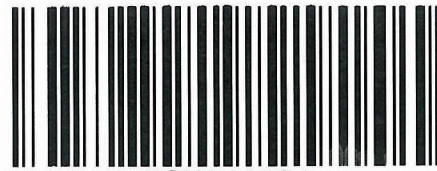




**Environment,
Climate Change
& Water**



PCU018061

Your reference: MP 10-0088
Our reference: DOC10/51958, 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 – NORDS WHARF (MP10_0088)

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.

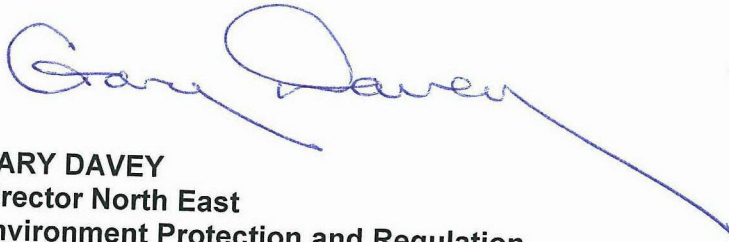
The other environmental matters of key interest to DECCW, as outlined in our submission on the Director General's Environment Assessment requirements (letter dated 11 August 2010), including impacts on threatened species, adjoining conservation lands, water quality and flooding, contaminated land and 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* and Coal & Allied Operations 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, sweeping underline that extends 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 Nords Wharf (MP10_0088)

Threatened Species and Biodiversity

DECCW has reviewed the *Ecological Assessment Report – Lower Hunter Lands Nords Wharf (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.

In relation to 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 through 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.

Water Quality and Impacts on Lake Macquarie

Under the proponent's previous applications under Part 3A of the EP&A Act for this site, the Department of Planning's Independent Hearing and Assessment Panel requested written comments from the former Department of Environment and Climate Change in regards to the potential impacts on water quality, seagrasses and ecology of Lake Macquarie arising from any potential development of Coal & Allied's southern estates on the Wallarah peninsula.

In this previous submission, the Department noted the downstream presence of ecologically significant coastal floodplain endangered ecological communities and receiving waters of Crangan Bay. Crangan Bay is the last undeveloped bay in Lake Macquarie and considered to be in good ecosystem health. It was stated that the likely impacts of the development proposals at Gwandalan and Nords Wharf could be minimised through:

- modification of development footprints (e.g. appropriate development set-backs from the foreshore and riparian zones)
- use of water sensitive urban design principles
- proper management and control of foreshore vegetation and human access / recreation areas
- imposition of strict development controls.

DECCW considers that protecting the ecology of Lake Macquarie / Crangan Bay is one of the most significant environmental issues that the Department of Planning should take into consideration in its assessment of the proposal. DECCW will also provide further advice on the management of potential impacts during subsequent project applications under Part 3A of the EP&A Act.

Aboriginal Cultural Heritage Assessment

A review of the EA documentation, including the the '*Lower Hunter Lands Development – Heritage Impact Assessment – Nords Wharf Final*' (dated October 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).

Summary of key issues

- Incomplete local Aboriginal community consultation process; that is, additional evidence is required from the local Aboriginal community stakeholders regarding the Aboriginal cultural heritage assessment process. In particular, comments regarding the current development application process, and support or otherwise for the proposed mitigation measures, including the Aboriginal cultural heritage management plan (ACHMP)
- Additional details and clarification required regarding the proposed mitigation strategies for the likely impact or harm to areas identified in the Archaeological Zone 1 and Archaeological Zone 2 within the project area.

Local Aboriginal community consultation

DECCW acknowledges that the proponent has provided in Section 2 and Annex A of the HIA, a summary of the consultation process undertaken with the local Aboriginal community until August 2007. The project application appears to have varied considerably; however, DECCW notes no additional correspondence or consultation was detailed following this period. DECCW also notes 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 undertake additional consultation with the local Aboriginal community, and recommends that the proponent provides evidence of the consultation process and the views of the registered Aboriginal stakeholders to form a complete submission. The consultation evidence required 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) the proposed ACHMP, and 4) the conservation outcomes for midden #45-7-0177.

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 telephone 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 proponents with consultation with the Aboriginal community. While these guidelines are aimed at proponents 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 proponent 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 for Nords Wharf.

Known Aboriginal sites

DECCW acknowledges the field survey conducted in July 2007 identified the scale and extent of Aboriginal midden site #45-7-0177 located within the project area. DECCW also notes the field survey was limited by vegetation coverage and the eastern portion of the project area was not surveyed. The development footprint also contains mature forests, 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.

Proposed impacts on Aboriginal cultural heritage values

DECCW acknowledges that the development proposes to impact or harm a portion of or a part of the complex of midden site #45-7-0177 located within the areas identified as Archaeological Zone 1 (AZ 1) and Archaeological Zone 2 (AZ 2) within the development footprint. DECCW recommends where impacts to Aboriginal objects cannot be avoided, the proponent develops appropriate processes to reduce the extent and severity of impacts and using appropriate mitigation measures to achieve better outcomes for cultural heritage objects.

Any measures proposed should be negotiated between the proponent and the registered local Aboriginal stakeholders. Evidence of this negotiation is yet to be provided by the proponent (see above comments).

DECCW notes that the proponent proposes to undertake additional archaeological investigations within AZ 1 and AZ 2 areas to ascertain the nature, extent and scale of any additional evidence of Aboriginal occupation of these areas. DECCW supports such a program; however, we are concerned with the proposed methodology provided in Section 10.2.3 of the HIA. DECCW strongly recommends that the proponent ensures any investigations must be in accordance with the regulated investigation works required under the NPW Act since October 1 2010, including DECCW's '*Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)*'.

Copies of this code can be found at:

www.environment.nsw.gov.au/resources/culturalheritage/10783finalArchCoP.

We also recommend that the registered Aboriginal stakeholders participate in this investigation process and the archaeological investigations are further detailed in the proposed ACHMP.

DECCW would like to remind the proponent that custodial arrangements for any Aboriginal material salvaged as part of this project needs to be determined with the local Aboriginal community and DECCW prior to the project's commencement and relevant processes be included in the proposed ACHMP (refer to additional comments below).

Furthermore, if this site is impacted or harmed during the proposed investigations the proponent must complete a DECCW Aboriginal Site Impact Recording (ASIR) form and submit it to DECCW AHIMS unit within three months of completion of these works in accordance with the provisions of section 89A of the NPW Act.

Aboriginal Cultural Heritage Management Plan (ACHMP)

DECCW acknowledges that the proponent has committed to developing and implementing an ACHMP for the project area and we support this proposal. 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, 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.

National Parks and Wildlife 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.

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
 - 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 3 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