

# Notice of Modification

## Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, I modify the project approval referred to in Schedule 1, as set out in Schedule 2.



Clay Preshaw  
A/Executive Director  
Resource Assessments and Business Systems

Sydney 23 JANUARY 2019

### SCHEDULE 1

The project approval for the Mount Piper Rail Coal Unloader Project (06\_0271), granted by the Minister for Planning on 27 June 2009.

### SCHEDULE 2

- In Schedule 1:
  - delete "Delta Electricity", and replace with "EnergyAustralia NSW Pty Limited"; and
  - delete the description of "Project", and replace with "Construction and Operation of the Pipers Flat Rail Coal Unloader".
- In Schedule 2 "DEFINITIONS", delete "ARTC", "DECC", "Department of Planning", "Director-General", "Director-General's Approval", "DWE", "Delta Electricity", "EPA", "Proponent", "RTA" and "SCA" and insert the following definitions in alphabetical order:

Department	Department of Planning and Environment
Dol Lands and Water	Department of Industry Lands and Water Division
EA	<ul style="list-style-type: none"><li><i>Western Rail Coal Unloader: Environmental Assessment</i>, prepared by Sinclair Knight Merz Pty Ltd and dated April 2007;</li><li><i>Western Rail Coal Unloader: Environmental Assessment, Submissions Report</i>, prepared by Sinclair Knight Merz and dated August 2007;</li><li>supplementary information provided under correspondence from Delta Electricity to the Department of Planning, dated 10 April 2008, and accompanied by:<ol style="list-style-type: none"><li><i>Western Rail Coal Unloader: Submissions Report – Conveyor Options Assessment</i>, prepared by Sinclair Knight Merz and dated 12 February 2008;</li><li><i>Western Rail Coal Unloader: Submissions Report – Sleep Disturbance Assessment</i>, prepared by Sinclair Knight Merz and dated March 2008;</li></ol></li><li><i>Western Rail Coal Unloader: Submissions Report – Portland Noise Assessment</i>, prepared by Sinclair Knight Merz and dated 6 March 2008; and</li><li><i>Pipers Flat Rail Coal Unloader Section 75W Modification Project Approval 06_0271 Environmental Assessment</i> dated August 2018, as modified by the Response to Submissions dated October 2018.</li></ul>
EPA	Environment Protection Authority
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance
OEH	Office of Environment and Heritage
Proponent	EnergyAustralia NSW Pty Limited
RMS	Roads and Maritime Services
TfNSW	Transport for NSW

3. Delete conditions 1.1 and 1.2 of Schedule 2, and replace with the following:
  - 1.1 The Proponent shall carry out the project:
    - (a) generally in accordance with the EA; and
    - (b) in accordance with the conditions of this approval.”
  - 1.2 If there is any inconsistency between the documents in condition 1.1 above, the most recent document prevails to the extent of the inconsistency. However, the conditions of this approval prevail to the extent of any inconsistency.
4. In Schedule 2, delete:
  - (a) references to “ARTC”, and replace with “TfNSW”;
  - (b) references to “DECC”, in conditions 2.33, 2.36, 2.38 and 6.4d, and replace with “OEH”;
  - (c) references to “DECC” in conditions 2.9c, 2.12, 2.13, 2.18, 3.2-3.6, 6.2 and 6.4a, and replace with “EPA”;
  - (d) references to “Director-General”, and replace with “Secretary”;
  - (e) references to “DWE”, and replace with “DoI Lands and Water”;
  - (f) references to “RTA”, and replace with “RMS”; and
  - (g) references to “SCA”, and replace with “WaterNSW”.
5. In condition 1.4 of Schedule 2, delete “ten years after the date on which it is granted” and replace with “on 28 June 2022”.
6. In condition 1.5 of Schedule 2, delete “eight” and replace with “5”.
7. In condition 2.10 of Schedule 2, delete all words after “including rail noise generated on the rail loop”.
8. In condition 2.11 of Schedule 2:
  - (a) in the first paragraph delete all words after “noise from the project” and insert “shall be assessed in accordance with the procedures in the *Noise Policy for Industry* (EPA, 2016)”; and
  - (b) in the second paragraph, delete“(refer to Section 11 of the New South Wales Industrial Noise Policy (EPA, 2000)” and replace with “(see Section 7 of the *Noise Policy for Industry*)”.
9. In condition 2.12 of Schedule 2 delete “Y-junction crossing” and replace with “branch line connections to the Wallerawang to Mudgee rail line ”.
10. In condition 2.14 of Schedule 2:
  - (a) delete “six” and replace with “5”; and
  - (b) delete “Interim guideline for the Assessment of Noise from Rail Infrastructure Projects (DECC, 2017)” and replace with “the *Rail Infrastructure Noise Guideline* (EPA, 2013)”.
11. In condition 2.16 of Schedule 2, delete “*Conservation*” and replace with “*Construction 4th Edition March 2004*”.
12. In condition 2.19 of Schedule 2, after “watercourses”, insert “(including Pipers Flat Creek, Thompsons Creek, Irondale Creek and Winters Creek)”.
13. In condition 2.30 of Schedule 2, delete “the commencement of site construction works” and replace with “oversize vehicles accessing the site”.
14. Delete condition 2.33, and replace with the following condition:
 

2.33 At least 3 months prior to the commencement of construction, the Proponent shall undertake a program of archaeological subsurface testing for potential archaeological deposits (PADs) that may be directly impacted by the project, in consultation with OEH and the Aboriginal community, and to the satisfaction of the Secretary. The program must:

  - (a) re-evaluate PADs 3, 4, 5 and 6 and assess the nature and significance of any Aboriginal cultural material present at each location; and
  - (b) include a suitable test excavation method and salvage actions based on the results of the re-evaluation.

*Note: the PADs referred to in this condition are shown in Figure 1 of Appendix 2.*
15. After condition 2.34 of Schedule 2, insert the following:
 

2.34A Prior to any vegetation clearing in the rail loop alignment and coal conveyor corridor, the Proponent shall, in consultation with OEH:

  - (a) undertake targeted threatened flora species surveys, during appropriate survey periods,; and
  - (b) quantify the area (hectares) of each plant community type identified to be cleared for all project components, to the satisfaction of the Secretary.

16. In condition 2.37 of Schedule 2, after “Dol Lands and Water” insert “and WaterNSW”.
17. In condition 2.38 of Schedule 2:
  - (a) delete “The Proponent” and insert “Within 12 months of the commencement of construction, the Proponent”;
  - (b) after “agreed by the OEH” insert “, and to the satisfaction of the Secretary”; and
  - (c) delete all words after “the local area.”
18. In condition 3.3 of Schedule 2, delete “(DEC, 2005)” and replace with “(EPA, 2016)”.
19. In condition 3.5 of Schedule 2, delete “*New South Wales Industrial Noise Policy* (EPA 2000), and replace with “*Noise Policy for Industry* (EPA, 2016)”.
20. In condition 6.1 and 6.3 of Schedule 2 after “(DIPNR 2004)” add “or its latest version”.
21. In condition 6.2 of Schedule 2, delete “1.1b)” and replace with “1.1a)”.
22. In condition 6.2 of Schedule 2, after “an Erosion and Sedimentation Management Plan” add “in accordance with Landcom’s Managing Urban Stormwater – Soils and Construction 4th Edition, March 2004”.
23. In condition 6.4a) of Schedule 2, after “effluent” add “including locating the effluent disposal area at least 100 metres from Pipers Flat Creek”.
24. After condition 6.4 of Schedule 2, insert the following:

**Revision of Strategies, Plans and Programs**

- 6.5 The Proponent must review and, if necessary, revise the strategies, plans or programs required under this approval to the satisfaction of the Secretary within 1 month of the:
- (a) submission of an incident report under condition 7.1 of Schedule 2;
  - (b) submission of an audit report under condition 3.7 of Schedule 2; or
  - (c) any modification to the conditions of this approval.

**Staging and Updating of Strategies, Plans or Programs**

- 6.6 With the approval of the Secretary, the Proponent may submit any strategy, plan or program required by this approval on a progressive basis.

To ensure the strategies, plans or programs under the conditions of this approval are updated on a regular basis, the Proponent may at any time submit revised strategies, plans or programs to the Secretary for approval.

With the agreement of the Secretary, the Proponent may prepare any revised strategy, plan or program without undertaking consultation with all the parties referred to under the relevant conditions of this approval.

*Notes:*

- *While any strategy, plan or program may be submitted on a progressive basis, the Proponent must ensure that all development being carried out on site is covered by suitable strategies, plans or programs at all times.*
- *If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program must clearly describe the specific stage to which the strategy, plan or program applies, the relationship of this stage to any future stages, and the trigger for updating the strategy, plan or program.*

25. Delete conditions 7.1 and 7.2 of Schedule 2 and replace with the following:

**Incidents**

**7.1 Incident Notification**

The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) as soon as practicable after the Proponent becomes aware of an incident. The notification must identify the project (including the project name and approval number), and set out the location and nature of the incident.

**7.2 Non-Compliance Notification**

The Department must be notified in writing to [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within 7 days after the Proponent becomes aware of any non-compliance with the conditions of this approval. The notification must identify the project and the application number for it, set out the condition of approval that the project is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

26. After Schedule 2, insert Appendix 1 and Appendix 2 as follows:

# APPENDIX 1 PROJECT LAYOUT

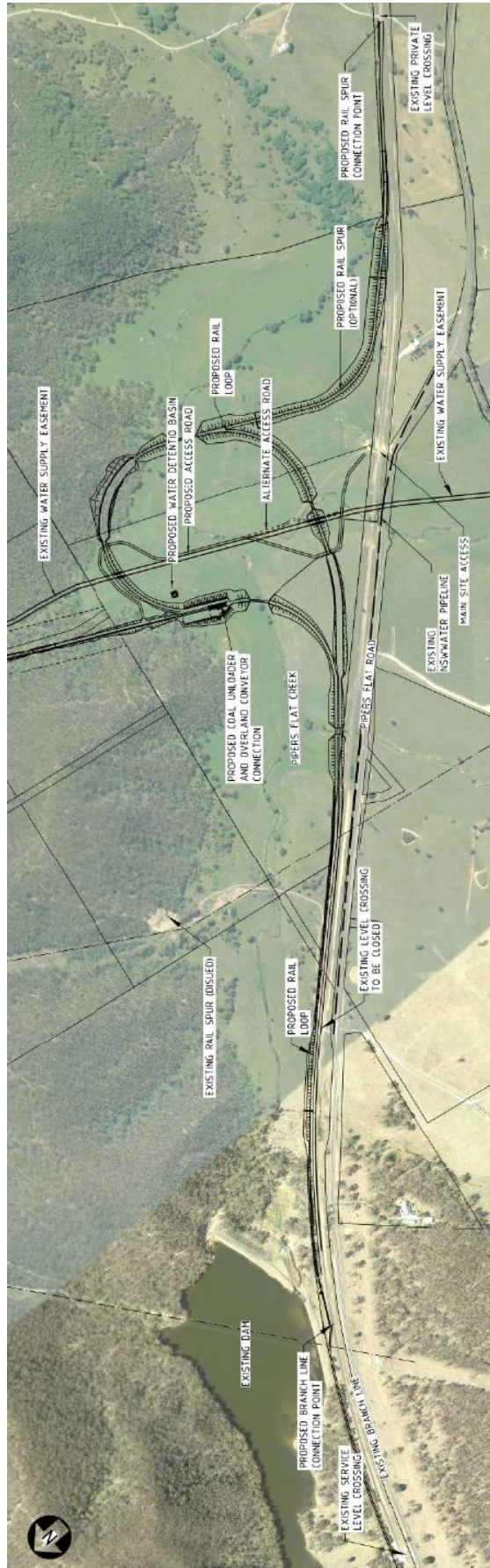


Figure 1: General Layout and Conceptual Configuration of the Project

APPENDIX 2  
POTENTIAL ARCHAEOLOGICAL DEPOSITS

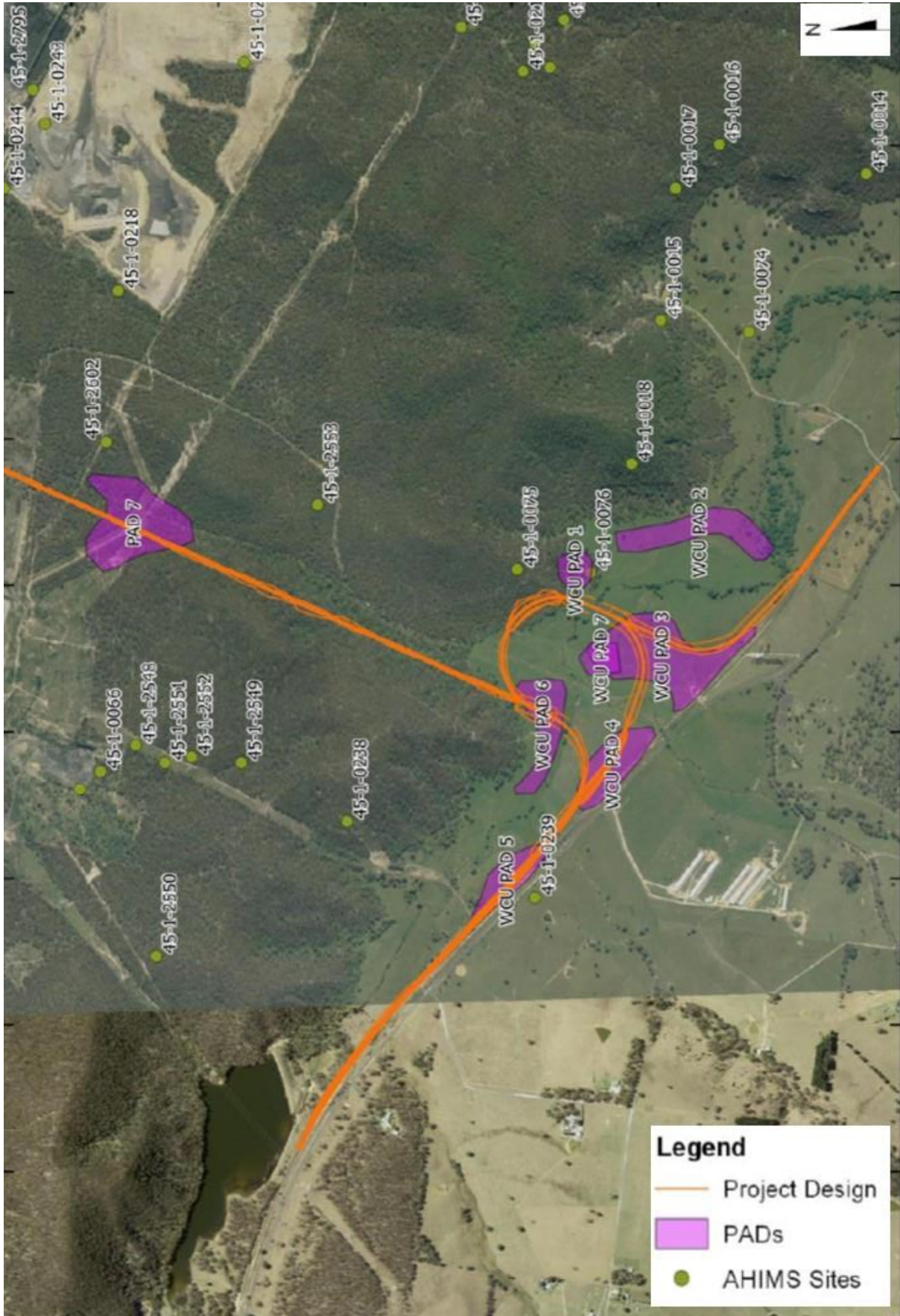


Figure 1: Location of the Identified Potential Archaeological Deposits