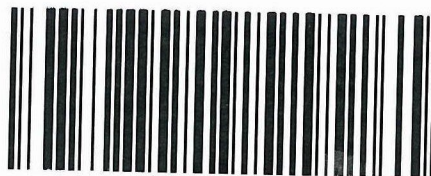




**Environment,
Climate Change
& Water**



PCU018060

Your reference: MP 10-0089
Our reference: DOC10/51957, FIL07/19608-04
Contact: Richard Bath, 4908 6805

Anna Johnston
A/Team Leader, Strategic Assessments
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Attention: Dorna Darab



Dear Ms Johnston

RE: COAL & ALLIED SOUTHERN ESTATES – MIDDLE CAMP (MP10_0089)

I refer to your letter dated 16 November 2010 enclosing the Environmental Assessment (EA) for the concept plan and state significant site listing for the above-mentioned proposal.

The Department of Environment, Climate Change and Water (DECCW) has reviewed the information provided and requests that further information on several matters of Aboriginal cultural heritage be provided to inform the assessment of the proposal.

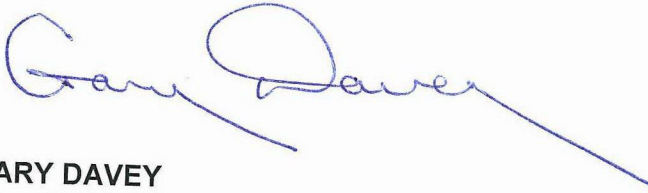
The other environmental matters of key interest to DECCW, as outlined in the Department's submission on the Director General's Environment Assessment requirements, letter (dated 11 August 2010) including impacts on threatened species, adjoining conservation lands, water quality and flooding, contaminated land and noise have been adequately addressed by the applicant. **Attachment 1** contains DECCW's assessment of the proposal, including further comments on key issues.

The proposed environmental conservation offset contributions are identified in the draft planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (EP&A Act) between the Minister for Planning, Minister administering the *National Parks and Wildlife Act 1974*, Coal & Allied Operations Pty Ltd and Catherine Hill Bay Land Pty Ltd. DECCW recognises that these contributions provide for a number of significant conservation outcomes including the transfer into public ownership of environmental conservation lands that are identified in the Lower Hunter Regional Conservation Plan and securing funding towards the costs of managing those lands.

DECCW understands that further information relating to the development of this land will be forthcoming from the Department of Planning for subsequent development assessment processes. DECCW can also provide further advice on the impacts of the development proposal at this stage of the approval process.

If you require any further information regarding this matter, please contact Richard Bath, Acting Head Planning Unit - Hunter, on 4908 6805 or via email to richard.bath@environment.nsw.gov.au

Yours sincerely

A handwritten signature in blue ink, appearing to read "Gary Davey", with a long horizontal stroke extending to the right.

17 DEC 2010

GARY DAVEY
Director North East
Environment Protection and Regulation

Enclosure: Attachment 1 – Review of Concept Plan and State Significant Site listing

ATTACHMENT 1

Department of Environment, Climate Change and Water – Review of concept plan and state significant site listing Environmental Assessment (EA) for Middle Camp (MP10_0089)

Threatened Species and Biodiversity

DECCW has reviewed the *Ecological Assessment Report – Lower Hunter Lands Catherine Hill Bay (Middle Camp) (RPS, November 2010)* and other information contained within the State Significant Site (SSS) listing, and is satisfied that the issued Director General's key assessment requirements for biodiversity impact have been adequately addressed.

It should also be noted that the key assessment requirements require the proponent to demonstrate that biodiversity impacts can be appropriately offset in accordance with the NSW Government's policy for 'improvement or maintenance' of biodiversity values. The EA report shows compliance with this requirement through the use of the DECCW offsetting principles identified in the Lower Hunter Regional Conservation Plan. The use of this qualitative 'principles-based' approach does not provide a quantitative assessment of biodiversity impact and adequacy of proposed offsets, such as could be determined through use of the BioBanking Assessment Methodology under the Biodiversity Banking and Offsets Scheme.

Nonetheless, the offset proposal is shown to be in compliance with the DECCW offsetting principles including through avoidance of impacts by using prevention and mitigation measures, the offsets are underpinned by sound ecological principles, will result in a net improvement in biodiversity over time, provide "like for like" offsets for impacted vegetation communities and threatened species, and are strategically located to strengthen the existing conservation reserve network.

Under the proponent's previous application under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for this site, the Department of Planning's Independent Hearing and Assessment Panel (IHAP) requested written comments from the former Department of Environment and Climate Change in regards to several outstanding biodiversity issues surrounding Coal & Allied southern estates on the Wallarah peninsula. The previous concerns of the Department relating to the potential impacts on biodiversity were adequately dealt with under the IHAP process, and the additional conservation outcomes achieved via that process are reflected in the current proposal.

Conservation lands proposed for transfer to DECCW

In the Department's submission on the Director General's Environment Assessment requirements (letter dated 11 August 2010) it was raised that there are a number of issues relating to the proposed transfer of Coal & Allied's conservation lands in their current condition and the ability of DECCW's Parks & Wildlife Group (PWG) to manage these areas for conservation and recreation purposes into the future. It was also requested that an environmental / land audit be undertaken over these lands.

It is considered that these previous concerns of the Department have been adequately addressed and incorporated into the draft planning agreement under the EP&A Act through the inclusion of "Schedule 4 - Development Contribution Procedures, clause 6 Remediation, reserve establishment and other works".

DECCW can also provide further advice on the management of impacts from the proposed residential development on the adjacent conservation areas (that is, use of perimeter roads, containment of APZs within the development areas, provision of vehicular access to existing fire trails within the conservation areas, etc) during subsequent project applications under Part 3A of the EP&A Act.

Aboriginal Cultural Heritage Assessment

A review of the EA documentation, including the *Lower Hunter Lands Development – Heritage Impact Assessment – Catherine Hill Bay – Middle Camp* (ERM, November 2010) (the HIA), was undertaken to assess the potential impacts of the projects on Aboriginal cultural heritage in accordance with the DECCW's Aboriginal cultural heritage assessment guidelines and the requirements of Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act), as amended.

Summary of key issues

- Incomplete local Aboriginal community consultation process (i.e. additional evidence required from the local Aboriginal community stakeholders regarding the Aboriginal cultural heritage assessment process). In particular comments regarding the current development application, the results of the field assessments, the significance assessment, and support for the proposed mitigation measures, including the Aboriginal cultural heritage management plan (ACHMP).
- The Aboriginal cultural heritage assessment provided has not adequately addressed the cultural significance of the Aboriginal cultural heritage values of the project area.
- Registration of identified Aboriginal sites.

Local Aboriginal community consultation

DECCW acknowledges that the applicant has provided in Section 2 and Annex A of the HIA, a summary of the consultation process undertaken with the local Aboriginal community until June 2007. Since this time the proposal has been modified, however, we note no additional correspondence or consultation was detailed following this period. We also note the absence of formal evidence from all five registered Aboriginal stakeholders of their views on the final draft Aboriginal cultural heritage report. The absence of current evidence or support from the local Aboriginal community means the assessment is incomplete.

DECCW encourages the proponent to undertaking additional consultation with the local Aboriginal community, and recommends that the proponent shows evidence of the consultation process and the views of the registered Aboriginal stakeholders. The consultation evidence requested should include the local Aboriginal community views on 1) cultural significance of the area, 2) the adequacy of the proposed management measures detailed in the Aboriginal cultural heritage report, 3) their views on the proposed ACHMP. Evidence of consultation may take the form of consultation/conversation logs, copies of all correspondence sent/received for the project, newspaper advertisements, records of personal communications, meeting minutes, documented phone calls, copies of agendas, minutes to all Aboriginal community meetings and records of participation in field assessments.

DECCW has developed the '*Aboriginal cultural heritage consultation requirements for Proponents 2010*' to assist applicants with consultation with the Aboriginal community. While these guidelines are aimed at applicants seeking an Aboriginal Heritage Impact Permit under the NPW Act, the guideline provides a useful reference to guide broader community consultation during the development of the major project application.

DECCW also encourages the applicant to continue to engage with all the registered local Aboriginal stakeholders in developing appropriate cultural heritage outcomes for the life of the proposed development. We also offer our support for the Aboriginal community component of Coal & Allied's Allocation Initiative.

Significance assessment

DECCW notes the cultural significance of the Aboriginal cultural heritage values of the project area does not appear to have been addressed, noting that the cultural significance of an Aboriginal site can only be determined by the Aboriginal community. The absence of a cultural significance assessment by the community means that DECCW is unable at this time to comment on the appropriateness of the proposed management strategies for the project area.

It is recommended that the proponent consult further with the local Aboriginal community to establish the cultural significance of the Aboriginal cultural heritage values of the project area to complement the archaeological significance assessment conducted. Any information provided should also be addressed in developing Aboriginal cultural heritage management options and commitments.

Aboriginal Cultural Heritage Management Plan (ACHMP)

DECCW acknowledges and supports that the proponent has committed to developing and implementing an ACHMP for the project area. The ACHMP must clearly demonstrate that effective community consultation with local Aboriginal communities has been undertaken in the development and implementation of the plan. DECCW encourages the proponent to maintain continuous consultation processes with the community for the entire ACHMP and for the life of the project for all Aboriginal cultural heritage matters associated with the project area. Evidence of consultation and views of the community for the ACHMP should be included in its final iteration.

DECCW also recommends the ACHMP includes procedures for ongoing Aboriginal consultation and involvement, management of any recorded sites within the project area, the responsibilities of all stakeholders, details of proposed mitigation and management strategies of all sites; including any additional investigation processes, salvage activities, monitoring, etc; procedures for the identification and management of previously unrecorded sites (excluding human remains), details of an Aboriginal cultural heritage education program for all contractors and personnel associated with construction activities and compliance procedures in the unlikely event that non-compliance with the ACHMP is identified.

Known Aboriginal sites

DECCW acknowledges that the proponent has identified site card record irregularities for Aboriginal sites #45-7-0018 and #45-7-0019. DECCW will investigate this matter and correct any necessary errors in the Aboriginal Heritage Information Management System (AHIMS).

We note the field survey effort conducted in July 2007 over the two proposed development envelopes was limited by vegetation cover and we note that large portions of the development areas were not surveyed, in particular the western and southern portions of Developable Area B and northern portion of Developable Area A. DECCW also notes that this area contains mature forests, creek tributaries, crests and slopes and Aboriginal cultural heritage has been identified in similar landscape features within the same context in close proximity. On this basis, the potential for finding additional evidence of Aboriginal occupation within the proposed development footprints has been identified.

If Aboriginal objects are uncovered due to the development all works should halt in the immediate area to prevent any further impacts to the objects. A suitably qualified archaeologist and the registered Aboriginal stakeholders must be contacted to determine the significance of the object(s). Any new sites must also be registered in DECCW's Aboriginal Heritage Information Management System (AHIMS). The management of any new sites should be addressed in culturally and scientifically appropriate methods devised and gain the necessary approvals before recommencing works. We have included a recommended condition of approval to target this matter.

Registration of Aboriginal sites

DECCW acknowledges the results of field assessment undertaken by the proponent and the identification of a Potential Archaeological Deposit (PAD) on the southern banks of Middle Camp Creek. A search of AHIMS revealed that this Aboriginal site has not been registered with DECCW. The proponent is advised to promptly complete a DECCW site recording card for this site and submit to DECCW for registration in AHIMS. Any management outcomes for the site(s) must be included in the information provided to AHIMS. Please also note that penalties now apply to corporations for failing to fulfil these requirements.

AHIMS contact details: Phone: (02) 9585 6470, address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, e-mail: ahims@environment.nsw.gov.au.

National Parks and Wildlife Act (NPW Act)

The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the NPW Act. DECCW notes that the requirements of the NPW Act have recently been amended. It is strongly recommended that the proponent familiarises itself with the new requirements during the development and any subsequent assessment/development works processes.

Proposed Listing in SEPP

In respect of Clause 9 (Heritage Conservation) in the proposed listing under Schedule 3 of the Major Development SEPP, DECCW acknowledges that all Aboriginal objects and Places are significant to Aboriginal people. DECCW therefore recommends that the term '*heritage item*', as defined in the listing, be expanded to include the definition of '*Aboriginal object or Place*', as described in legislation in the NPW Act.

Conclusion

DECCW has no additional concerns with the Aboriginal cultural heritage assessment for the concept plan and recommends that the following proposed conditions of approval for Aboriginal cultural heritage are reflected in any approval conditions for subsequent of development approval.

Recommended Conditions of Approval for Aboriginal Cultural Heritage

1. The applicant must continue to consult with and involve all the registered local Aboriginal representatives for the duration of the project in relation to all Aboriginal cultural heritage matters. Evidence of all consultation is to be collated and provided to the consent authority upon request.
2. The proponent shall develop an Aboriginal Cultural Heritage Management Plan (ACHMP) for the project area. The ACHMP is to be developed and implemented in full consultation with the registered local Aboriginal stakeholders. The plan is to include, but not limited to:
 - procedures for ongoing Aboriginal consultation and involvement,
 - details of the responsibilities of all stakeholders,
 - management of any recorded sites within the project area,
 - procedures for the identification and management of previously unrecorded sites (excluding human remains),
 - identification and management of any proposed cultural heritage conservation area(s),
 - compliance procedures including for in the unlikely event that non-compliance with the ACHMP is identified.
 - details of an appropriate keeping place agreement with local Aboriginal community representatives for any Aboriginal objects salvaged through the development process, and
 - details of proposed mitigation and management strategies for sites identified to be impacted within the project area.
3. In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and representatives of the local Aboriginal community must be contacted to determine the significance (cultural and scientific) of the object(s). The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by DECCW). The proponent will consult with the Aboriginal community representatives the archaeologist and DECCW to develop and implement management strategies for all objects/sites. Prior to recommencing works in that area, the proponent will ensure they have the necessary approvals.
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 unless the NSW Police provide written notification to the proponent stating otherwise. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW's 'Enviroline' on 131555. No works are to continue until DECCW provide written notification to the proponent.
5. All reasonable efforts are to be made for the development to avoid impacting Aboriginal cultural heritage. If impacts are unavoidable, mitigation measures are to be negotiated with the local Aboriginal community and the required legislative approvals. All sites impacted must have a DECCW Aboriginal Site Impact Recording (ASIR) form completed and submitted to DECCW AHIMS unit within three months of completion of the Aboriginal cultural heritage works.
6. An Aboriginal Cultural Education 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 local Aboriginal community.

DECCW December 2010