Boggabri Coal and Whitehaven Coal and is consistent with the ML requirements.

100. The Department concludes that:

“The proposed realignment of the Boggabri coal mine project boundary is an administrative change to ensure clear delineation of responsibility between the two mines and would not result in any changes to the approved impacts.” (page 9)

101. The Department has proposed changes to the conditions to update the Project area and boundary, including figures and tables referencing the Project land.

5.6.3 Public comments

102. In the representations made to the Department, the community raised concerns regarding the management of the land transferred to the Tarrawonga Coal Mine, given that there is no environmental representative on the Tarrawonga Community Consultative Committee.

5.6.4 Commission’s consideration

103. The Commission acknowledges that the transfer of land covered by ML 1685 and ML 1749 has occurred and has been captured in the Tarrawonga Coal Mine Project Approval (11_0047 Modification 5).

104. The Commission considers that the proposed realignment of the Boggabri Coal Mine boundary ensures that the Project Approvals for both it and Tarrawonga Coal Mine delineate the responsibilities between the two mines over the land and removes any overlap in responsibility over the management of the land.
105. The Commission acknowledges the concerns raised by the community that Tarrawonga Coal Mine does not have an environmental officer and that the management of the overlapping land would be compromised; however, the Commission considers that this is outside the scope of the Commission's task, as this would have been considered as part of the Tarrawonga Coal Mine's modification to accept ownership and responsibility for managing and rehabilitating the land.
106. The Commission accepts the conclusions of the Department, as outlined in paragraphs 96 to 100 above, that the boundary re-alignment would not result in any changes to the approved impacts and considers that this aspect of the Modification should be approved. As such, the Commission accepts the Department's proposed changes to the conditions, as summarised in paragraph 101.

5.7 The public interest

107. In determining the public interest of the Modification, the Commission has had regard to the objects of the EP&A Act.
108. The relevant objects under Section 1.3 of the EP&A Act are:
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
 - (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
 - (c) to promote the orderly and economic use and development of land,...*
 - (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
 - (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
 - (g) to promote good design and amenity of the built environment,*
 - (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,...*
 - (j) to provide increased opportunity for community participation in environmental planning and assessment.*
109. In regard to object (b) of the EP&A Act, the Commission notes that Section 6(2) of the *Protection of the Environment Administration Act 1991* states that ecologically sustainable development can be achieved through the implementation of:
- the precautionary principle;
 - inter-generational equity;
 - conservation of biological diversity; and

- improved valuation, pricing and incentive mechanisms.
110. The Commission finds that the Modification is generally consistent with the relevant objects of the EP&A Act, because it achieves an optimal balance between the relevant economic, environmental and social considerations that form part of the decision-making process. In particular, the Modification is consistent with object (b), as it would strengthen the protection of the approved biodiversity offsets for the Project. In addition, the Modification would achieve orderly and economic use and development of the Boggabri Coal Mine and remain consistent with the requirements of the Project Approval.
111. The Commission finds that the Modification is in the public interest for the reasons set out below::
- **Secure biodiversity offsets through alternative mechanisms and extended timeframe:**
The proposed security of biodiversity offsets through alternative mechanisms would strengthen the protection of the approved biodiversity offsets for the Project, and the extension to the timeframe would align the Project Approval with the EPBC Act approval (EPBC 2009/5256).
 - **Use an approved stockpile area for its product coal:**
The use of the Tarrawonga Coal Mine stockpile area would not increase the rate of extraction or handling of coal product and would not result in any changes to the approved impacts of the Boggabri Coal Mine (see paragraphs 56 and 57).
 - **Undertake drilling and exploration activities within the approved disturbance area but not in the native vegetation corridor:**
The impacts associated with the drilling and exploration activities are minor in nature and would be limited to the approved disturbance area, but would not occur within the native vegetation corridor (see paragraphs 72 to 74).
 - **Transport small tonnages of coal by road for testing and marketing purposes:**
The proposed coal sample transport would result in negligible impacts on the road network due to the small number of vehicles required and the irregular frequency (see paragraph 88).
 - **Realign a small section of the Project boundary:**
The boundary realignment would not result in any changes to the approved impacts of the Boggabri Coal Mine (see paragraph 106).

6 HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

112. The views of the community were expressed through:
- comments received by the Department while it was assessing the Modification; and
 - comments received by the Commission from members of the public who spoke at the public meeting and/or subsequently provided written comments (as detailed in paragraph 25).
113. In summary, the views expressed by the community raised several significant concerns regarding:
- the proposed amendments to the biodiversity offset mechanism;
 - potential environmental impacts from the drilling and exploration activities, including concerns in relation to the vegetation corridor;
 - increasing traffic impacts associated with the road transport of product coal for testing and marketing purposes; and
 - process concerns associated with the assessment of the Modification, as the

community do not consider the Modification to be administrative in nature.

114. The Commission carefully considered all these views in making its decision. The way in which these concerns were considered by the Commission is set out in sections 5.2.4, 5.3.3, 5.4.4, 5.5.4, and 5.6.4 above.

7 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

115. After carefully considering all the Material before it, including the community's views, the Commission has determined to approve the Modification subject to the proposed changes to the conditions of approval outlined by the Department in the Draft Notice of Modification.

116. The Commission finds that the Modification is within the broad scope of Section 75W of the EP&A Act, and therefore the request to modify can be considered under Section 75W.

117. The Commission is of the view that the Modification is in the public interest, for the reasons set out in paragraph 111. A summary of the Commission's findings for each of the five elements of the Modification is provided below:

- **Secure biodiversity offsets through alternative mechanisms and extended timeframe:**

The contemporising of the biodiversity offset security mechanism and extension of the timeframe for securing the biodiversity offsets to February does not reduce the level of protection offered by the security mechanism (section 5.2.4).

- **Use an approved stockpile area for its product coal:**

The Commission finds that the use of the coal stockpile area for coal product from Boggabri Coal Mine rather than Tarrawonga Coal Mine does not have an adverse environmental impact, for the reasons outlined in section 5.3.3. The Modification provides the Applicant with additional flexibility and efficiencies in its operations, by providing the Applicant with additional stockpile area.

- **Undertake drilling and exploration activities within the approved disturbance area but not in the native vegetation corridor:**

The Commission considers that drilling and exploration activities are a normal part of mining operations, which provides the Applicant with detailed information to inform its mining operations. The Commission finds that the environmental impacts from the drilling and exploration activities are minor and can be adequately managed, for the reasons outlined in section 5.4.4.

- **Transport small tonnages of coal by road for testing and marketing purposes:**

The Commission considers that the road transportation of coal samples for testing and marketing purposes is standard industry practice to ensure quality of product to meet customer specifications. The Commission finds that the relatively small size of the samples and the irregular occurrence of the sampling will not have an adverse impact on traffic impacts, and agrees with the Department's proposed upper annual limit, to ensure that the transport of material remains small and that product coal for market is transported by rail, for the reasons outlined in section 5.5.4.

- **Realign a small section of the Project boundary:**

The Commission finds that the proposed realignment of the boundary between the Boggabri Coal Mine and Tarrawonga Coal Mine clarifies the responsibilities for the management and rehabilitation of the land and removes any overlap between the two Project Approvals, for the reasons outlined in section 5.6.4.

118. As such, for the reasons above, the Commission has determined that the Modification can be approved, subject to the Department's proposed conditions. These conditions are designed to prevent, minimise and/or offset adverse environmental impacts and impacts on the community.

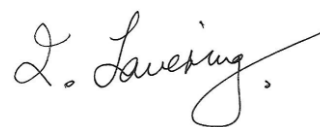
119. The reasons for the decision are given in this 'Statement of reasons for decision', dated 27 May 2019.



Prof Snow Barlow (Chair)
Member of the Commission



Prof Zada Lipman
Member of the Commission



Dr Ian Laverling
Member of the Commission