



Dear Secretary,

, Submission to the Boggabri Coal Mine: Modification 7

The proponent has submitted an application to modify the existing NSW Approval for the Boggabri Coal Mine (PA 09-0182) known as **Boggabri Coal Mine: Modification 7**.

We object to the Boggabri Coal Mine Modification 7. Our local community has been provided with not enough information to assess the Modification with. We, and our environment will be impacted by this decision. We are concerned about:

1. Not all aspects of MOD 7 are “administrative”. The Environmental Assessment written by Umwelt ecological consultants itself states that it is “largely” administrative i.e. not wholly administrative. Also, the MOD 7 has some potentially extremely serious consequences, particularly in regard to biodiversity offsets.

“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.” (Umwelt, Boggabri Mine Approval 09_0182 Modification 7 Environmental Assessment, August 2018). The reasons this was considered minor or administrative are missing and it is unclear why this Modification has been put as minor or administrative.

The determination by the Planning Department that five modifications to Boggabri Coal’s Project Approval is minor in nature or administrative is not unfair and the logic to this is missing. How could the modification that seeks to modify the Biodiversity offset long-term security arrangements be considered minor by the community or environment?

2. Cumulative impacts: Cumulative impacts when considered in total are changing the nature of our district. The original approvals are changing and with no oversight from the community to see the overall picture. Currently there is mining expansion underway which threatens many aspects of our environment, and cumulative impacts are not being adequately considered, if at all, by MOD nor other modifications or new major project applications including the Vickery Extension project which is extremely sketchy as regards cumulative impacts of water, biodiversity, blasting, dust and noise impacts.

The Mod 7 Environmental Assessment involves changes of the existing mining approval for the Boggabri coal mine which will have a cumulative impact on the district of Boggabri and Maules Creek areas which are already impacted by coal mines. Nothing could be clearer than the cumulative decline of water, air quality, roads, community amenity and biodiversity.

Cumulative impacts of coal mines and expansions are starting to become overwhelming to the communities of Boggabri and Maules Creek. When a community has many mines who- like Boggabri coal have 21 non-compliances in the most recent annual review, the impacts add up to a poor outcome for locals. These mines and their cumulative impacts must be considered as part of this application.

3.. Non-transparent and unfair process: The community has not been told exactly why the Boggabri offsets cannot be secured by the designated date being December 2019.

4.. More information and a public process: The community needs more information and a public process to assess the full impacts. Considering the number of non-compliances that have eventuated from Boggabri Coal- (*Boggabri Coal's 2017 Annual Review* recorded 21 non-compliances) emphasis should be on improving performance not seeking more modifications.

5. We are also concerned about we perceive to be a disorderly governance of biodiversity offsets within the Office of Environment and Heritage and the DPE, especially the Biodiversity Conservation Trust which appears to be cause of much delay in respect of the long term conservation agreements.

6. Lack of Clarity around the process

Should this Modification be assessed under 75W of the old EP&A Act?

This process appears to be rushed and incomplete.

Based on the information we currently have we believe that the modification application is currently being treated as a Part 3A 75W modification. If so, under the transitional regulation, it is our understanding that because the application has not been dealt with by 1 September 2018, the Secretary has the power to decline to determine the modification application under former s75W if the Secretary is of the opinion that insufficient information has been provided to deal with the request and if the Secretary notifies the applicant that the request will not be dealt with under section 75W (*Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW) Sch 2 Cl 3BA).

We request that additional information be requested by the Secretary, before the Application can be considered complete and that a thorough assessment be undertaken of this Modification 7 pursuant to s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

Failing this, we are writing to you in regards to MOD 7 with our feedback including information required.

In addition to the above, [REDACTED] seeks some minor changes that we believe would have positive benefits for the communities of Maules Creek and Boggabri, that seek to modernise the Approval Conditions with the following administrative changes.

1. That the mine has the burden of proof if there are water impacts, not the landholder.

“The burden of proof that any loss of surface water or groundwater access was not due to mining impacts rests with the Applicant.”

2. The requirement to install on all groundwater pumps of meters with telemetry to monitoring of groundwater pumping and the publication of the data.

3. The use of cameras to identify toxic blasts.

These administrative changes will harmonise with other modern project approvals. We believe it is imperative that we also have this security.

4. We request that the DPE initiate steps towards achieving the above, and also to “Harmonise” Maules Creek mine, ie make the same changes to MCCM Project Approval conditions.

FURTHERMORE, we would like to add:

Modification classification “Generally administrative in nature,”

Based on the evidence provided, from the environments’ and our perspective, this is inappropriate for this modification, as is the classification “minor environmental impacts”.

When questioned by our BC CCC Maules Creek representative in the Boggabri Coal Special CCC meeting the BC representative said that they used the term “administrative” as an “in-house term,” not one that related to the DPE process. It is clear that not even the company understand what this Modification process is in this instance as the process and the information contained within is not detailed enough and does not inspire confidence in the process.

Transport of coal samples by road:

We do not regard the changes to the notification of the trucking of unknown coal samples as administrative. Our concern is for lives on the road. Industrializing our region is not in the interests of our members. Further we object to the right of consultation by the community being stripped away by this Modification.

Having recently dealt with the Vickery Extension EA, it is clear that there is little understanding of the roads and traffic and volume of trucks on the road. The Vickery Extension submission has trucks going on the road and on the as yet to be built overpass at the same time.

Even prior to an expansion of Vickery mine EIS, or an approved Boggabri Coal truck sample on the road, assuming this is the designated route as there is none noted in the Application, there is already one truck every 45 seconds entering the Kamilaroi Highway from Blue Vale Road and the same for returning trucks.

The reality is that the overpass from the expansion of coal tonnage to 4.5 tonnes from Tarrawonga and Rocglen mines was never built as it was deemed a “temporary increase” by the Department and not required by DPE to be built. It is not safe for road users to have such congestion.

Even more perplexing, is the fact that this particular modification – to inform RMS and the two Councils Narrabri and Gunnedah - seeks to remove an existing arrangement that by BC’s own admission is working. In the special BC CCC meeting in relation to this Modification 7 the coal company confirmed the success they had had in dealing with the Narrabri and Gunnedah Shires and the RMS in an efficient and timely manner in relation to notifying them when a truck would take a sample to the Gunnedah coal loader by road.

There must be some information missing for Boggabri Coal to have asked for this modification, because on the face of it, this modification does not make sense. There was no justification provided by the company as to why a modification to allow less transparency could be minor or administrative. To put an unquantified number of trucks on unspecified roads, with up to sixty tonnes should not be approved.

Further the Coal company informed the community at the Special CCC that they had been breaking their current approval conditions and not been held to account by DPE for years. The company against its Project Approval has been sending ute loads of coal samples to the Gunnedah coal loader. It is not an administrative change to substitute a voluntary disclosure offered to the community and sole Council representative at the special CCC meeting for a mandatory Approval Condition designed to inform the public and notify councils- who have to maintain the roads. More information is required for example:

- a) How frequently does the Proponent need to transport coal by road? The current proposed condition does not contain any limit on the frequency of the proposed transportation by road.
- b) Where does such coal need to be transported to?

For what marketing, testing or other purpose does or might the Proponent require a sample size of 60 tonnes? This is a very substantial “sample” size and further explanation should be provided.

There is no justification for this Modification in its present form, the case has not been made and the community, environment and project itself will be poorer if this modification is approved and implemented. This aspect to the modification should be rejected.

We believe that you do not have sufficient information to determine the application. We believe that you need additional understanding of the context within which these changes and in relation to this modification specific information in relation to the following matters:

Offsets:

- Why is the nature of the mechanisms proposed for securing the required offsets unspecified? This could lead to major environmental impacts and is against the will of the PAC recommendations.
- Further, why is an extension of time required for registering the offsets? I’ve noticed that the original time in the conditions is December 2014 and the new proposed time is December 2019. Where is the evidence that the December 2014 time limit has been formally extended.
- Also, Condition 47(a) of schedule 3 of the conditions of approval, page 23 of the EA, requires the Proponent to register the conservation agreements “by December 2014 unless agreed otherwise by the Secretary after consultation with Chief Executive of OEH”. Where have the community been notified that this has occurred?

We have also noted that when the Boggabri Part 3A project was first approved by the Planning Assessment Commission (**PAC**) in 2012, and that the PAC specifically amended the “Long term security offset” condition so that it contained more specificity around what was required of the Proponent in relation to offsets. Removing this specificity is not minor for the environment and all of us living in the environment. As you know, we cannot live without a functioning environment. Impacts from coal mining on the environment are a big issue, brought to bear by lots of big and then seemingly small government decisions and attitudes towards our planet. This modification must be rejected.

Drilling and exploration activities:

There are many questions from this Application and no legally binding answers. It has become clear that the Secretary requires further details in relation to the location, intensity and volume of proposed drilling and exploration activities, including the nature of the vegetation that will or may be cleared. An approval could not be granted with so little information. Further, will any additional offsets be required due to additional clearing? During the CCC special meeting when specifically asked whether Boggabri coal would proceed if they found the impacts on water were worse than predicted, the question was

met with silence. We have no confidence in this step towards increased mining in an area that is already suffering from previous approvals to mine in a sensitive area.

Based on the above, it is our view that the modification application should be dealt with under s 4.55 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

We note that the community values the benefits that would flow from this, including the Minister’s requirement to consider the matters listed in s 4.15 (formerly s 79C), noting that no such list of mandatory considerations applies to s 75W modifications.

We specifically think that the application should be dealt with under s 4.55(2) of the EP&A Act and public notification of the modification should follow.

Additional concerns about the modification application

Changing the Boggabri Coal and Tarrawonga Coal Mine common boundary Project Approval area and the Boggabri Coal Mine use of the stockpile area approved for Tarrawonga Coal Mine:

- Why is there no Environmental Rep on the Tarrawonga CCC?

We note that Tarrawonga Community Consultative Committee does not have an environmental representative that means there is insufficient oversight of biodiversity matters. Tarrawonga mine from the road appears to be stripping the land of trees. This is important as their offsets are not considered robust by the community.

Many from the community, both individuals and groups have expressed their concern about this Modification Application. Concerns include the timing, the lack of public process and the fact that the outcomes of this modification are extensive for the local environment and community and the proponent.

The East-West Biodiversity Corridor is required to be preserved under the Commonwealth EPBC Act approval. It is the cornerstone of the biodiversity protection for CEEC that is intended by the Commonwealth approval. In the interests of the Precautionary Principle, this corridor of Critically Endangered White Box Grassy Woodland must be preserved. There is no possibility that it can be replaced with existing like-for-like woodland, however fragmented.

There has been some talk of creating a new alternative East-West corridor to the south of the existing one, connecting with Tarrawonga rehabilitated area.

Two things should be noted about the quality of the Boggabri-Tarrawonga rehabilitation areas to replace the existing Biodiversity Corridor:

- The species recovery rate at the Southern Rehabilitation Area of Boggabri Coal as observed by the CCC Environmental representatives in their comments on the Southern Rehabilitation Strategy report, particularly the bird species. Community members have viewed the Boggabri rehab areas, and heard the pluses and minuses of the progress there.
- Community members have never had the opportunity to view the Tarrawonga offsets but the scene from the air is extremely discouraging, as the Tarrawonga offsets seem many decades away from supporting species variety such as the CEEC.

Any changes to this scenario should not be considered as a minor environmental impact or administrative modification.

The proposed amendments are neither “administrative” nor “minor”

The community has expressed their concern that the benefits of having a public assessment process are being unnecessarily lost.

In conversation with officers of the DPE, it appears that the Department is characterizing the modification application as “minor”. Further, there has been a lack of clarity around process- time limits for this Modification process. In one email (2 October 2018), the community were advised by DPE “an indicative 35 days,” and then (26 October)- “preferably Monday” to wrap up in 28 Days from official start date nominated as 4 October). This has been challenging. This adds to the sense of chaos that has been observed, referred to above, in the OEH concerning biodiversity offsets.

Also the timing seems designed to avoid scrutiny. We have been told that this Application has been with DPE since February 2018, yet our special CCC meeting was on the Thursday before the Long Weekend leading into school holidays and 14 days after the Vickery Extension EIS was put on exhibition. We are concerned that the Secretary is not aware of the pressure this is placing on communities.

In summary, there are five parts to this modification and we submit that the impacts of this modification are not all minor to the community and the environment and we disagree with this non-transparent DPE decision. The application should be publicly notified and, as discussed above, should be assessed under s 4.55 of the *Environmental Planning and Assessment Act 1979* (NSW) to ensure greater public participation and transparency in decision making.

The Community urges the DPE Secretary to require the additional information we have referred to in this letter before the application is treated as being complete and ready for assessment.

We ask that for this Modification that

1. the exhibition period be extended for a further 28 days
2. The application should be publicly notified and, as discussed above, should be assessed under s 4.55 of the *Environmental Planning and Assessment Act 1979*
3. it is referred to the Independent Planning Commission (IPC) if necessary and
4. that updated conditions be applied to the Boggabri Coal mine to reverse the burden of proof for the conditions that require the provision of compensatory water supplies.
5. We ask for the Administrative changes listed above.