



BHP

MT ARTHUR COAL MINE MODIFICATION 2

Modification Report

Attachment 3

Detailed Statutory Compliance Reconciliation Table

Table A4-1
Summary Statutory Compliance for State Legislation

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
<i>NSW Environmental Planning and Assessment Act 1979</i>			
section 1.3	Relevant objects of the EP&A Act: <ul style="list-style-type: none"> • 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. • Facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment. • Promote the orderly and economic use and development of land. • Protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. • Promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage). • Promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State. • Provide increased opportunity for community participation in environmental planning and assessment. 	Section 4.1.1	✓

Table A4-1 (Continued)
Summary Statutory Compliance for State Legislation

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
NSW <i>Environmental Planning and Assessment Act 1979</i> (continued)			
section 4.15	Relevant environmental planning instruments: <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021</i>. • <i>State Environmental Planning Policy (Resources and Energy) 2021</i>. • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>. • <i>Muswellbrook Local Environmental Plan 2009</i> (Muswellbrook LEP). 	Table A4-2	✓
	<ul style="list-style-type: none"> • Any planning agreement or draft planning agreement that a developer has entered into under section 7.4 of the EP&A Act. 	Section 4.1	
	<ul style="list-style-type: none"> • The <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regulation). 	This table	
	The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality; the suitability of the site for the development; any submissions made in accordance with the EP&A Act or the EP&A Regulation; the public interest.	Section 6	
section 4.55	Clause 2 provides for the circumstances in which a modification application can be granted. The consent authority must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified. As outlined in Section 4.1 of the Modification Report, the consent authority can be satisfied that the Modification is substantially the same development as the development last modified under section 75W of the EP&A Act (as modified by Modification 1).	Section 4.1	✓
	Clause 3 requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. As outlined in Section 4.1 of the Modification Report, the Modification represents a continuation of socio-economic benefits associated with the Mt Arthur Coal Mine, which were cited by the Department of Planning in the justification for the approval of MP 09_0062. While there would be a continuation of adverse impacts for an additional four years, the majority of these impacts would continue at a reduced rate relative to the currently approved operations and could be managed in accordance with existing conditions of approval imposed by the Minister for Planning. Section 4.1 includes the reasons given for approval of MP 09_0062.		✓

Table A4-1 (Continued)
Summary Statutory Compliance for State Legislation

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
NSW <i>Environmental Planning and Assessment Regulation 2021</i>			
clause 98	<p>Clause 98 provides for the circumstances in which a modification application may be made.</p> <p>In accordance with the requirements of clause 98(4), HVEC will give notice of the Modification application via newspaper no later than 14 days after the Modification application is made.</p> <p>With respect to clause 98(6), the Mt Arthur Coal Mine incorporating the Modification does not relate to land owned by a Local Aboriginal Land Council.</p>	-	✓
clauses 99 and 100	<p>Clauses 99 and 100 of the EP&A Regulation provide for the making and content of a modification application. With respect to these two clauses, this Modification application:</p> <ul style="list-style-type: none"> contains the information required by the EP&A Act and EP&A Regulation; has been prepared in consideration of the SSD Guideline, in particular <i>Preparing a Modification Report</i> (DPIE, 2021a); contains the information required by clause 100(1)(a) to (c) and a description of the Modification and its expected impacts; and 	Sections 1 to 8 Appendices A to J	✓
	<ul style="list-style-type: none"> is accompanied by a Biodiversity Development Assessment Report (BDAR) detailing biodiversity credits information. 	Appendix D	
clause 103	<p>Clause 103 of the EP&A Regulation concerns applications to modify a development consent that relates to “mining or petroleum development” on certain land.</p> <p>The proposed Modification Area, and continued existing operations would be located within existing mining leases and is not located on Strategic Agricultural Land.</p>	Section 4.2.5	✓
NSW <i>Mining Act 1992</i>			
section 380AA	<p>An application for development consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority that is in force in respect of coal for the relevant land, or the applicant has the written consent of the holder of such an authority to make the application.</p> <p>The Modification does not propose any change to the existing Development Application Area (DA Area) as per MP 09_0062. The existing Mining Leases 1548, 1487, 1358, 1655, 1739, 1757, and 1593, Mining Purpose Lease (MPL) 263, Sublease CLs 229 and 395, CL 396 and Consolidated Coal Lease (CCL) 744. Sublease CLs 229 and 395 are held by Maxwell Ventures (Management) Pty Ltd.). No coal extraction is proposed within sublease CL 229 and CL 395 and therefore consent of the tenement holder is not required under section 380AA. The use of the TSFs and emplacement activities would continue within sublease CL 229 and CL 395 for an additional four years as part of the Modification.</p>	Section 4.2.5	✓

Table A4-2
Summary Statutory Compliance for Environmental Planning Instruments

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
<i>State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)</i>			
clause 2.7	Clause 2.7(1) relevantly provides for the Independent Planning Commission to be the declared consent authority for certain applications to modify a development consent for major projects (now referred to as SSD), if the application is made by a person who has disclosed a "reportable political donation" under section 10.4 of the EP&A Act in connection with the modification application. In this respect, this Modification application is not made by a person who has disclosed a reportable political donation.	-	✓
<i>State Environmental Planning Policy (Resources and Energy) 2021 (Resources and Energy SEPP)</i>			
clause 2.1	<p>Clause 2 of Chapter 2 (Mining, petroleum and extractive industries) of the Resources and Energy SEPP relevantly states that the aims of the Policy are, in recognition of the importance to NSW of mining, petroleum production and extractive industries:</p> <ul style="list-style-type: none"> • to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State; • to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources; • to promote the development of significant mineral resources; and • to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources. <p>The consent authority can be satisfied that the Modification is consistent with the relevant aims of the Resources and Energy SEPP for the reasons given in Section 4.1.1 with respect to the objects of the EP&A Act.</p>	Section 4.1.1	✓
clause 2.9	Clause 2.9 states that development for the purpose of mining may be carried out (with consent) on land where agriculture or industry may be carried out (with or without development consent). The DA Area for the approved Mt Arthur Coal Mine is primarily within land that is zoned for primary production, for which development for the purpose of agriculture or industry may be carried out (with or without consent) under the Muswellbrook LEP. The DA Area also covers land zoned for environmental management, whereby development for the purposes of agriculture is permitted without consent. Portions of the DA Area overlies land zoned for infrastructure associated with the Antiene Rail Spur.	Section 4.3.1	✓

Table A4-2 (Continued)
Summary Statutory Compliance for Environmental Planning Instruments

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
Resources and Energy SEPP (continued)			
<i>Part 2.3 of the Resources and Energy SEPP identifies matters for consideration in the determination of development applications. Noting that this is a modification application, the provisions detailed in clauses 2.16 to 2.23 below are nevertheless addressed for completeness in this statutory compliance table.</i>			
clause 2.16	Clause 2.16 provides various non-discretionary development standards for mining. In this regard, it is noted that: <ul style="list-style-type: none"> • The Modification would not result in exceedances of the cumulative noise level, airblast overpressure, or ground vibration (i.e. the non-discretionary development standards listed under clause 2.16[1] to [6]). 	Section 6.4 Appendix A	✓
	<ul style="list-style-type: none"> • The Modification would result in one exceedance of the cumulative annual average criteria for PM₁₀ at a privately owned dwelling. However, this dwelling is afforded acquisition rights in accordance with MP 09_0062. 	Section 6.5 Appendix B	
	<ul style="list-style-type: none"> • The minimal impact considerations in the <i>NSW Aquifer Interference Policy</i> (NSW Government, 2012) were considered in the Groundwater Assessment (Appendix H). 	Section 6.12 Appendix H	
clause 2.17	<p>Before determining an application for consent for the purposes of mining the consent authority must:</p> <ul style="list-style-type: none"> (a) <i>consider –</i> <ul style="list-style-type: none"> (i) <i>the existing uses and approved uses of land in the vicinity of the development, and</i> (ii) <i>whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and</i> (iii) <i>any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and</i> (b) <i>evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and</i> (c) <i>evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).</i> <p>Land use in the vicinity of the Mt Arthur Coal Mine is characterised by a combination of agricultural land uses, industrial and residential areas in the Muswellbrook. The Modification would be wholly within the existing Mt Arthur Coal Mine mining and coal leases and involves a minor extension of the approved surface disturbance extent (25 ha).</p> <p>Accordingly, the Mt Arthur Coal Mine incorporating the Modification is considered to be compatible with existing and approved uses of land, namely an open cut coal mine rehabilitated to conservation and agriculture final land uses.</p>	-	✓

Table A4-2 (Continued)
Summary Statutory Compliance for Environmental Planning Instruments

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
Resources and Energy SEPP (continued)			
clause 2.18	Consideration of the <i>Voluntary Land Acquisition and Mitigation Policy</i> (VLAMP) (NSW Government, 2018). The Modification would result in one exceedance of the VLAMP cumulative annual average criteria for PM ₁₀ at a privately-owned dwelling (Appendix B). This dwelling is afforded acquisition rights in accordance with MP 09_0062.	Section 6.5 Appendix B	✓
clause 2.19	Before determining an application for development in the vicinity of mining, petroleum or extractive industry, the consent authority must (among other things) consider whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery. In this regard, the Mt Arthur Coal Mine incorporating the Modification would continue to progress in accordance with approved mine plans until the target coal resource is fully extracted (until 2030). Further, the development as modified is not expected to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials. Accordingly, no additional measures to avoid or minimise incompatibility with existing and approved surrounding land uses are considered to be required.	-	✓
clause 2.20	Clause 2.20(1) of the Resource and Energy SEPP requires that, before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at conducting the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:	Sections 6.11 and 6.12. Appendices G and H	✓
	(a) <i>that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,</i>	Section 6.8 Appendix D	
	(b) <i>that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,</i>	Section 6.6 Appendix B	
	(c) <i>that greenhouse gas emissions are minimised to the greatest extent practicable.</i> In addition, clause 2.20(2) requires that, without limiting clause 2.20(1), in determining a development application for development for the purposes of mining petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.		

Table A4-2 (Continued)
Summary Statutory Compliance for Environmental Planning Instruments

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
Resources and Energy SEPP (continued)			
Clause 2.21	<p>Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery, and whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.</p> <p>In this regard, the Mt Arthur Coal Mine incorporating the Modification would continue to progress until 2030, enabling the efficient extraction of additional economically viable coal resources.</p>	Section 3	✓
clause 2.23	<p>Clause 2.23 of the Resource and Energy SEPP requires that, before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development. In particular, the consent authority must consider whether conditions of the consent should:</p> <ul style="list-style-type: none"> (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under clause 3 of Schedule 6 to the Act and the Contaminated Land Management Act 1997), or (d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety. <p>HVEC would continue to progressively rehabilitate the Mt Arthur Coal Mine in accordance with existing approvals and the approved RMP and Rehabilitation Strategy. HVEC would review and revise the RMP (or equivalent) to incorporate the Modification.</p>	Section 3	✓

Table A4-2 (Continued)
Summary Statutory Compliance for Environmental Planning Instruments

Relevant Legislation or Instrument	Consideration	Relevant Section in Modification Report	Modified Project Compliance Status
<i>State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)</i>			
clause 3.12	<p>A consent authority must consider current circulars or guidelines published by the DPE relating to hazardous or offensive development, whether to consult with relevant public authorities regarding any environmental or land use safety requirements, a preliminary hazard analysis prepared by the applicant, feasible alternatives to the development and likely future use of surrounding land.</p> <p>To the extent that clause 3.12 is relevant to the Modification application, the consent authority can be satisfied that the development as modified will be carried out appropriately to manage potential hazards and offensive pollution.</p> <p>Hazardous materials associated with the Modification and associated continuation of mining operations would continue to be managed in accordance with MP 09_0062 as proposed to be modified by this Modification and approved management plans.</p>	-	✓
clause 4.6	<p>Chapter 4 (Remediation of Land) of the Resilience and Hazards SEPP is concerned with the remediation of contaminated land. Relevantly, clause 4.6(1) and (2) state:</p> <ul style="list-style-type: none"> (1) <i>A consent authority must not consent to the carrying out of any development on land unless—</i> <ul style="list-style-type: none"> (a) <i>it has considered whether the land is contaminated, and</i> (b) <i>if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</i> (c) <i>if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i> (2) <i>Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines</i> <p>The Modification New Disturbance Area would be located within the boundary of MP 09_0062 and existing MLs 1487, 1358 and 1548 and therefore does not involve any change of use of any of the land specified in clause 4.6(4).</p>	-	✓

Table A4-3
Summary of Considerations under the Muswellbrook Local Environmental Plan 2009

Relevant Instrument	Consideration under the Muswellbrook LEP	Relevant Section in Modification Report	Modified Project Compliance Status
<i>Muswellbrook LEP</i>			
clause 2.3	A consent authority* must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone.	Section 4.3.1	✓
clause 5.10(4)	If applicable, a consent authority must, before granting consent under clause 5.10 in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	Section 6.9 and Section 6.15 Appendix E	✓
clause 5.10(8)	If applicable, a consent authority must, before granting consent under clause 5.10 to the carrying out of development in an Aboriginal place of heritage significance, consider the effect of a proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment.	Section 6.9 and Appendix E	✓
clause 7.6	If applicable, a consent authority must, before granting development consent for earthworks, consider the effect of proposed earthworks on drainage patterns, soil stability, quality of fill, likely amenity impacts, likelihood of disturbing relics and proximity to and potential impacts on water courses.	Section 6	✓

* Clause 1.6 of Part 1 of the Muswellbrook LEP states:

The consent authority for the purposes of this Plan is (subject to the Act) the Council.

The Consent Authority under the EP&A Act, in the case of this Modification, is the Minister.

Table A4-4
Summary of Considerations under Other Legislation

Relevant Legislation	Consideration	Relevant Section in Modification Report	Modified Project Consideration Status
<i>NSW Biodiversity Conservation Act 2016</i>			
section 7.14(2)	<p>The consent authority is to take into consideration the likely impact of the proposed development on biodiversity values as assessed in the BDAR.</p> <p>The Modification does require a minor extension in surface development beyond the approved areas and would therefore increase the impact on biodiversity values, including threatened species and ecological communities. A BDAR has been prepared detailing the impact on ecological values and offset measures.</p> <p>If the Modification is approved, amendments to the conditions under MP 09_0062 have been proposed which incorporate the Biodiversity Offset Scheme, facilitating the application of sections 7.14(3) and 7.14(4).</p>	Sections 4.2.1 and 6.8 Appendix D	✓
section 7.16(4)	<p>If the consent authority is of the opinion that the Mt Arthur Coal Mine (as modified) is likely to have serious and irreversible impacts on biodiversity values, the consent authority is required to:</p> <ul style="list-style-type: none"> take those impacts into consideration; and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted. 		✓
<i>NSW National Parks and Wildlife Act 1974 (NPW Act)</i>			
section 90	The Modification would involve a minor increase in approved surface development extent, and therefore would involve additional potential impacts on Aboriginal cultural heritage to those previously assessed. These impacts are assessed in the ACHA (Appendix E). HVEC will continue to manage Aboriginal cultural heritage in accordance with the approved Mt Arthur Coal Mine Aboriginal Heritage Management Plan (BHP, 2022a).	Sections 4.2.3 and 6.9 Appendix E	✓
<i>NSW Protection of the Environment Operations Act 1997 (PoEO Act)</i>			
section 43	The Mt Arthur Coal Mine currently operates under EPL 11457, granted under the PoEO Act, which allows for coal works and mining for coal as scheduled activities. The EPL contains conditions that relate to emission and discharge limits, environmental monitoring and reporting. EPL 11457 would be reviewed and if necessary varied to incorporate the Modification.	Section 4.2.4	✓
<i>NSW Water Management Act 2000</i>			
sections 89, 90 and 91	HVEC holds appropriate licences under the WM Act for the existing activities at the Mt Arthur Coal Mine. Appropriate licences under the WM Act would continue to be held and where necessary obtained via purchase or trade according to the operating rules of the water market.	Sections 4.2.6 and 6.12	✓

Table A4-4 (continued)
Summary of Considerations under Other Legislation

Relevant Legislation	Consideration	Relevant Section in Modification Report	Modified Project Consideration Status
<i>NSW Heritage Act 1977</i>			
section 139	No items of known historic heritage would be directly disturbed by the Mt Arthur Coal Mine (as modified) (BHP, 2022b).	Section 6.15	✓
<i>NSW Crown Land Management Act 2016</i>			
section 5.30	There is no Crown Land directly affected by the Modification. HVEC has consulted with DPE – Crown Lands regarding the Modification.	No change.	✓