



12 February 2019

Liddell Coal Mine MOD 7

1. INTRODUCTION

1. On 21 January 2019, the NSW Independent Planning Commission (the **Commission**) received from the NSW Department of Planning and Environment (the **Department**) a modification application (the **Application**) from Liddell Coal Operations Pty Ltd (the **Proponent**) to amend an existing development consent for open cut mining operations (the **Project**) under Section 75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. As 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. The Commission is to be taken to be the same legal entity as the PAC, pursuant to clause 7 of the Transitional Regulation.
3. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued, however as the request for this Application was made before 1 March 2018, the provision of Schedule 2 continue to apply.
4. Under the Minister's delegation dated 14 September 2011 the Commission is the consent authority in respect to the Application because Glencore Australia Holdings Pty Ltd, an entity associated with the Proponent has declared a reportable political donation.
5. Professor Mary O'Kane, Chair of the Commissions, nominated Gordon Kirkby (as Panel Chair) and Dr Ian Lavering to constitute the Commission to determine the application.
6. The Department referred the proposal to the Commission as a modification under section 75W stating that:

*"The Department considered that the proposed modification is within the scope of section 75W and may be determined accordingly, as:*

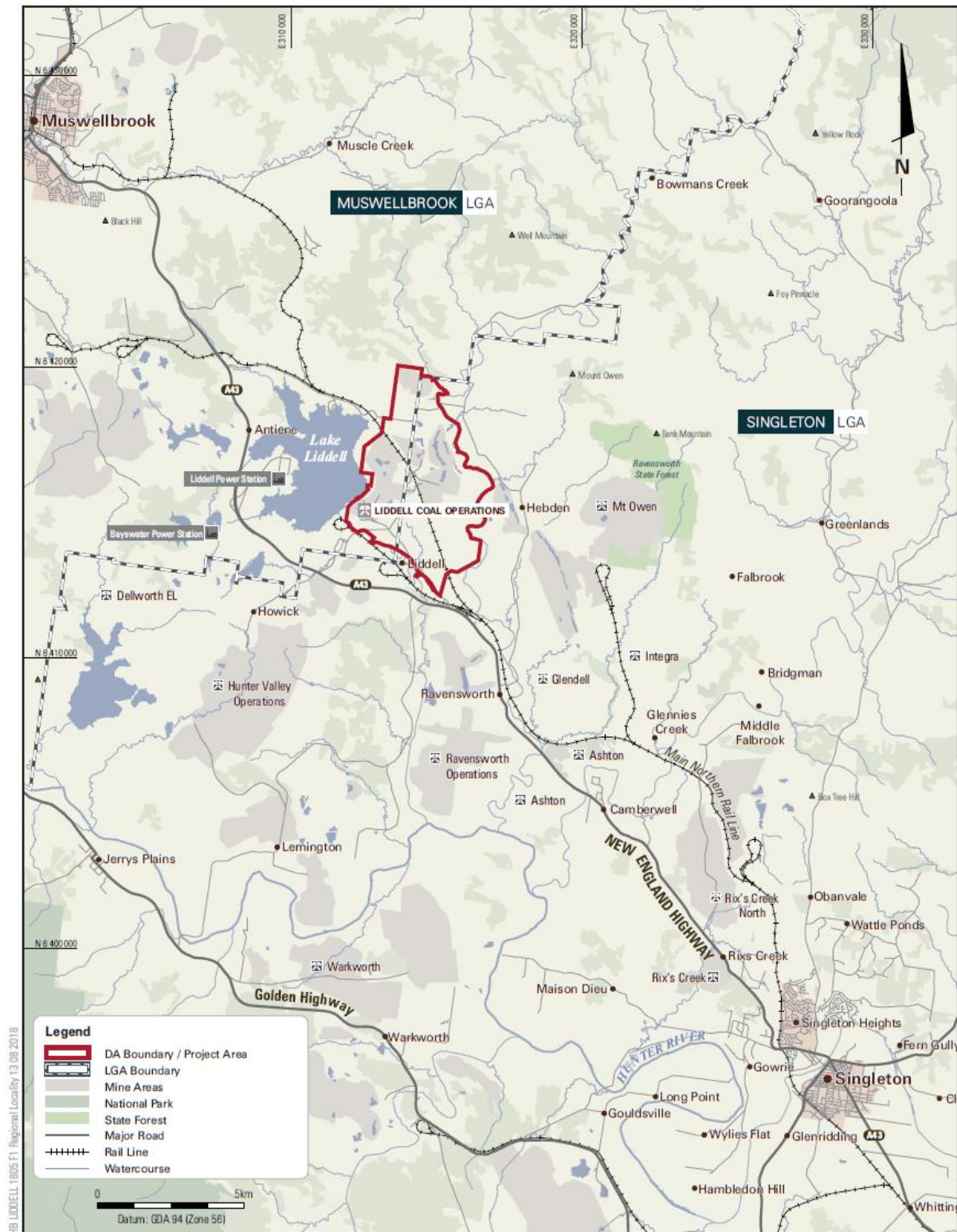
  - *The principal components of the development, such as rate of production, mining method and project duration, would remain unchanged; and*
  - *The environmental impacts would not significantly change compared to the approved development"*.
7. The Commission has considered the differences between the existing approval and the Project and finds that it is sufficiently consistent with the existing approval that is properly a modification pursuant to s75W(1) of the EP&A Act. The Commission is satisfied that the Application is within the scope of s75W.

8. The Commission's role is to determine the Application for which approval is sought, specifically, deciding whether or not 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

9. According to the Department's Assessment Report dated 17 January 2019 (the **Department's AR**), the Proponent operates the Liddell Coal Mine (the site) which is located approximately 25 kilometres (**km**) north-west of Singleton and 26 km south-east of Muswellbrook. The mine is located in the Upper Hunter Valley and sits within both the Singleton and Muswellbrook Local Government Areas (LGA). Figure 1 below illustrates the sites regional context.

Figure 1 – Regional context of the site



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Regional Locality

Source: Proponent's Environmental Assessment Report

## 1.2 Background to Modification Application

10. The Department's AR stated that current operations at the site were approved under development consent DA 305-11-01 by the then Minister for Planning on 20 November 2002 under Part 4 of the EP&A Act. The Project, as currently approved, includes:
- "open cut coal mining and processing of up to 8 million tonnes per annum (**Mtpa**) of run-of-mine (**ROM**) coal until 31 December 2028;
  - transporting product coal by rail to the Port of Newcastle and up to 0.5 Mtpa of reclaimed tailings by truck to local power stations; and
  - use of associated infrastructure to support open cut coal mining and processing of ROM coal."
11. According to the Department's AR, DA 305-11-01 has been modified on six previous occasions between November 2002 and February 2016 as outlined below in Table 1.

Table 1 - Summary of DA 305-11-01 approval history

Approval / Modification No.	Approval Date	Summary
DA 305-11-01	20 November 2002	<ul style="list-style-type: none"> <li>• consolidation of DA 24/90 and DA 101/93 into one approval;</li> <li>• continuation of open cut mining operations and use of existing infrastructure; and</li> <li>• increased ROM coal production to 4.5 Mtpa and use of Liddell loading facility to transfer product coal via rail to Port of Newcastle</li> </ul>
MOD 1	11 August 2003	<ul style="list-style-type: none"> <li>• amendment to schedule of land</li> </ul>
MOD2	18 July 2007	<ul style="list-style-type: none"> <li>• extension of open cut mining area by 47 hectares (ha);</li> <li>• increased ROM coal production to 8 Mtpa and rail transportation of product coal to 6 Mtpa;</li> <li>• modification to existing infrastructure and construction and operation of a new Coal Handling and Preparation Plant (CHPP); and</li> <li>• new access haul road and overpass haul bridge</li> </ul>
MOD 3	7 May 2008	<ul style="list-style-type: none"> <li>• re-alignment of Old New England Highway; and</li> <li>• re-use of treated effluent in an on-site dam</li> </ul>
MOD 4	27 October 2009	<ul style="list-style-type: none"> <li>• construction of additional offices and workshop facilities within the Mining Infrastructure Area (MIA)</li> </ul>
MOD 5	1 December 2014	<ul style="list-style-type: none"> <li>• extension of mine life to 2028;</li> <li>• extension of Entrance Pit and South Pit to the south-east;</li> <li>• establish Mining Infrastructure Area Pit following completion of mining in the South Pit and Entrance Pit;</li> <li>• emplacement of tailings in South Pit void; and</li> <li>• construction of additional infrastructure</li> </ul>
MOD 6	16 February 2016	<ul style="list-style-type: none"> <li>• construction and operation of tailings pipelines from the CHPPs at Ravensworth Operations and Liddell to West Pit Void at Ravensworth East Mine</li> </ul>

Source: Department's Assessment Report

### 1.3 Summary of Modification Application

12. The Department's AR stated that on 27 February 2018, the Proponent lodged an Application and supporting Environmental Assessment (**EA**) under section 75W of the EP&A Act.
13. Based on the information before it and as stated by the Departments AR (section 2), the Commission understands that the Application before it for determination includes:
  - “minor adjustment to the northern boundary of the consent area to facilitate remediation works in the completed Mountain Block Mining Area (**MBMA**);
  - disturbance of approximately 1 (ha) of remnant vegetation within the established Mountain Block Offset Area (**MBOA**) to facilitate these remediation works; and
  - minor administrative changes.

*The proposed administrative amendments include modification of:*

- *condition 2 of Schedule 2 relating to the development layout plans and updating the consent boundary;*
- *condition 16 of Schedule 3 relating to the air quality assessment criteria and updating to the short-term assessment criteria for 24-hour PM10 to ensure consistency with the Department's policies;*
- *condition 37 of Schedule 3 relating to rehabilitation objectives, to adjust grazing land requirements to align with the available land remaining, following completion of requirements for rehabilitating Central Hunter Box Ironbark Woodland; and*
- *condition 39 of Schedule 3 updating the appropriate revision agency for the Rehabilitation Management Plan (**RMP**) to the Department's Division of Resources and Geosciences (**DRG**)."*

Figure 2 below illustrates the general layout of the site and the proposed boundary modifications.



Figure 2 – Site and proposed boundary modification



LIDDELL COAL OPERATIONS

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Modification Overview

Source: Proponent's Environmental Assessment Report

## 1.4 Stated need for Modification Application

14. The Department's AR stated that:

*"the MBMA includes an area of steep unstable land that was once subject to previous mining operations. Previous attempts to stabilise this landform have been unsuccessful and further remediation works are required to ensure successful rehabilitation outcomes (i.e. to establish self-sustaining vegetation and minimise safety risks). To achieve this Liddell is proposing to reshape and stabilise the steep slopes which would require additional surface disturbance beyond the northern consent boundary".*

15. According to the Department's AR, these works are considered to be 'designated ancillary mining activities' under the *Mining Act 1992* and require a variation to existing mining lease (ML 1597) conditions. Before an ancillary mining activity condition can be approved, a development consent must be granted, to approve the activities being carried out on that land. The Proponent is therefore seeking to extend the consent boundary to the north to include a small portion of the MBOA (see Figure 2). Minor adjustments to the consent boundary and schedule of lands are also required to align with contemporary cadastral boundaries and remove areas of private land.
16. According to the Department's AR, the Proponent is also seeking minor administrative amendments to facilitate improved operational efficiencies and the flexibility to deliver an environmentally stable final landform to comply with the consent's rehabilitation objectives.

## 2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

### 2.1 Key steps in Department's consideration of the Modification Application

17. According to the Department's AR, the following key steps were undertaken during the consideration of the modification application:
- the Department received the modification application on 27 February 2018, which was accompanied by the Proponent's EA and specialist reports;
  - the modification application and supporting documents were publicly exhibited from 30 August 2018 until 13 September 2018;
  - in response to the exhibition and notification process, the Department received six public submissions from Government agencies. No submissions were received from the public or from special interest groups;
  - in response to Government agency submissions received, the proponent provided a Response to Submissions (RtS) report dated 9 November 2018, to address the issues raised. The RtS was made publicly available on the Department's website and provided to agencies for review and comment;
  - the Department received six Government agency comments on the RtS during November 2018. There were no objections or ongoing concerns raised;
  - further information on the historical context of the mountain block was provided by the Proponent on 10 January 2019 at the request of the Department; and
  - agency comments and the RtS were assessed by the Department. The Department prepared its AR Assessment Report in respect of the Application.



## 2.2 The Department's Assessment Report

18. The Department's AR stated that *"the subject northern extension area is located on Lot 13/C/DP6841, owned by Liddell (except for a Crown road subject to current acquisition process), and is zoned RU1 'primary production' under the Muswellbrook Local Environmental Plan 2009 (Muswellbrook LEP). Development for the purposes of open cut mining is permissible in this zone under the Muswellbrook LEP"*.
19. The Department's AR stated that *"the Department has considered the modification against the relevant provisions of these EPLs. The Department is satisfied that the modification is permissible and can be undertaken in a manner that is generally consistent with the aims, objectives and provisions of these EPLs"*.
20. Based on the material (**Material**) provided, the Commission is satisfied that the project is permissible with consent.
21. The Department's AR stated that it considered the key assessment issues for this Application are biodiversity and rehabilitation.
22. The Department's AR stated that the assessment indicates that:  
  
*"there are minor short-term impacts to biodiversity, but that these impacts would enable a long-term stable and self-sustaining landform to be achieved. The Department has carefully considered the potential impacts of the proposal on the natural and cultural environment and on nearby residents in the location. The Department has concluded that these impacts can be appropriately managed under modified conditions and updated management plans"*.
23. The Department's AR stated that *"the Department considers that "the proposed modification would provide a better environmental outcome in the long term, and is approvable subject to the proposed conditions"*.
24. The Department's AR also stated that *"the Department has taken the opportunity to update various conditions, in order to correct minor drafting errors and to align with the Department's current drafting standards. The relevant figures and schedule of lands have also been updated to reflect adjustments to the consent boundary"*.

## 3. MEETING WITH THE DEPARTMENT

25. On 30 January 2019, the Department met with the Commission on the Application, the Department's AR and agency submissions received during exhibition. During the briefing the Department confirmed that no public submissions were received during exhibition and that the Application had been referred to the Commission as political donation had been declared. The Department outlined geotechnical stability factors, arising from the impacts of previous mining activity, which necessitated the remediation work proposed in this modification. A copy of the transcript and additional information provided by the Department during the meeting was made available on the Commission's website on 31 January 2019.



## 4. THE COMMISSION'S CONSIDERATION

### 5.1 Material considered by the Commission

26. In this determination, the Commission has carefully considered the following Material:
- the Environmental Assessment dated August 2018 and prepared by Hansen Bailey Environmental Consultation (Hansen Bailey) and its accompanying specialist reports;
  - agency submissions on the modification application from:
    - Department of Industry dated 6 September 2018;
    - DRG dated 11 September 2018;
    - Environment Protection Authority (EPA) dated 11 September 2018;
    - NSW Resource Regulator (RR) dated 12 September 2018; and
    - Office of Environment and Heritage (OEH) dated 14 September 2018.
  - Muswellbrook Shire Council submission on the Application dated 13 September 2018;
  - the RtS report dated November 2018, prepared by Hansen Bailey;
  - government agency comments on the RtS received in November 2018;
  - agency submissions on the RtS:
    - Department of Industry dated 12 November 2018;
    - DRG dated 21 November 2018;
    - EPA dated 22 November 2018;
    - RR dated 22 November 2018; and
    - OEH dated 28 November 2018.
  - Muswellbrook Shire Council submission on the RtS dated 23 November 2018;
  - Mt Block Historical Context RtS dated 10 January 2019, prepared by the Applicant;
  - the Department's Assessment Report dated January 2019; and
  - information provided to the Commission at its meeting with the Department on 30 January 2019;

### 5.2 Biodiversity

#### *Proponent's consideration*

27. The Application was accompanied by an Ecological Assessment dated 14 August 2018, prepared by Umwelt Australia Pty Ltd (**Umwelt**). The assessment was undertaken to identify the potential impacts to flora, fauna and ecological communities that may arise from the Project.
28. The Proponent's EA stated that:
- "the proposed remediation works will disturb approximately 3.5 ha of land of which 2.5 ha has been previously disturbed land with little to low biodiversity value. The remaining 1 ha to be disturbed by the Modification comprises non-listed native vegetation communities, including 0.7 ha of Grey Gum – Grey Myrtle – Narrow-leaved Stringybark – Rusty Fig Open Forest and 0.3 ha of Spotted Gum – Narrow-leaved Ironbark Shrub Grass Open Forest of the Central and Low Hunter – Derived Native Grassland".*
29. The Proponent's EA stated that the *"impacts to existing native vegetation are short term in that these areas will be progressively disturbed in order to successfully achieve the remediation and revegetation of these areas to achieve improved biodiversity outcomes for the local area in accordance with the approved Biodiversity Offset Management Plan*

**(BOMP)**".

30. The Proponent's EA stated that *"upon the completion of the proposed remediation works and revegetation of this area (as envisaged within the approved BOMP), there is expected to be material net improvements to the biodiversity values within the region in the medium to long term"*.

#### *Department's assessment*

31. The Department's AR stated that the OEH confirmed that it is satisfied with the findings of Proponent's Ecological Assessment and considered that the proposed offset strategy would provide a suitable offset package for the Project.
32. The Department's AR further stated that *"while the proposed modification would result in some short-term impacts on biodiversity, these impacts are minor and are able to be effectively managed and compensated for in the medium to long term"*.
33. The Department concluded that *"overall, the Department considers that the minor disturbance and vegetation clearing would achieve a stable and self-sustaining landform that would provide an improved biodiversity outcome in the long term"*. The Department also concluded that these impacts can be appropriately managed under modified conditions and updated management plans.

#### *Commission's findings*

34. Based on the material, the Commission finds that the impacts on biodiversity are minor and short-term and can be effectively managed and compensated for and that the disturbance is minor and will enable a long-term and self-sustaining landform to be achieved.
35. The Commission accepts the analysis and conclusions as referenced in paragraph 31 above, for the reasons provided in paragraphs 32 and 33, namely that it will provide an improved biodiversity outcome in the long term.

### **5.3 Rehabilitation**

#### *Proponent's consideration*

36. The Proponent states in its EA that minor amendments are sought to provide the *"necessary flexibility required in delivering an efficient, practical and environmentally stable final landform which meets all currently specified rehabilitation objectives"*.
37. In its submission, Muswellbrook Shire Council raised concern that *"insufficient consideration has been carried out in relation to the works within the expanded operations footprint required to achieve the rehabilitation outcomes that inform the need for this modification"*. Council requested clarification that adequate investigations have been carried out to confirm that the proposal would ensure the rehabilitation objectives and outcomes can be achieved.
38. In the RtS, the Proponent stated that the landform instability at Mountain Block can be attributed to geotechnical and erosion instability. The Proponent confirmed they have approached the remediation project with best practice in mind and that the design

approach was determined in consultation with the local DPE Compliance Office and RR, with further consultation following design outcomes. The Proponent also confirmed that detailed geotechnical investigation have also complemented this process to address key landform stability issues and treatments.

39. In its submission dated 12 September 2018, the NSW Resources Regulator stated that additional information is required to demonstrate that sustainable rehabilitation outcomes can be achieved as a result of the project.
40. In the RtS, the Proponent confirmed that it was not proposing to amend the conceptual final landform figure in the consent, but instead, it was requesting that the conditions be made more flexible so that the actual final landform can be improved and refined post determination to comply with the rehabilitation objectives under the consent.
41. On 22 November 2018, the RR stated that the RtS adequately addressed the issues raised in the previous submission from the RR. The RR also stated that sustainable rehabilitation outcomes can be achieved as a result of the project and that any identified risks or opportunities can be effectively regulated through the conditions of mining authorities issued under the *Mining Act 1992*.

#### *Department's assessment*

42. The Department concluded that:

*“the proposed modification would enable Liddell to achieve a self-sustaining final landform that is safe, stable and non-polluting in the long-term and complies with the rehabilitation objectives set out in the consent. While the final landform figure in Appendix 3 of the consent is titled ‘conceptual’, the Department accepts that the current drafting of condition 37 could be unintentionally restrictive and could lead to perverse environmental outcomes. The Department considers that the design of the final landform should be adaptive to allow for minor changes to the mine plan and to promote continuous improvement”.*

43. The Department is also accepting of the Proponent's proposal to *“reduce the requirements for post-mining grazing land, without sacrificing the area proposed for native woodland regeneration, to align with the actual land available for rehabilitation”.*
44. The Proponent's suggested changes to the rehabilitation conditions have been incorporated by the Department in the amended conditions of consent.

#### *Commission's findings*

45. The Commission accepts that amending Schedule 3, Condition 37 will allow greater flexibility in achieving a self-sustaining and successful rehabilitation outcome. The Commission accepts the conclusions of the Department outlined in paragraphs 422, 433 and 444 above.



## 5.4 Noise impacts

### *Proponent's consideration*

46. The Application was accompanied by a Noise Assessment dated 14 August 2018, prepared by Global Acoustics Pty Ltd (Global Acoustics). The assessment was completed to identify the potential noise impacts that may arise from the modification.
47. During exhibition, the EPA made a submission and noted that the Noise Assessment appeared to be based on assumptions and not modelling despite the proposed activities being closer to receivers. The EPA requested that *"the Applicant provide an updated acoustic report that suitably calculates and models the likely noise impacts to residential receivers"*.
48. An updated noise assessment was provided as part of the RTS. The assessment demonstrated that the proposed modification would not result in any exceedances of approved noise criteria. The EPA did not raise any further concerns and was satisfied that the modification is unlikely to result in any adverse noise impacts.

### *Department's assessment*

49. In the AR, the Department concludes that *"the modification is unlikely to increase noise impacts and that the existing conditions remain appropriate for the development"*.

### *Commission's findings*

50. The Commission accepts the conclusions of the Department outlined in paragraph 48.

## CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

51. The Commission has carefully considered the Material before it.
52. The Commission finds that the proposed modification to the development is within the scope of section 75W of the EP&A Act, in that it would not change the key element of the Project (including mining methods or production rate) and would not significantly increase the environmental impacts of the approved Project. Therefore, the request to modify can be considered under section 75W.
53. The Commission finds that:
  - the Project would not result in significant biodiversity impacts and that the minor short-term impacts on biodiversity can be effectively managed and compensated for;
  - the additional vegetation to be cleared is able to be adequately offset;
  - the Modification will allow greater flexibility in achieving long-term and self-sustaining rehabilitation outcomes; and
  - the existing conditions in relation to noise remain appropriate for the development.
54. For the reasons outline in paragraph 53, the Commission finds that the modification application is in the public interest.
55. For the reasons outlined above, the Commission determines to approve the proposed modification application.
56. The reasons for the Decision are given in this Statement of Reasons for Decision dated 12 February 2019.



**Gordon Kirkby (Chair)**  
Member of the Commission



**Dr Ian Lavering**  
Member of the Commission