



Environment, Climate Change & Water

Your reference: MP 10-0093
Our reference: DOC11/10990; FIL09/595
Contact: Richard Bath, 4908 6805

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

Attention: Alan Moroney

Dear Ms Johnston *Anna*

RE: BLACK HILL CONCEPT PLAN, STATE SIGNIFICANT SITE STUDY AND DRAFT VOLUNTARY PLANNING AGREEMENT (MP10-0093) – REVIEW OF ENVIRONMENTAL ASSESSMENT

I refer to your letter dated 24 February 2011 seeking advice in regard to an Environmental Assessment report (EA) from Coal & Allied P/L for a proposed employment lands development at Black Hill and dedication of conservation land at Stockrington and Tank Paddock. I appreciate the opportunity to comment.

The Department of Environment, Climate Change and Water (DECCW) has reviewed the information provided and requests that further information on several matters relating to the conservation offset lands and Aboriginal cultural heritage be provided to inform the assessment of the proposal. In regards to these outstanding matters, DECCW requests further consultation with the proponent prior to a determination of the application.

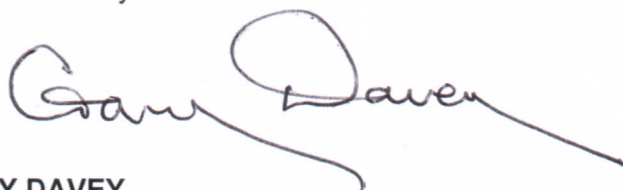
The other environmental matters of key interest to DECCW, as outlined in the submission on the Director General's Environment Assessment requirements (letter dated 11 August 2010), including impacts on threatened species, impacts on adjoining conservation areas, water quality and flooding, contaminated land, odour 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*, Black Hill Land Pty Ltd and Coal & Allied Operations Pty Ltd. DECCW recognises that these contributions provide for a number of significant conservation outcomes to offset the impacts of the development including the transfer into public ownership of conservation lands that are identified in the Lower Hunter Regional Conservation Plan and securing reserve establishment works for the management those lands.

DECCW understands that further information relating to the development of this land will be forthcoming during subsequent development assessment processes under Part 3A of the EP&A Act. 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 Manager, Planning and Aboriginal Heritage Section, on 4908 6805 or via email to richard.bath@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Gary Davey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

GARY DAVEY
Director North East
Environment Protection and Regulation

Enclosure: Attachment 1 – Review of Environmental Assessment

31 March 2011

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ATTACHMENT 1

Department of Environment, Climate Change and Water – Review of Environmental Assessment (EA) for Black Hill Employment Lands (MP10-0093)

Conservation Lands Proposed for Transfer to DECCW

The Department's submission on the Director General's Environment Assessment requirements (letter dated 11 August 2010), raised a number of issues relating to the proposed transfer of Coal & Allied's conservation lands in their current condition and the ability of the DECCW 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 the majority of the Department's previous concerns have been adequately addressed and incorporated into the draft planning agreement under the *Environmental Planning and Assessment Act 1979* (EP&A Act). Many of these issues have been addressed through the inclusion of "Schedule 4 - Development Contribution Procedures, clause 5 Remediation, reserve establishment and other works".

One outstanding issue is the contamination and former mining activities on the conservation offset lands. The Department requests further consultation with the proponent on these matters prior to a determination of the application and execution of the planning agreement.

The EA documentation for both the current application and the Minmi Newcastle Link Road application (MP-0090) identify a number of significant contamination issues and risks to public safety from former mining activities within the proposed development area and surrounding areas. DECCW wishes to meet with the proponent to better ascertain which contaminants (for example, chitter - combustible material emplacements) and public safety risks from former mining activities (such as location of mining shafts) are located on the conservation lands. It is anticipated that the proponent has already collated that information.

Threatened Species and Biodiversity

DECCW has reviewed the report titled *Ecological Assessment Report – Lower Hunter Lands Black Hill (RPS, January 2010)* and other information contained within the EA documentation. The Department 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 obliged 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 offset proposal is shown to be in compliance with the DECCW offsetting principles, including through partial avoidance of impacts by using prevention and mitigation measures. The offsets are underpinned by sound ecological principles, are appropriately located, provide in-perpetuity conservation outcomes, provide 'like for like' offsets for impacted vegetation communities and threatened species, and are strategically located to strengthen the existing conservation reserve network.

Impacts of the Proposed Development

The proposed development will have a number of localised impacts on threatened species and biodiversity, including through:

- the removal of significant amounts of native vegetation, including endangered ecological communities such as Lower Hunter Spotted Gum Ironbark Forest
- loss of habitat features for a number of flora and fauna species

- reduction of remnant size such that populations of a number of some species may drop below thresholds
- habitat fragmentation and loss / reduction of viability of wildlife corridors
- further potential direct and indirect impacts from edge effects, weeds, rubbish dumping, pollution, alterations to flow regimes of streams, noise, lighting, wildlife road kill, etc.

These local-scale impacts on biodiversity are proposed to be offset through the formal protection and dedication of Coal & Allied's Stockrington and Tank Paddock lands to the Minister administering the *National Parks and Wildlife Act 1974* (NPW Act). These conservation offset lands are known to contain populations / habitat of the individual endangered ecological communities and threatened flora and fauna species being impacted upon. This is consistent with the high priority conservation outcomes envisaged by DECCW in the Lower Hunter Regional Conservation Plan.

Aboriginal Cultural Heritage Assessment

A review of the documentation, including the '*Black Hill & Tank Paddock – SSS Listing*' (dated February 2011), the '*Black Hill & Tank Paddock – Environmental Assessment*' (dated February 2011) and the '*Lower Hunter Estates Development – Heritage Impact Assessment – Black Hill and Tank Paddock for Coal & Allied*' (dated November 2010) (the HIA), was undertaken to assess the potential impacts on Aboriginal cultural heritage. The review sought to ascertain that the assessments were in accordance with the DECCW's Aboriginal cultural heritage assessment guidelines and the requirements of Part 6 of the NPW Act.

The review has identified a number of potential short-comings with the assessment guidelines and legislative requirements. These issues/inadequacies are detailed below.

Summary of key issues/inadequacies

- 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, the results of the field assessments, the significance assessment, and support for the proposed mitigation measures, including the proposed Aboriginal Heritage Plan of Management, are required.
- Additional details of mitigation measures.
- 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 Council has provided in Section 2 and Annex A of the HIA, a summary of the consultation process undertaken with the local Aboriginal community. It is noted, however, that there is a lack of any evidence from the four registered Aboriginal stakeholders in support or otherwise of the Aboriginal cultural heritage assessment process, in particular the proposed Aboriginal heritage mitigation measures presented in Section 10.2 of the HIA.

The Department notes that effective Aboriginal heritage management requires knowledge of values or cultural significance. An understanding of the values that make a place culturally significant and why, enables appropriate decisions to be made about the management of that place. DECCW recognises and acknowledges that Aboriginal people are the primary source of information about the value of their heritage and how this is best protected and conserved and must have an active role in any Aboriginal cultural heritage planning process.

The absence of current evidence or support from the local Aboriginal community means the assessment is incomplete. DECCW is unable at this stage to determine the appropriateness or offer support for the proposed Aboriginal cultural heritage approach proposed in this assessment.

It is recommended that the proponent undertakes additional consultation with the local Aboriginal community and provides evidence of the consultation process and the views of the registered

Aboriginal stakeholders to form a complete submission. The consultation evidence request should include the local Aboriginal community views on:

- cultural significance of the area,
- the adequacy of the proposed mitigation measures detailed in the HIA, and
- their views on the proposed Aboriginal Heritage Plan of Management.

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. The Department supports Aboriginal community component of the Black Hill Allocation Initiative, which includes funding for indigenous heritage studies and publications and an Aboriginal education officer.

Aboriginal cultural heritage values

DECCW acknowledges the results of the field assessment which identified three Aboriginal sites located within the project area, identified as '*Black Hill 1*', '*Black Hill 2*', object scatters and a potential archaeological deposit (PAD), identified as the area of '*Moderate Archaeological Potential*' in Figure 5.2 of the HIA. DECCW acknowledges that the proposed employment lands development is likely to impact or cause harm to these Aboriginal sites.

DECCW recommends where impacts to Aboriginal objects and places 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 Aboriginal cultural heritage objects. Any measures proposed should be negotiated between the applicant and the local Aboriginal community.

DECCW notes a large portion of the Black Hill area is heavily vegetated, in particular through the centre of the site, and provided limited visibility during field surveying. DECCW also notes that the project area contains crests, slopes and drainage lines and Aboriginal cultural heritage has been identified in similar landscape features within the same context in close proximity. Further, it is noted that limited survey transects were conducted and large portions of the Black Hill site were not surveyed at all. Accordingly, DECCW acknowledges that there is a likelihood of finding further evidence of Aboriginal occupation of the project area if the development of the employment lands proceeds.

Given the above, DECCW recommends that the proponent provides an opportunity for the registered local Aboriginal stakeholders to monitor the initial ground disturbance activities in those areas surrounding (50m radius) Aboriginal sites '*Black Hill 1*' and '*Black Hill 2*', and in the area described as having '*Moderate Archaeological Potential*'. DECCW acknowledges that the proponent has committed to an excavation and salvage program in these areas and DECCW has included a recommended condition of approval to target this matter. It is recommended that a map indicating the specific location of the areas of '*Moderate Archaeological Potential*' is provided to all registered Aboriginal community stakeholders and all contractors prior to any ground disturbance work commencing.

If new Aboriginal object(s) are uncovered due to the development and/or monitoring activities, the object(s) identified must be recorded and registered with DECCW as part of the assessment process in accordance with the requirements of Section 89A of the NPW Act. The management of any new

sites or existing sites impacted by the development should be included in the information provided to DECCW. This includes completing an Aboriginal Site Impact Recording Form, for all sites which are partially or wholly impacted upon by the works following approval. Please also note that penalties now apply to corporations for failing to fulfil these requirements.

Mitigation measures

DECCW notes that the proponent has also committed to conducting archaeological investigations as a component of the mitigation options if previously unidentified Aboriginal sites are identified and are assessed as having moderate or high integrity. DECCW supports this proposal. However, it is recommended that further details are provided by the proponent detailing the nature, extent, scale of the proposed investigations or the extent of involvement by the registered Aboriginal stakeholders in the development of the investigation process and their implementation.

DECCW has recently released the '*Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW (2010)*' ('the Code'). The Code establishes the requirements for undertaking test excavations as part of an archaeological investigation and it is recommended that the proponent uses the Code as a guide to develop an appropriate investigation strategy.

DECCW also understands that any Aboriginal cultural material recovered from the project area during the proposed construction activities is to be collected by the registered Aboriginal stakeholders. The proponent must ensure that any proposed custodial arrangements comply with the provisions of Section 85A of the NPW Act. Accordingly, an application for a Care and Control Agreement must be lodged with DECCW in conjunction with the proposed investigation or collection works if objects are to be removed from the project area. The proponent must provide evidence of the support or otherwise of all registered Aboriginal stakeholder groups with any application for a care and control agreement.

Aboriginal Heritage Plan of Management (AHPM)

DECCW acknowledges and supports the proponent's commitment to developing and implementing an AHPM for the project area. The AHPM 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 AHPM 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 AHPM should be included in its final iteration.

DECCW also recommends the AHPM 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. This should include 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 AHPM is identified.

Significance assessment

DECCW notes that the cultural significance of the Aboriginal cultural heritage values of the project area do not appear to have been addressed. 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. DECCW strongly recommends that the proponent consults 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 that has been conducted.

Any information provided should also be used in developing Aboriginal cultural heritage management options and commitments.

Registration of Aboriginal sites

DECCW acknowledges the results of the field assessment undertaken by the proponent during October and November 2007, and the identification of the seven Aboriginal sites (refer to descriptions above) within the project area. A search of DECCW's Aboriginal Heritage Information Management System (AHIMS) revealed that these Aboriginal sites have not been registered with DECCW.

The proponent is advised to promptly complete a DECCW site recording card for each of the sites and submit to DECCW for registration in AHIMS. Any management outcomes for the sites 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: 9585 6470, address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, e-mail: ahims@environment.nsw.gov.au.

Legislative Requirements

The proponent should be reminded that the requirements of the NPW Act have recently been amended. The proponent will need to be familiar with the new requirements during the development and any subsequent assessment processes. Further advice regarding Aboriginal cultural heritage can be found on DECCW's web-site at: www.environment.nsw.gov.au/cultureandheritage.htm.

Water Quality and Stormwater Management

The management of stormwater and groundwater quality, quantity and flooding are key issues for DECCW and it is supportive of the proposed use of Water Sensitive Urban Design (WSUD) practices.

Given the ecological significance of receiving waters, including Woodberry Swamp, DECCW will provide further advice on the proposed water quality and stormwater management measures during development assessment processes under Part 3A of the EP&A Act.

Zoning

All land gazetted or proposed to be gazetted under the *National Parks and Wildlife Act 1974* (NPW Act) should be placed under the E1 zone. Only development authorised under the NPW Act should be permitted within the E1 zone. In this regard, DECCW questions the inclusion of "public utility undertaking" within Permitted without consent uses.

DECCW notes the proponent's justification for not zoning the riparian corridor through the Black Hill development precinct for environmental conservation purposes at this point in time, due to proposed mine subsidence / underground coal mining impacts. Therefore DECCW is supportive of the IN1 General Industrial zone over the entire site.