

26 September 2012

Mr Sam Haddad  
Director- General  
Department of Planning & Infrastructure  
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SYDNEY NSW 2001

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Dear Mr Haddad

**Hunter Valley Operations South Project Approval (06\_0261)  
Modification 4 – Administrative Omissions and Clarifications**

In reviewing the Hunter Valley Operations (HVO) South Project Approval 06\_0261 the proponent has identified a number of conditions that require amendment via a modification application under section 75W of the *Environmental Planning and Assessment Act 1979 (EPA Act)* to rectify various administrative issues.

We note that the HVO South Project Approval is a “transitional part 3A approval” and accordingly section 75W of the EPA Act is still available pursuant to the transitional provisions provided in Schedule 6A.

**1.0 Background**

The HVO South Project Approval was granted on 24 March 2009. It provides approval for:

1. consolidation of 25 existing consents to allow production and processing of up to 16 million tonnes of coal across the HVO-South complex;
2. extending the Cheshunt, Riverview and South Lemington Pits;
3. transport of coal, overburden, tailings and rejects between HVO-South and HVO-North;
4. transport of coal via haul trucks or conveyor to the Wambo rail spur, or alternatively construction of a new rail spur, and transport of coal to market via rail;
5. relocation of the Hunter Valley Gliding Club and Comleroi Road; and
6. rehabilitation and revegetation of the site.

Modification 1 was granted on 17 December 2009 and provided for the raising of Lake James.

Modification 2 was proposed to amend the HVO South Project Approval to reallocate the Archerfield Property, provided as a Biodiversity Enhancement Area to offset impacts caused by the clearing of native remnants (48ha) and regrowth (92ha) for the HVO South Coal Project, to an alternative site within the Goulburn River Biodiversity Area.

The modification was proposed to allow Archerfield to be used as part of the Northern Biodiversity Offset Area for the proposed Warkworth Extension. Modification 2 was granted on 3 February 2012 and while it, amongst other things, deleted the condition requiring that the Archerfield Property be provided as an offset it did not include

(apparently through oversight) a condition requiring an alternative offset site within the Goulburn River Biodiversity Area.

## 2.0 Matters requiring clarification

There appear to be a number of administrative omissions or matters requiring clarification in the HVO South Project Approval as modified by the HVO South Modification 2. These include:

1. Schedule 2, Condition 2 does not include any reference to the Environmental Assessment (EA) lodged for the modification; and
2. there are no conditions requiring the alternate offset or nomination of the land to be used for such alternate offset; and
3. Appendix 3 of the Statement of Commitments was not amended to reflect the reallocation of the Archerfield Offset.

Each of these matters is discussed below.

### 2.1 Schedule 2, Condition 2 Generally in Accordance

Schedule 2, Condition 2 requires the proponent to carry out the project generally in accordance with the original EA and the EA for Modification 1.

It is general practice for modifications of project approvals to amend this condition to require the proponent to carry out the project generally in accordance with the EA lodged as part of the assessment process for the modification.

The EA lodged as part of Modification 2, titled *Environmental Assessment – Proposed Modification to HVO South Coal Project* (EMGA Mitchell McLennan, May 2010), should be included within this condition.

### 2.2 Replacement Offset Conditions

Condition 29 of the original HVO South Project Approval required the provision of 140ha of vegetation at the Archerfield Property as an offset. This condition was deleted in its entirety on the granting of Modification 2, rather than being modified to reflect the provisions of an alternate offset property i.e. Goulburn River Biodiversity Area.

The Planning and Assessment Commission (**PAC**) report in respect of the HVO Modification 2 and Warkworth Extension Project Applications included the following statement:

*“Modification to the Hunter Valley Operations South Project*

*The reason for modification to the Hunter Valley Operations South project is to allow the relocation of the existing Archerfield offset area located within the HVO mine complex to a property adjacent to the Goulburn River National Park so as to combine with additional land to form the larger northern biodiversity area for the Warkworth extension project.”*

Further, the PAC noted when approving the Warkworth Extension Project Approval in Annexure 6 on page 64 of the Project Approval that:

*“Please note that 140ha of Narrow leaved Ironbark woodland will be allocated to Hunter Valley Operations”*

A similar note was included in the conditions recommended by the Department of Planning to the PAC.

We note that in Table 2.1 of the Proposed Warkworth Extension - Response to Submissions (EMGA Mitchell McLennan, August 2010) the Goulburn River Biodiversity Area is described as having 1,439.3 ha of vegetation. Note 1 under the table states that:

*“... 140 ha of general woodland would be utilised by HVO South to address their NSW Project approval requirements. Therefore, the total area of vegetation communities to be used for NSW offsetting purposes for the proposed Warkworth Extension is 1,299.3 ha.*

Condition 33 of the Warkworth Extension Project Approval 09\_0303 provides for 1,299.3 ha of offsets associated with the Goulburn River Biodiversity Area for the Warkworth Extension Project.

Given the above it is clear that condition 29 was not replaced with an alternative condition in an administrative error and that the HVO South Project Approval should include a condition requiring that the 140 ha of vegetation in the Goulburn River Biodiversity Area be provided as an offset.

If the omission in point 1 above had not occurred this amendment would not be necessary as compliance with the EA for the HVO South Modification 2, which clearly states that this offset is to be provided, would have been required.

### **2.3 Appendix 2 Statement of Commitments**

As shown in 2.2 above, it is clear from the PAC’s decision that its intention was to replace the 140 ha of vegetation offset for the HVO South Project at the Archerfield Property with 140 ha of vegetation offset at the Goulburn River Biodiversity Area. The Statement of Commitments in Appendix 3 of the HVO South Approval has not been amended to reflect this decision. The consequence of this is that while the intent of the modification was clearly to replace the Archerfield Property with another offset, the Statement of Commitments does not reflect this.

We request modifications to the Statements of Commitments as outlined below.

If the omission in point 1 above had not occurred this amendment would not be necessary because, to the extent there was an inconsistency between the EA for the HVO South Modification 2 and the Statement of Commitments, the EA for the HVO South Modification 2 would have prevailed.

### **3.0 Modification request**

Coal & Allied Operations Pty Ltd, therefore requests that the Minister for Planning modify the HVO South Project Approval pursuant to section 75W of the EP&A Act (which is now repealed but which continues to apply in respect of the Project Approval due to the transitional provisions provided in Schedule 6A of the EPA Act) to:

1. Amend condition 2 of Schedule 2 so it reads as follows:

*Terms of Approval*

*2. The Proponent shall carry out the project generally in accordance with the:*

- (a) EA;*
- (b) statement of commitments;*
- (c) EA (Mod1);*
- (d) EA (Mod 2); and*
- (e) conditions of this approval.*

The following definition of EA (Mod 2) should also be included:

*Environmental Assessment titled Proposed Modification to HVO South Project, dated May 2010, and the response to submissions dated August 2010.*

2. Include the following conditions:

*(x) The Proponent shall implement the biodiversity offset strategy as further described in the Warkworth Extension EA and summarised in the table below to the satisfaction of the Director-General. This requires:*

*Table: Summary of the Biodiversity Offset Strategy*

<b>Area</b>	<b>Offset Type</b>	<b>Minimum Size (hectares)</b>
Goulburn River Biodiversity Area	Existing vegetation to be enhanced	140

*The location of this 140 ha of narrow leaved ironbark woodland is shown on the plan provided in Appendix 5. This further 140 ha of vegetation in the Goulburn River Biodiversity Area is additional to the 1,299.3 ha of vegetation to be offset at this property under Condition 3 of Schedule 3 of the Warkworth Extension Project.*

*(x) By the end of March 2013, unless the Director-General agrees otherwise, the Proponent shall enter or cause to be entered into a conservation agreement or agreements pursuant to section 69B of the National Parks and Wildlife Act 1974 for the land shown in the plan in Annexure [Insert] recording the obligations assumed by the Proponent under the conditions of this approval in relation to the offset area, and register the agreement/s pursuant to section 69F of the National Parks and Wildlife Act 1974. The conservation agreement/s must remain in force in perpetuity. This land can be included in a conservation agreement for other offset proposals.*

Please note that a copy of Appendix 5 is provided in **Attachment 1**.

*(x)The Proponent shall prepare and implement a Biodiversity Management Plan for the offset shown in Appendix 5 to the satisfaction of the Director-General. The Biodiversity Management Plan for the offset shown in Appendix 5 can be included in a Biodiversity Management Plan for an offset or offsets provided in respect of the Warkworth Extension Project. Further the Director-General can be satisfied with an offset plan required under any conservation agreement/s in place in respect of it.*

*(x)By the end of March 2013, unless the Director-General agrees otherwise, the Proponent shall lodge a conservation bond with the Department to ensure that the biodiversity offset strategy is implemented in respect of the land identified in Appendix 5 in accordance with the performance and completion criteria of the Biodiversity Management Plan.*

*The sum of the bond shall be determined by:*

- calculating the full cost of implementing the offset strategy (other than land acquisition costs); and*
- employing a suitably qualified quantity surveyor to verify the calculated costs.*

*If the offset strategy is completed generally in accordance with the completion criteria in the Biodiversity Management Plan to the satisfaction of the Director-General, the Director-General will release the bond.*

*If the offset strategy is not completed generally in accordance with the completion criteria in the Biodiversity Management Plan, the Director-General will call in all or part of the conservation bond, and arrange for the satisfactory completion of the relevant works.*

*With the agreement of the Director-General, this bond may be combined with rehabilitation security deposit administered by the Department of Resources and Energy and may be combined with bonds in respect of offsets required for the Warkworth Extension Project.*

3. The Statement of Commitments is amended by way of deletion of the following text in strike out so as to ensure consistency with Modification 2:

~~–Areas identified with sand profile will be included in the Warkworth Green Offsets research programme;~~

~~–The Coast Banksias will be assessed and fenced to exclude stock and provide for enhancement opportunities;~~

~~- General environmental land management practices implemented on all CNA owned land will be applied to the Archerfield Property along with planned rehabilitation areas.~~

~~–The vegetation on the Archerfield Property will require specific management practices to protect and enhance the ecological value and improve the biodiversity. In particular, the specific management practices will include:~~

- ~~–monitoring of remnant vegetation areas in accordance with existing procedures to provide evidence of success of management practices;~~
- ~~–undertaking bushfire management, weed and pest control in accordance with recommended practices~~
- ~~–maintenance and enhancement of native grasses, wherever possible;~~
- ~~–utilising local native species for seed stock where practical;~~
- ~~–utilising existing farm dams and retention or establishment of native vegetation around dams to provide habitat;~~
- ~~–habitat creation and enhancement for common and threatened species;~~
- ~~and~~
- ~~–fencing of remnant vegetation to restrict stock access where practical.~~

~~–Options for securing the 140 ha of vegetation on the Archerfield Property will be investigated and a suitable mechanism will be implemented to ensure protection and enhancement of the biodiversity during the life of the project. Due to proximity of the Archerfield Property to coal resources and operations, it is considered inappropriate as a biobank site under the draft NSW Threatened Species Conservation (Biodiversity Banking) Regulation 2007 (DECCW).~~

~~An alternative measure will need to be identified to secure the site for the duration of the development.~~

We trust that this provides sufficient information and justification to approve the requested S75W modification of the Project Approval.

If any further information is required, please don't hesitate to contact Mark Nolan on (02) 6575 5915 or the undersigned.

Yours sincerely



Rory Gordon

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Enc.

Attachment 1: Appendix 5 - Goulburn Biodiversity Offset for HVO South



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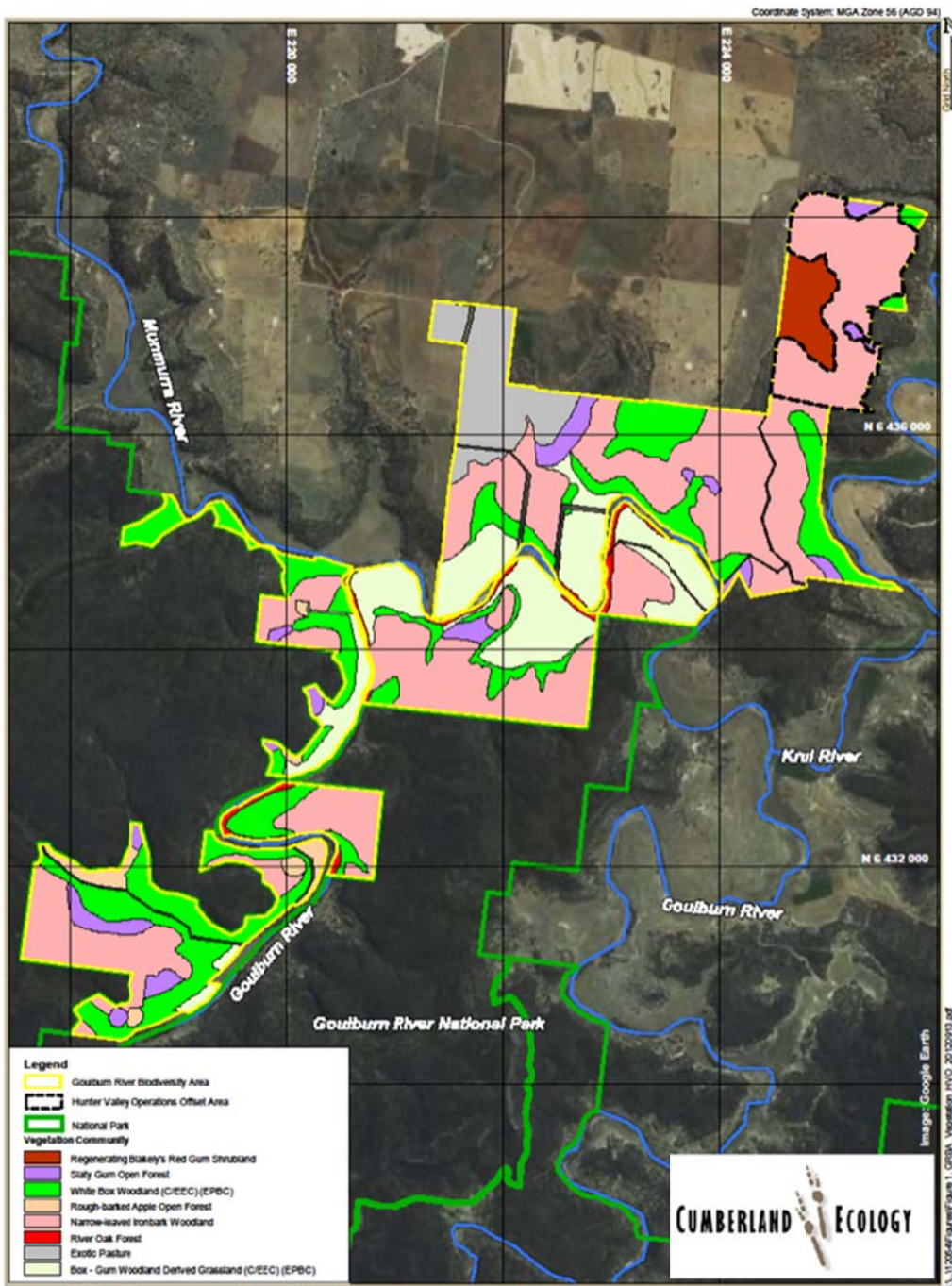


Figure 1. Vegetation communities within the Goulburn River Biodiversity Area