



Office of  
Environment  
& Heritage

Your reference: MP11-0062  
Our reference: DOC14-50950-01; EF14/1130  
Contact: Robert Gibson, 4908 6851

Mr Matthew Sprott  
Planning Officer – Mining Projects  
Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Sprott

**RE: COMMENTS ON THE DRAYTON SOUTH COAL PROJECT (MP 11-0062) AND RECOMMENDED CONDITIONS FOR APPROVAL**

I refer to your emails dated 3 April 2014 and 28 April 2014 seeking advice regarding the revised Drayton South mine plan, including feedback from the proponent to correspondence from the Office of Environment and Heritage (OEH) dated 15 April 2014 (DOC14/45623-01) concerning the offset package for the proposed mine.

OEH takes the opportunity to provide comment on Aboriginal Cultural Heritage matters and threatened biodiversity and also to provide recommended conditions for approval for this project. These are discussed in more detail in **Attachment 1**.

If you require any further information regarding this matter please contact Robert Gibson, Regional Biodiversity Conservation Officer, on 4908 6851.

Yours sincerely

30 APR 2014

**RICHARD BATH**  
Senior Team Leader Planning, Hunter Central Coast Region  
Regional Operations

Enclosure: Attachment 1 Comments on the revised Drayton South Coal Project and recommended conditions of approval.

## **ATTACHMENT 1: OEH's COMMENTS ON THE REVISED DRAYTON SOUTH COAL PROJECT (MP 11-0062) AND RECOMMENDED CONDITIONS FOR APPROVAL**

The Office of Environment and Heritage (OEH) has been invited by Planning and Infrastructure (P&I) to review the revised Drayton South Coal Project for any residual Aboriginal cultural heritage or threatened biodiversity matters. This review is based largely on the *Response to Submissions Report* for this project, that addressed comments raised in OEH's assessment of 21 December 2012 (DOC12/47838) of the exhibited Environmental Assessment for the original project. It also includes a review of the additional information provided by the proponent on 28 April 2014 to OEH's letter of 15 April 2014 (DOC14/45623-01) on the revised biodiversity offset package. These are discussed further below:

### **ABORIGINAL CULTURAL HERITAGE ASSESSMENT**

OEH acknowledges that the Aboriginal cultural heritage assessment has been undertaken in accordance with OEH's Aboriginal cultural heritage assessment requirements. The results of the Aboriginal cultural heritage assessment for the project area are also acknowledged.

OEH notes that the proponent is committed to updating the existing Aboriginal Cultural Heritage Management Plan for the project area to incorporate the additional strategies developed to manage the likely impact on Aboriginal cultural heritage values associated with this project.

### **Legislative Requirements**

The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the *National Parks and Wildlife Act 1974* (NPW Act). OEH notes that the requirements of the NPW Act have been amended. It is strongly recommended that the proponent familiarises itself with the new requirements during the development and any subsequent assessment and/or development processes.

### **Conclusion**

OEH has no additional concerns with the Aboriginal cultural heritage assessment and recommends that the following conditions of approval for Aboriginal cultural heritage are reflected in any approval conditions for the project.

### **RECOMMENDED CONDITIONS OF APPROVAL FOR ABORIGINAL CULTURAL HERITAGE**

1. The proponent must consult with and involve all the registered local Aboriginal parties for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
2. The proponent must update the existing Aboriginal Cultural Heritage Management Plan for the project area in consultation with the registered Aboriginal parties to detail procedures for managing all Aboriginal cultural heritage values associated with the project area. This process must be undertaken prior to commencing any ground disturbance or development works subject to the development.
3. In the event that ground disturbance identifies a new Aboriginal object/s within the project area, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified cultural heritage specialist and representatives of the local Aboriginal community must be contacted to determine the nature, extent and significance of the finds. The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by OEH) and the management outcome for the site included in the information provided to AHIMS. The proponent must consult with representatives of the local Aboriginal community, and the cultural specialist to develop an appropriate management strategy for all objects/sites which complies with the requirements of the *National Parks and Wildlife Act 1974*.

4. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until the NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact OEH's Environment Line on 131 555 and representatives of the local Aboriginal community. No works are to continue until OEH provides written notification to the proponent.
5. All Aboriginal sites impacted by the project must have an Aboriginal Site Impact Recording form completed and be submitted to OEH's AHIMS Register within three months of being impacted.
6. An Aboriginal Cultural Education Induction Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the registered Aboriginal parties.

### **THREATENED BIODIVERSITY ASSESSMENT**

OEH recently reviewed the offset package for the revised Drayton South Mine Project and found that the offset package appeared to be appropriate. However, this was based on a number of assumptions which led to the request for clarification or further information to details in the in 'Drayton South Coal Project – Proposed Revised Biodiversity Offset Strategy'. On 28 April 2014 the proponent provided additional information in response to OEH's letter of 15 April 2014 which are discussed below:

#### **1. Securing Biodiversity Offset Land**

OEH notes the proponent has identified that they are primarily considering the securing of the biodiversity offsets by the placement of a Conservation Agreement, under Part 4, Division 12 of the *National Parks and Wildlife Act 1974*. It should be noted that has no prior approval for a Conservation Agreement has been given by OEH for this site, there is no guarantee that this offset mechanism can be achieved. OEH has an assessment process that determines whether land is suitable for a Conservation Agreement. In the event that some or all of the offset package for the Drayton South Coal Project is unsuitable then the proponent would need to consider other mechanisms to secure the offset package in its entirety from applicable options provided in section 126L of the *Threatened Species Conservation Act 1995*.

#### **2. Monitoring and reporting**

OEH supports appropriate ongoing monitoring of biodiversity values to ensure that stated objectives can be demonstrated to have been met.

#### **3. *Acacia pendula* on the Project site**

Weeping Myall (*Acacia pendula*) in the Hunter Catchment is an endangered population under Schedule 1 of the *Threatened Species Conservation Act 1995* irrespective of whether it is the locally indigenous form or planted examples of the typical form of the species from the Murray-Darling Basin. The Hunter Valley form of *Acacia pendula* appears to be functionally sterile, but has a distinctive non-pendulous habit that forms close-spaced clonal clumps due to the prevalence of suckers generated from the root system. In contrast, the inland form of the species has a distinctly pendulous habit, is not recorded as suckering but sets seed, including in the Hunter Valley and so can produce clumps from multiple seed germination events (Bell S, Peake T and Driscoll C (2007)). Identification of which form(s) of the "...[t]wo small stands of regenerating *Acacia pendula*..." in the project area, and which form occurs in the development footprint and which occurs in the Saddlers Creek Regeneration Area are important in knowing the relative biodiversity values being lost or secured, and also how the clump in the offset area may be best managed.

OEH acknowledges that samples of *Acacia pendula* from the project area have been lodged with a herbarium, but that feedback on the identity of the samples has yet to be received. Field observations of

whether the plants have erect or pendulous branches; whether they form clonal clumps or not; and whether they set seed or not would go a long way in determining whether the two small stands are of the indigenous or inland form of this species before receipt of correspondence from the herbarium to which the samples have been sent. OEH notes that additional feedback on the form of *Acacia pendula* on the project area will be provided when it is available.

4. Consideration of translocation of *Diuris tricolor* from the development site to an Offset area

OEH acknowledges that the proponent has agreed to OEH's recommendations of 15 April 2014 in relation to *Diuris tricolor*.

5. Copies of field data sheets and maps of additional flora quadrats undertaken on the Temi property.

OEH requested data of the additional 31 vegetation quadrats that have been done since the original EA was exhibited on 'Temi'; the proposed offsite offset property. This has now been provided in the form of a map of the quadrat locations, copies of the field sheets and a summary of the floristic data from the vegetation quadrats. OEH notes that the new quadrats have been conducted across most of the property and as such about 15 occur in the revised offsite offset property. The data provided appears to support the hypothesis that the grassland is primarily after White Box – Yellow Box – Blakely's Red Gum woodland. OEH recommends, that for transparency this data is made available to the general public on the P&I webpage.

The biodiversity matters discussed above, and in correspondence from OEH from 15 April 2014 and 12 December 2012 about this project in its original and revised form have been considered in the formulation of the recommended conditions for approval provided below.

**RECOMMENDED CONDITIONS OF APPROVAL FOR THREATENED BIODIVERSITY**

1. That the any clearance of threatened species, populations or communities, or their habitats, or harm caused by the Drayton South Coal Project mine development must be offset in accordance with OEH offsetting policy. That is, the 'NSW offset principles for major projects (state significant development and infrastructure) (OEH, 2014a). This includes any harm to threatened biodiversity, including offset vegetation by subsidence or other impacts of proposed High Wall mining in the latter part of this project.
2. That all of the biodiversity offset land as described in the *Revised Drayton South Biodiversity Offset Package* (Cumberland Ecology, April 2014) , including the Drayton Wildlife Reserve portions adjacent to Thomas Mitchell Drive are secured by an appropriate conservation mechanism, such as a Conservation Agreement under Part 4, Division 12 of the *National Parks and Wildlife Act 1974*, or other suitable mechanism as listed in section 126L of the *Threatened Species Conservation Act 1995* within 12 months of any consent being granted.
3. That the proposed Biodiversity Offset Package for this project must include rehabilitation to create 614 hectares of Central Hunter Box-Ironbark Woodland and 598 hectares Narrabeen Foothills Slaty Box Woodland on the Drayton South Disturbance Footprint, as described in the *Revised Drayton South Biodiversity Offset Package*. This rehabilitation must generate recognisable and self-sustaining plant communities. If this proposed rehabilitation does not deliver the stated objective then the proponent must provide sufficient additional biodiversity offsets in accordance with biodiversity offsetting policy in force at the time.
4. That the proponent adequately offset impacts to the Pine Donkey orchid (*Diuris tricolor*) and Weeping Myall (*Acacia pendula*) in the Hunter Catchment in the offset package.
5. That the proponent's monitoring of rehabilitation and restoration and reference sites includes analysis by appropriate statistical analysis and that the monitoring data, statistical analysis and underlying assumptions are made freely and publically available within six months of data collection on the company's website – or made freely available on CD or DVD upon written request. This will ensure that

lessons learnt from this project may be able to be applied to other rehabilitation projects in the Hunter Valley as soon as possible.

6. That pre-clearing surveys are conducted by a suitably qualified and experienced ecologist (as per DEC, 2004).
7. That the translocation of any threatened flora from the development site is conducted in accordance with the *Guidelines for the Translocation of Threatened Plants in Australia: Second Edition* (Vallee et al., 2004).
8. That the proponent coordinates its proposed rehabilitation works along Saddlers Creek with the adjacent Saddlers Creek Conservation Area on the Mount Arthur Coal Mine lease.

#### References:

Bell S, Peake T and Driscoll C (2007) Dealing with taxonomic uncertainty in Weeping Myall *Acacia pendula* from the Hunter Catchment. *Australian Plant Conservation* **16**: 14-15.

Cumberland Ecology (2014) *Revised Drayton South Biodiversity Offset Package*. Report prepared for Planning and Infrastructure dated 2 April 2014. Cumberland Ecology, Carlingford Court.

OEH (2014a) *Draft NSW Biodiversity Offsets Policy for Major Projects*. March 2014. NSW Office of Environment and Heritage, Sydney. [www.environment.nsw.gov.au/resources/biodiversity/1480bioffspol.pdf](http://www.environment.nsw.gov.au/resources/biodiversity/1480bioffspol.pdf)

OEH (2014b) *Fact Sheet: Mine site rehabilitation. NSW Biodiversity Offsets Policy for Major Projects*. March 2014. NSW Office of Environment and Heritage, Sydney  
[www.environment.nsw.gov.au/resources/biodiversity/14100minerehab.pdf](http://www.environment.nsw.gov.au/resources/biodiversity/14100minerehab.pdf)

Vallee L, Hogbin T, Monks L, Makinson B, Matthews M and Rossetto M. (2004) *Guidelines for the Translocation of threatened Plants in Australia: Second Edition*. Australian Network for Plant Conservation. Canberra.

