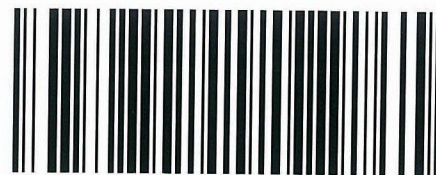




Office of
Environment
& Heritage



PCU036278

Mr David Mooney
Department of Planning and Infrastructure
Mining and Industry Projects
GPO Box 39
SYDNEY NSW 2001

Dear Mr Mooney

RE: WAMBO COAL MINE (DA 305-7 2003) MODIFICATION 11 – MONTROSE WATER STORAGE DAM

Reference is made to your email of 5 July 2012 to the Office of Environment and Heritage (OEH) in which you invited comment and recommended conditions of approval for a proposed modification to the Wambo Coal Mine located near Warkworth. The modification involves the proposed construction and operation of a 1,500 megalitre water storage dam and associated infrastructure on the mine site. It is noted that this project is being assessed by the Department of Planning and Infrastructure (DP&I) as a Major Project application in accordance with the provisions of Section 75W of the *Environmental Planning and Assessment Act 1979*.

OEH has reviewed the document '*Wambo – Montrose Water Storage Modification - Environmental Assessment*' (June 2012) to assess potential impacts to Aboriginal cultural heritage and threatened biodiversity. The resulting comments and recommended conditions of approval for this development are provided in **Attachment 1**.

If you have any questions about this matter then please phone Mr. Robert Gibson, Regional Biodiversity Conservation Officer, on 4908 6851.

Yours sincerely

26 JUL 2012

RICHARD BATH
Head – Hunter Planning Unit
Conservation and Regulation, North East



Enclosure: Attachment 1 - Comments and Recommended Conditions of Approval for the Proposed Modification 11 - Wambo Coal Mine

ATTACHMENT 1

COMMENTS AND RECOMMENDED CONDITIONS OF APPROVAL FOR THE PROPOSED MODIFICATION 11 FOR THE WAMBO COAL MINE

OEH has reviewed the Environmental Assessment (EA) for threatened biodiversity and Aboriginal cultural heritage issues. Comments and recommended conditions of approval are provided below.

Aboriginal Cultural Heritage Assessment

OEH acknowledges that the Aboriginal cultural heritage due diligence assessment has been undertaken in accordance with OEH's Aboriginal cultural heritage assessment requirements. The results of the Aboriginal cultural heritage assessment for the project area are also acknowledged and OEH supports the specific recommendations provided to manage any Aboriginal cultural heritage values associated within the project area.

Conclusion

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

Threatened biodiversity assessment

The proposed Montrose Storage Dam would be a turkey-nest style dam with a footprint of about 24 ha. It would require supporting infrastructure including pumps, pipes and powerlines.

OEH notes that the proponent cites a flora survey of the Wambo mine lease conducted in 2003 (Orchid Research, 2003) in which there were no records of threatened species that were listed at the time in the schedules of the NSW *Threatened Species Conservation Act 1995* (TSC Act). FloraSearch (2012) prepared a Flora Assessment for the medication area was prepared by FloraSearch (2012). OEH notes that the fieldwork for the site assessment was conducted over 14 days during January 2010, February 2010 and July 2010, and thus missed the flowering period of local threatened ground orchids, particularly *Diuris pedunculata*, which has been recorded flowering between August and September (PlantNet, 2012a) and *Pterostylis gibbosa*, which flowers between August and November (PlantNet 2012b). Both species are listed in Schedule 1 ('Endangered') of the TSC Act.

OEH also notes that the proposed development would clear about 1.8 ha of Central Hunter Box – Ironbark Woodland Endangered Ecological Community and about 0.8 ha of Narrabeen Foothills Slaty Box woodland Vulnerable Ecological Community (EA, pg. 28). OEH acknowledges that this is a small area, however, the EA does not propose any mitigation measures for this loss of threatened plant communities. This is not appropriate and therefore OEH recommends that the provision of an appropriate biodiversity offset for this loss is required as a condition of approval (see below).

RECOMMENDED AMENDED CONDITIONS OF APPROVAL FOR ABORIGINAL CULTURAL HERITAGE

1. The proponent must continue to consult with and involve all the registered local Aboriginal representatives for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
2. In the event that surface disturbance identifies a new Aboriginal object, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and the registered Aboriginal parties must be contacted to determine the significance of the object(s) and to develop an appropriate management strategy. A management strategy must be developed for the site in accordance with the provisions of the *National Parks and Wildlife Act 1974*. This may include

avoiding impact, additional investigations and/or the submission of an Aboriginal Heritage Impact Permit application. The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by the OEH) and the management outcome for the site included in the information provided to the AHIMS.

3. 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 contacted immediately. No action is to be undertaken until police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact the OEH's Environment Line on 131 555 and representatives of the local Aboriginal community. No works are to continue until the OEH provides written notification to the proponent.
4. 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.

RECOMMENDED AMENDED CONDITIONS OF APPROVAL FOR THREATENED BIODIVERSITY

1. That the clearance of threatened species, populations or communities, or their habitats, for this development must be offset in accordance with OEH offsetting policy; either the 'Principles for the use of biodiversity offsets in NSW' (DECC, 2011) or the 'NSW OEH interim policy on assessing and offsetting biodiversity impacts of part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects (OEH, 2011).

References

- DECC (2011) Principles for the use of biodiversity offsets in NSW. 17 June 2011. NSW Department of Environment and Climate Change, Sydney. www.environment.nsw.gov.au/biocertification/offsets.htm
- FloraSearch (2012) Montrose Water Storage Modification: Flora Assessment. Prepared for Wambo Coal Pty Limited by FloraSearch, June 2012. FloraSearch, Orange.
- OEH (2011) NSW OEH Interim policy of assessing and offsetting biodiversity impacts of Part 3A, State significant developments (SSD) and State significant infrastructure (SSI) projects. 25 June 2011. NSW Office of Environment and heritage, Sydney.
- Orchid Research (2003) Wambo Development project Flora Assessment. Orchid Research, Orange.
- Peabody Energy (2012) Wambo: Montrose water Storage Modification, Environmental Assessment. June 2012. Peabody Energy, Brisbane.
<https://majorprojects.affinitylive.com/public/2473d2b72ff2aebb48200ce47bf36934/Environmental%20Assessment.pdf>
- PlantNet (2012a) *Diuris pedunculata* R.Br. PlantNet. The Royal Botanic Gardens & Domain Trust, Sydney: <http://plantnet.rbgsyd.nsw.gov.au/cgi-bin/NSWfl.pl?page=nswfl&lvl=sp&name=Diuris~pedunculata>
- PlantNet (2012b) *Pterostylis gibbosa* R.Br. PlantNet. The Royal Botanic Gardens & Domain Trust, Sydney: <http://plantnet.rbgsyd.nsw.gov.au/cgi-bin/NSWfl.pl?page=nswfl&lvl=sp&name=Pterostylis~gibbosa>