



Environment,
Climate Change
& Water

Your reference: MP 10-0090
Our reference: Doc11/10993; 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: Dorna Darab

Dear Ms Johnston *Anna*

RE: MINMI/NEWCASTLE LINK ROAD CONCEPT PLAN, STATE SIGNIFICANT SITE STUDY AND DRAFT VOLUNTARY PLANNING AGREEMENT (MP10-0090) – 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 urban development at Minmi – Newcastle Link Road and dedication of conservation land at Stockrington. 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, management of impacts on adjoining conservation areas, 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 our submission on the Director General's Environment Assessment requirements (letter dated 11 August 2010), including impacts on threatened species, 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 assessment identifies that the proposed urban development, taking into consideration cumulative impacts, is likely to lead to a loss of biodiversity values within vegetated remnant areas east of the F3 freeway (that is, the area bounded by the *Newcastle – Lake Macquarie Western Corridor Planning Strategy*) and impact on the natural values, existing infrastructure and future management regime of Blue Gum Hills Regional Park.

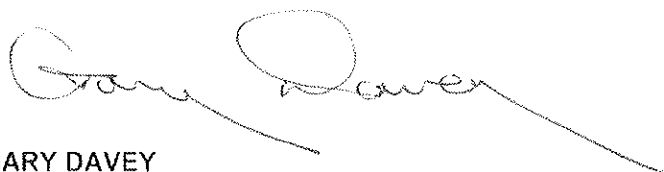
The proposed environmental conservation offset contributions are identified in the draft planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (EP&A Act) between the Minister for Planning, Minister administering the *National Parks and Wildlife Act 1974*, Minmi Land Pty 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 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 black 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

ATTACHMENT 1

Department of Environment, Climate Change and Water – Review of Environmental Assessment (EA) for Minmi Newcastle Link Road Project (MP10-0090)

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), a number of issues were raised relating to the proposed transfer of Coal & Allied's conservation lands in their current condition and the ability of the DECCW's Parks and Wildlife Group (PWG) to manage these areas for conservation and recreation purposes into the future. It was also requested that an environmental / land audit of these lands be undertaken.

It is considered that the majority of the previous concerns of the Department 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 matters 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 potential impacts from contamination and former mining activities on the conservation offset lands. It is in relation to this matter that the Department requests further consultation with the proponent prior to a determination of the application and execution of the planning agreement,

The EA documentation, including the *Preliminary Contamination and Geotechnical Assessment (Douglas Partners, February 2011)*, identifies 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.

Impacts on Adjacent Conservation Areas

The 'Guidelines for developments adjoining land and water managed by the Department of Environment, Climate Change and Water (DECCW, 2010)' outline the issues that consent authorities need to consider when assessing proposals adjoining DECCW land, including impacts from: erosion and sediment control, storm-water runoff, wastewater, management implications relating to pests, weeds and edge effects, fire and the location of asset protection zones, boundary encroachments and access through DECCW conservation lands, visual, odour, noise, vibration, air quality and amenity impacts, threats to ecological connectivity and groundwater dependent ecosystems, and Aboriginal cultural heritage.

Whilst the EA documentation has taken these heads of consideration into account, it is considered that localised impacts will occur to existing DECCW reserves, in particular, Blue Gum Hills Regional Park. These impacts are detailed below.

It is noted that some of these matters can be addressed in later stages of the approvals process; however, others should be resolved prior to the commencement of works. It is recommended that the proponent and DECCW's Parks and Wildlife Group reach agreement on these matters, and that these agreements are reflected in an agreed binding document, such as the Statement of Interim Management Intent (SIMI).

Blue Gum Hills Regional Park (BGHRP)

The biodiversity values, existing infrastructure and future management regime of BGHRP will be placed, potentially, under substantially increased pressure by the proposed urban development, which will directly border the reserve on three sides.

Following a review of the EA documentation, DECCW has identified the following issues:

1. Impacts on Infrastructure / Management Regime

The cost to date for the State Government to develop BGHRP has been in the order of \$3 million. This has provided access and basic facilities in approximately six hectares of the 130 hectare reserve. It is important to ensure the proposed development areas interface with BGHRP in such a way as to enable reasonable access, develop expected recreational amenities and facilities, minimise edge effects (erosion, wildfire, vandalism, weeds, nutrients, etc.) and maintain natural values into the future.

The draft Statement of Commitments states that \$50,000 of the ten million dollar allocation fund will go towards "Funding towards linkage and facilities within Blue Gum Hills Regional Park subject to discussions with Council(s) and other developers".

Further financial and resource commitments would be required for BGHRP to function in a sustainable manner with sufficient recreational infrastructure to meet the needs and expectations of the increased local population.

2. Impacts on Biodiversity / Ecological Connectivity

Localised impacts on biodiversity are likely to occur as a result of the proposed urban development. This is primarily due to reduction in remnant size and loss of ecological connectivity as the proposed development will directly abut the reserve on three sides.

The EA documentation correctly identifies that the riparian / open space corridors through the development area to BGHRP are likely to only be suitable for highly mobile, less vulnerable fauna and avifauna. As a consequence, this will result in a loss of connectivity for other less mobile and threatened species.

BGHRP also occurs within a larger vegetated remnant area that is mostly bounded by the *Newcastle – Lake Macquarie Western Corridor Planning Strategy (Department of Planning, July 2010)*. In consideration of the impacts from the current proposal and the cumulative impacts from future urban and employment development proposals within this remnant area, there is likely to be a loss of biodiversity values within the reserve, including the localised extinction / loss of populations of some flora and fauna species.

3. Development – Conservation Area Interface

As the development directly abuts BGHRP, the residential subdivision design and management of the development / conservation area interface is one of the primary concerns of DECCW. In this regard, we provide the following advice:

- Further clarification of the intent and applicability of the proposed "Statement of Interim Management Intent" (SIMI) identified in the draft Statement of Commitments. The EA documentation identifies that the proponent will enter into a SIMI with DECCW to manage the immediately adjacent conservation land up to 100 metres from the development land boundary for a period of five years or until the development is completed, and that the areas of conservation land subject to the SIMI "will revert back to DECCW / NPWS for their ongoing management".

- A number of issues, including the control of human access, stormwater runoff, remediation of contaminated areas (which extend into the reserve from the development area), have not been adequately addressed in the EA documentation and require further consideration and assessment. It is expected that a number of these issues can be dealt with during subsequent project application stages of the development.
- DECCW reconfirms that all construction activities and asset protection zones should be fully contained within the development area, and not dependent on any works / management activities within BGHRP. Further information on proposed earthworks and how the final landform will affect the reserve will also need to be provided, although this can occur at the project application stages of the development.
- DECCW reconfirms its preference is for the use of perimeter roads along the boundary of the reserve. The use of perimeter roads minimises impacts from boundary encroachment, rubbish dumping, and aids in fire management purposes.
- For areas involving boundary fencing, DECCW has established policies and procedures to guide the choice of suitable fencing and cost-sharing arrangements. Consent authorities should refer development proponents to DECCW's 'Boundary Fencing Policy', available at: www.environment.nsw.gov.au/policies/BoundaryFencing.htm

Impacts on Hunter Wetlands National Park and Pambalong Nature Reserve

Potential impacts on these reserves have been adequately addressed by the EA documentation, including the draft Statement of Commitments.

As noted above, DECCW will provide further advice on the management of impacts from the proposed development on the adjacent conservation areas (such as construction activities / earthworks, water quality and quantity management, visitor management and control of access etc.) during subsequent project applications under Part 3A of the EP&A Act.

Threatened Species and Biodiversity

DECCW has reviewed the report titled *Ecological Assessment Report – Lower Hunter Lands Minmi Link Road (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
- decreased ecological viability of Blue Gum Hills Regional Park
- further potential direct and indirect impacts from edge effects, weeds, rubbish dumping, pollution, alternations to flow regimes of streams, noise, lighting, wildlife road kill, etc.

As stated previously, the vegetation of the Minmi Newcastle Link Road development is part of a much larger remnant area containing Blue Gum Hills Regional Park and other vegetated areas within Newcastle and Lake Macquarie Local Government Areas. This remnant area is largely bounded by the *Newcastle – Lake Macquarie Western Corridor Planning Strategy (Department of Planning, July 2010)*.

In consideration of the above mentioned impacts from the current proposal and the cumulative impacts from future urban and employment development proposals within this remnant area, there is likely to be a loss of biodiversity values within the locality, including the possibility of localised extinctions / loss of populations of some flora and fauna species. Threatened fauna species most likely to be impacted upon include the Squirrel Glider, Koala, and forest Owls. This is due primarily to the incremental loss of habitat, reduction of remnant size, and likely severance of local wildlife corridors.

The existing riparian / green corridors through the development area are intended to serve multiple functions, such as stormwater management, ecological, visual buffer, etc. However, they are unlikely to function as viable wildlife corridors or provide adequate habitat for a number of flora and fauna species. This aspect is noted in the Ecological Assessment Report, and it correctly identifies that these corridors will only be suitable for and utilised by more mobile fauna species such as birds.

These local-scale impacts on biodiversity are proposed to be offset through the formal protection and dedication of Coal & Allied's Stockrington lands to the Minister administering the *National Parks and Wildlife Act 1974 (NPW Act)*. These conservation offset lands are known to contain populations / habitat for 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.

The proponent proposes that the riparian, open space and remaining vegetated areas within the development area (that is, those lands not being transferred to DECCW) will be dedicated to Newcastle City Council and Lake Macquarie City Council. As these areas contain biodiversity and other environmental values, the Department of Planning should ensure that the proposed environmental management and impact mitigation measures outlined in the EA documentation are appropriately conditioned as part of any concept approval and agreed to by the end-users, in this case Newcastle and Lake Macquarie Councils.

Aboriginal Cultural Heritage Assessment

A review of the documentation, including the 'Minmi/Link Road and Stockrington – SSS Listing' (dated February 2011), the 'Minmi/Link Road and Stockrington – Concept Plan Environmental Assessment' (dated February 2011) and the 'Lower Hunter Estates Development – Heritage Impact Assessment – Minmi-Link Road Estate for Catylis and Coal & Allied' (dated November 2010) (the HIA) was undertaken to assess the potential impacts of the projects 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.
- 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 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. It is noted, however, that there is a lack of 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 of the HIA and the significance assessment for Aboriginal heritage (Section 6 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 therefore unable at this stage to determine the appropriateness or offer support for the proposed Aboriginal cultural heritage approach proposed in this assessment.

It is therefore 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 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 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. DECCW supports the Indigenous Heritage component of the Coal & Allied's – Minmi/Link Road Allocation Initiative, which includes funding for an Indigenous Interpretation Centre, Aboriginal heritage studies and publications, an Aboriginal education officer and contributions for Aboriginal art and displays.

Aboriginal cultural heritage values

DECCW acknowledges the results of the Aboriginal cultural heritage assessment of the Minmi/Link Road project area, and the identification of four previously recorded Aboriginal sites and results of the field assessment which identified six Aboriginal sites located within the project area. These sites have been identified as: 'Minmi/Link Road 1' through to '6' and two potential archaeological deposits (PADs), identified as the areas of 'High Archaeological Potential' in Figure 5.3 of the HIA. DECCW acknowledges that the proposed development is likely to impact or cause harm to most of these Aboriginal sites (only excluding site 'Minmi/Link 1').

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 Minmi/Link Road project areas is heavily vegetated, which limited visibility during field surveying. DECCW also notes that the project area contains ridges, crests, slopes, creeks 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 Minmi/Link Road project areas were not surveyed at all, including the Minmi Extension Precinct and the Minmi East Precinct.

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 strongly 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) all identified Aboriginal sites (previously recorded or otherwise), and in the areas described as having 'High Archaeological Potential'. DECCW also recommends that a map indicating the specific location of the areas of 'High 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 and in accordance with the requirements of Section 89A of the NPW Act. The management of any new sites or existing sites impacted upon 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 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 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 archaeological potential. DECCW supports this proposal.

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 reviews the Code to guide an appropriate investigation strategy.

The Department also recommends that further details are provided regarding the involvement by the registered Aboriginal stakeholders in the development of the investigation methodology and any comments regarding the implementation of the program.

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; 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 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 Hunter Wetlands National Park and further areas proposed to be added to the DECCW estate as part of the Hunter Central Rivers Catchment Management Authority Hexham Swamp Rehabilitation Project, DECCW will provide further advice on the proposed water quality and stormwater management measures during development assessment processes under 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, and requests its removal.

The proposed development area contains two zones, being R2 Low Density Residential and B2 Local Centre zones. DECCW requests that conservation areas within this development area (that is, riparian / wildlife corridors) be zoned E2 – Environmental Conservation.

DECCW, March 2011