



Your reference
Our reference
Contact

Coalpac Consolidation Project
DOC12/22615
Dr Robert Taylor 6883 5354

Mr David Kitto
Manager Mining Projects
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

4th June 2012

Dear Mr Kitto,

The Office of Environment and Heritage (OEH) has reviewed the exhibited Coalpac consolidation Project (10-01178, the project Environmental Assessment (EA). Our comments on biodiversity were supplied on 1 June 2012. This letter covers Aboriginal Cultural Heritage. OEH has found the EA to be adequate in relation to the assessment of Aboriginal Cultural Heritage for this project.

OEH would like to provide comments in relation to the proposed Aboriginal Cultural Heritage Management Plan (ACHMP) for this project. An Aboriginal Cultural Heritage Management Plan (ACHMP) directs the implementation of management strategies for Aboriginal cultural heritage in major projects approved under Part 3A of the *Environmental Protection & Assessment Act* (1979). The intent of ACHMPs is to frame the measures and responsibilities to protect Aboriginal cultural heritage for the life of the project and/or duration of the ACHMP. It is to provide clear and relevant, directions and instructions for the day-to-day management of all known and potential Aboriginal cultural heritage issues across the Project area. It should be subject to periodic review and be updated if required. The Office of Environment and Heritage (OEH) has prepared a checklist to assist proponents of Part 3A Major Projects in the development of an ACHMP (see attached). The checklist informs proponents of the processes and procedures outlined within a ACHMP including the statutory requirements of the *National Parks & Wildlife Act* (1974), and accord with OEH's operational policies and guidelines for the protection and management of Aboriginal cultural heritage.

The ACHMP including with the Environmental Assessment did not include the following:

- Roles and Responsibilities of all parties

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- Dispute resolution clause
- Compliance and Procedural Breaches Clause
- Communication protocols
- Review Clause
- Assignment Clause
- Length of Agreement Clause
- Variation Clause
- Definitions Clause

If you wish to discuss any of the above matters further please contact Paul Houston on (02) 6883 5361.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Taylor'.

Dr Robert Taylor
Manager Environment & Conversation Programs
Conservation and Regulation Division

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Preparation and Implementation of an Aboriginal Cultural Heritage Management Plan



A Checklist for Proponents of Part 3A Major Projects

What is an Aboriginal Cultural Heritage Management Plan?

An Aboriginal Cultural Heritage Management Plan (ACHMP) directs the implementation of management strategies for Aboriginal cultural heritage in major projects approved under Part 3A of the *Environmental Protection & Assessment Act* (1979). The intent of ACHMPs is to frame the measures and responsibilities to protect Aboriginal cultural heritage for the life of the project and/or duration of the ACHMP. It is to provide clear and relevant, directions and instructions for the day-to-day management of all known and potential Aboriginal cultural heritage issues across the Project area. It should be subject to periodic review and be updated if required.

The Office of Environment and Heritage (OEH) has prepared a checklist to assist proponents of Part 3A Major Projects in the development of an ACHMP. The checklist informs proponents of the processes and procedures outlined within a ACHMP including the statutory requirements of the *National Parks & Wildlife Act* (1974), and accord with OEH's operational policies and guidelines for the protection and management of Aboriginal cultural heritage.

1. Project Outline: Defines and describes the Part 3A Project to which the ACHMP is to apply

1.1 Provide clear information about the nature, design and expected life of the Project as well as its location and extent.	Y
1.2 Provide suitably detailed maps of the area covered by the ACHMP with relevant information on Aboriginal cultural heritage highlighted.	Y

2. Purpose and Scope: Briefly outlines the purpose and scope of the ACHMP.

2.1 Outline the key factors that the ACHMP has been formulated to address such as consent conditions, legislative requirements; protection of Aboriginal cultural heritage resources within the Project Area; avoidance, mitigation and management of likely development impacts including salvage; and the purpose and maintenance of consultation with relevant Aboriginal community stakeholders.	Y
2.2 Indicate whether the Plan is to apply to all or only a portion of the Project Area and/or whether it is to apply to one or more stages of a multi-stage development.	Y
2.3 Indicate clear time frames for both the duration and periodic review of the ACHMP.	Y

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3. Summary of Aboriginal Heritage Resources and expected Project Impacts:

3.1 Provide summary details of the known and predicted Aboriginal cultural heritage resource within the Project Area as identified in the Aboriginal cultural heritage survey and assessment report. <i>For Project Areas where numerous items of Aboriginal cultural heritage are identified it is recommended that this description is supported by the inclusion of a tabulated record of all known sites.</i>	Y
3.2. Provide a description/listing of any recommended strategy for the avoidance and/or mitigation of impacts for each known Aboriginal object/site within the Project area (Refer to Sections 6 & 7) including Aboriginal Heritage Information Management System site for all sites	Y

4. Aboriginal Community Consultation

4.1 The plan should ensure ongoing consultation with and involvement of the Aboriginal community in all facets of Aboriginal cultural heritage addressed within the ACHMP. This could potentially include (but is not limited to) protocols for: <ul style="list-style-type: none">• Establishment of an Aboriginal consultative committee including its form, function, operation and reporting requirements ;• Roles and responsibility for all parties• Aboriginal access to sites for community education purposes;• Aboriginal involvement in site protection measures such as fencing• Aboriginal monitoring of ground disturbing works in culturally sensitive areas;• Aboriginal participation in salvage works• Their role in care and control of salvaged objects• A process to address any conflicts that cannot be resolved between the parties.e.g. Dispute resolution protocols• Communication protocols:• Variation Cause e.g. A process on how and why the ACHMP can be changed	Y
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5. Operational and Training Protocols

5.1 Outline the obligations and/or requirements of all employees, contractors, sub-contractors and visitors with respect to the protection of Aboriginal cultural heritage within the Project Area. Ensure responsibilities are assigned to communicate these	Y
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obligations to individuals involved.	
5.2 Consider Aboriginal cultural heritage awareness training for all employees, contractors, sub-contractor and visitors as part of work-place induction procedures.	Y
5.3 Outline the protocols for operation of the ACHMP and clearly indicate the roles and responsibilities of particular staff in relation to the timing and implementation of all protocols.	Y
5.4 Outline the key criteria by which effective compliance and performance review of the ACHMP will be measured (refer to Section 9).	Y

6. On-ground Aboriginal site protection measures

<p>6.1 Where actions are required as part of an agreed avoidance or site impact mitigation strategy then the ACHP should outline details such as the appropriate processes and protocols e.g. Clearance checklist for actioning each activity and the responsibilities and accountabilities of all staff in relation to the implementation and maintenance of each measure. Examples of some potential actions are:</p> <ul style="list-style-type: none"> • Installation of warning signage, fencing and protection measures for known sites, • Erosion and sediment control, • Feral animal and weed control, • Bushfire maintenance, • Management of indirect mining impacts including subsidence impacts, • Installation and maintenance of transport corridors • Timeframes of proposed works • Maps showing no go area's and location of sites 	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>
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7. Salvage/test excavation

7.1 Where salvage of objects or test excavation of probable sites is proposed as a mitigation strategy the ACHMP should specify and include plans appropriate for each site to be so managed.	Y
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8. Statutory Reporting Requirements

8.1 Outline the procedures for all statutory reporting of Aboriginal cultural heritage within the project area. This should include:	
<ul style="list-style-type: none"> The procedure for the notification to OEH of Aboriginal objects revealed through any ground disturbing or survey works associated with the on-going operation of the Project as per Section 91 of the NP&W Act. This should include: <ul style="list-style-type: none"> A description of the process that will be followed when a new site is located and how the ACHMP will be amended to include it. Information about and access to OEH Aboriginal site recording forms; and training of relevant staff. This should include provision of a copy of a NPWS site recording form, an explanation of the legal requirement under the NPW Act to record new sites, and a description of the process which will be followed when a new site is located and how the ACHMP will be amended to include it. Identification of the procedure to be adopted in the event that human skeletal remains are found within the project area; including 'stop work' protocols, notification procedures and guidance on site access restrictions. Identification of procedures to be adopted in the event of protection, salvage and/or site destruction to ensure OEH receives updated information relating to all sites within the Project Area. Identification of the roles and responsibilities of all staff with respect to notification and reporting of Aboriginal cultural heritage matters. 	 Y Y Y Y Y

9. Performance Monitoring and Review

9.1 Include a schedule for periodic reviews of the ACHMP and develop appropriate reporting mechanisms (e.g. proforma) for these reviews. <i>The reviews may be incorporated into broader environmental reporting documents</i>	Y
9.2 Include provisions for monitoring and/or review of the key performance criteria outlined in the ACHMP. This may include (but need not be limited to): <ul style="list-style-type: none"> Monitoring of work plans to ensure that any new ground disturbance activities 	Y

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are preceded by any archaeological survey, Aboriginal monitoring and/or salvage processes agreed to in the ACHMP.	Y
• Monitoring and review of the detail and accuracy of the reporting of new sites and of salvage activities.	Y
• Inspection of sites that are to be protected under the provisions of the ACHMP to ensure that they have not been damaged and that any signage and/or fencing that have been erected remains intact.	Y
• A review of site induction processes including cultural heritage awareness training to ensure that Project employees, contractors, sub-contractors and visitors have received the training, and are applying it in the context of their expected work roles.	Y
• Monitoring of activities associated with any provisions for Care and Control of salvaged objects including; post-salvage record keeping, provision and adequacy of any 'temporary storage' and progress of required applications to OEH for transfer of Aboriginal objects to the local Aboriginal community.	

10. Definitions and/or glossary of terms:

10.1 Include a list of definitions of key terms and, if used, include an explanatory list for all abbreviations	Y
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Summary of the critical elements of a plan

- A map(s) that clearly shows the area to be impacted, the location of sites to be protected and the location of sites to be salvaged and/or destroyed.
- A logical link from the results of the cultural heritage assessment to the measures placed in the ACHMP
- Clear articulated steps in the design and implementation of protection and / or mitigation measures
- Clear roles and responsibilities and protocols to ensure communication of these to relevant staff and contractors.
- Clear processes to ensure protection mechanisms are effective e.g. physical barriers and signage that tells project workers where things are and where not to go
- A process to ensure information flow on the fate of objects back to OEH

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- Processes to ensure ongoing communication with and involvement of the Aboriginal community in decision making related to Aboriginal heritage issues, including dispute resolution procedures
- Timeframes, monitoring and review

SUPPLEMENTARY DISCUSSION: FACTORS TO CONSIDER WHEN DEVELOPING AN ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN

1. Legislative Framework

For a Major Project approved under the Part 3A provisions of the *Environment and Planning Assessment Act, 1979* (the EP&A Act) there is no requirement for a developer to seek or obtain from OEHL an Aboriginal Heritage Impact Permit (AHIP) - under section 87 and/or section 90 of Part 6 of the *National Parks & Wildlife Act 1974* (NP&W Act) - to allow for the authorised disturbance, excavation and/or destruction of an Aboriginal object within the Approved Project Area. However, the fundamental obligation of proponents of Part 3A Projects to act to protect and/or mitigate harm to Aboriginal objects remains. Moreover these licensing exemptions do not apply to the disturbance or excavation of human skeletal remains whether they are known or expected to be ancestral Aboriginal in origin or not. In addition, sections of the NP&W Act (including s85a and s91) remain applicable regardless of any Part 3A approval.

2. Compliance with all requirements of planning consent

For clarity it is necessary that the ACHMP outline all conditions of the Part 3A consent that it is required to meet, and where in the document it does so. This can easily be achieved by the incorporation of a table listing the relevant Conditions of Consent, the associated requirements of approval, and in what section (or sections) of the Plan each requirement is addressed.

3. Project planning, construction and operational targets

The ACHMP should not be developed in isolation but should articulate with other environmental management plans required for the Part 3A Project such that the timing of all actions within the ACHMP reflects planning priorities, construction time frames and the life of Project operation, compliance and reporting schedules. To this end OEHL is not prescriptive as to the particular design and format of any ACHMP. OEHL recognises that there are corporate, project and site specific management requirements that need to be accommodated when formulating such Plans, and that there is merit in the standardising of the format of all Management Plans required for a single Project.

4. Aboriginal community involvement

The proponent should develop protocols to enable effective Aboriginal community consultation both during the development of the ACHMP and throughout its implementation. This is to ensure that all aspects of the ACHMP are understood and supported by the Aboriginal community. The

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ACHMP should also include a conflict resolution procedure to deal with any matters that cannot be resolved between the proponent and the Aboriginal community.

It should be noted that the ACHMP should be a document that continues to function independently of any broader negotiations (e.g. of native title) with the Aboriginal community - although where it is practicable it should also be able to be updated in light of Aboriginal community input and response to the ACHMP.

5. Formal notification of Aboriginal objects

Under s91 of the NP&W Act it is a requirement that OEH is notified of the existence of Aboriginal objects as soon as practicable after they are first identified. This is usually done through the completion of a OEH Aboriginal Site Card which is submitted to the Registrar of the Aboriginal Heritage Information Management System (AHIMS) for inclusion on the Aboriginal sites database. Information regarding AHIMS and site recording forms can be downloaded from the OEH website located at:

<http://www.environment.nsw.gov.au/licences/DECCAHISSiteRecordingForm.htm>

In the context of the development of an ACHMP it would be expected that a procedure for the statutory notification of new sites was outlined. In addition, to maintain the ongoing accuracy of the AHIMS database, it is necessary to notify OEH of any changes to the status of any Aboriginal sites (whether destroyed, salvaged, and/or subject to conservation measures). Again, in the context of the preparation of an ACHMP, this is most readily achievable through the development of an Aboriginal cultural heritage actions/operations reporting schedule within an ACHMP.

6. Care and Control of Aboriginal objects

Under s85a of the NP&W Act Aboriginal objects remain the property [and under the protection] of the Crown until formal transfer to an Aboriginal group occurs. If salvage and transfer of control to the Aboriginal community was proposed as part of the agreed conditions relating to the approval then it is necessary that an application for a Care and Control Agreement (CCA) be made to OEH. Care and Control Agreement Application forms can be downloaded from the OEH website located at:

<http://www.environment.nsw.gov.au/licences/CareAgreements.htm>

A Care and Control Agreement is required before any long term storage of any Aboriginal objects within a "Keeping Place" can occur. Also, where for operational reasons objects are not (or cannot be) provided immediately into the care and control of the Aboriginal community but are, for example, held in a secure temporary storage facility within the Project area, then it is usual for OEH to require that:

- the form, location, security and access arrangements to the temporary storage facility is identified;

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- time limits be placed on the duration of the 'temporary' storage and a date set by which all necessary arrangements for formal transfer to the local Aboriginal community must be completed; and that
- a clearly defined strategy for the subsequent transfer to the Aboriginal community is articulated.

In the current regulatory framework, the issuing of a s85 Care and Control Agreement for salvaged Aboriginal objects can only be achieved if sites have been notified to OEH and registered within the AHIMS system. Hence there is a procedural interrelationship between s85a and s91 of the NP&W Act and the earliest that each is addressed the more efficient and timely Aboriginal Cultural Heritage issues can be addressed for the life of each Project.

7. Salvage Plans

Where salvage of objects and/or test excavation of probable sites is part of any mitigation strategy, the ACHMP should include salvage and/or excavation plans appropriate for each site to be so managed. These plans should be determined and implemented by a qualified archaeologist using current best practice methodologies and show demonstrated Aboriginal community involvement in all facets of development and implementation. These salvage plans need not be separate documents to the main ACHMP but rather are best incorporated as sections of the overall ACHMP.

Each salvage plan should indicate a commitment to, and be designed to, facilitate and execute the reporting of all salvage and/or excavations to OEH. Hence they should be developed to include the recording of all Aboriginal objects salvaged at each site (e.g. number of artefacts, raw material type, artefact type etc), and ensure that post salvage identification protocols are developed and implemented so that the original provenance of the Aboriginal objects is established and maintained during any short term analysis and/or long term storage and curation of the objects. Each salvage plan should, where required outline a protocol for the development of s85 Care and Control Agreement if objects are to be salvaged, temporarily stored and/or transferred to Aboriginal community representatives. In addition any measure taken that alters the status of a site should be reported to OEH on a site card requesting modification/update of the AHIMS database record for each altered registered site. Once again this requires that all sites be identified by their AHIMS site number.

8. Concurrence with OEH Aboriginal cultural heritage policy and guidelines

In developing and implementing an ACHMP it is recommended that the proponent take account of the following policy and guidelines developed by OEH for the protection and management of Aboriginal cultural heritage:

OEH, 2010. *Aboriginal; cultural heritage Consultation Requirements for Proponents 2010.* (Available at: <http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>)

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OEH, 2010. Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales. (Available at <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>)

OEH, 2011. Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW. (Available at: <http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>).

OEH, 2011. Code of practice for Archaeological investigation of Aboriginal objects in NSW. (Available at <http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>)
Proponents should be aware that OEH may update this policy and guidance material from time to time.

9. Principles of Ecologically Sustainable Development (ESD)

'Cumulative impact' and 'intergenerational equity' are important current issues relating to ESD of relevance to any consideration of Aboriginal cultural heritage. The ability to effectively consider these issues as part of any development assessment process in part relies on the understanding of what prior and ongoing actions have occurred/are occurring across the landscape that has/will impact and/or conserve Aboriginal objects and places. More precisely, this understanding relies on the identification of what was (and is) the nature and content of the Aboriginal cultural heritage resource within any Part 3A Project Area and its wider local and regional contexts. It is imperative therefore that the proponent commits to the accurate recording and reporting of Aboriginal objects and places within the Project Area, as well as to the accurate recording and reporting of any salvage and/or post assessment protection measures adopted.

10. Long term protection of Aboriginal objects

Where Aboriginal objects are transferred to the care and control of the Aboriginal community there is an implied expectation in the NP&W Act that the Aboriginal community will act to secure and retain the long term – preferably in perpetuity - care of these Aboriginal objects. OEH is aware that for some Part 3A Projects, particularly those associated with the mining sector, agreements have been sought and/or reached between proponents and Aboriginal community stakeholders that require the re-instatement of Aboriginal objects back into the landscape from which they were removed / salvaged upon the cessation of the Project. These are usually accompanied by agreements and/or commitments to record and re-register on the OEH AHIMS database Aboriginal artefacts/sites emplaced back into the landscape. Proponents should note that prior to the formalisation of such agreements consultation with OEH is required to ensure that all policy and legislative consequences of re-instatement are considered.

11. Native Title

All exclusive commercial deeds of arrangement that any proponent may enter into with any individual or group, particularly with respect to Native Title Claimant rights, must not preclude any

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wider Aboriginal involvement that is a requirement under the 2010 OEH consultation guidelines. Moreover, any commercial-in-confidence agreements that may be negotiated with an Aboriginal individual or group does not remove the proponent's responsibility to clearly articulate all processes and procedures that will be taken to ensure the protection of, and/or appropriate mitigation of harm to, Aboriginal objects. The onus is on the proponent to ensure that it meets all of its obligations with respect to the Aboriginal cultural heritage provisions of the *National Parks & Wildlife Act* [1974], and that it has developed and articulated the mechanisms to do so within an ACHMP.

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