

Your reference:
Our reference: LIC07/106-06:DOC11/6847:GN
Contact: Greg Newman, (02) 4224 4100

NSW Department of Planning
(Attention: Naomi Nelson)
PO Box 39
SYDNEY NSW 2001

Dear Madam

APPIN VENT SHAFT NUMBER 6 PROJECT – REQUEST FOR FURTHER INFORMATION

I refer to the Proponent's correspondence regarding the above dated 17 December 2010 and 2 February 2011. This information was submitted to the Department of Environment, Climate Change and Water (DECCW) in response to requests for additional information and/or clarification on several issues following our review of the exhibited Environmental Assessment (EA) and other information provided. These issues were the assessment of alternative shaft locations, the air quality impact assessment (odour), and threatened species.

DECCW advises the additional information provided on the alternative locations of the vent shaft and air quality impact assessment is adequate. Based on our review of the threatened species information, DECCW is not in a position at the present time to support the Project in its current form. We would be able to provide recommended conditions of approval for the project, subject to clear and agreed commitments from the Proponent in relation to the Cumberland Plain Woodland (CPW) offset.

The guiding principles for a threatened species biodiversity assessment are that impacts should be avoided in the first instance using prevention and mitigation measures. Through the information provided, the Proponent has identified a loss of 3.5 hectares of CPW and its habitat. CPW is listed as a critically Endangered Ecological Community (EEC) under the *Threatened Species Conservation Act 1995* (TSC Act) and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Where impacts cannot be avoided or mitigated, they must be compensated by the development of a suitable biodiversity offset package.

The EA states (executive summary and Annexure G) that the *'impacted 3.5 hectares of low to moderate condition CPW will be offset permanently onsite by 8.1 hectares of mostly moderate to good condition CPW.'* which *'includes a commitment from the Proponent to in-perpetuity management of the offset area.'*

Through the recent information presented and discussions in response to our EA submission (our reference DOC10/46306), the Proponent now argues that the development footprint area is relatively small (3.5 hectares), is temporary (approximately 30 years), and the area identified as an offset would be protected during this operational period. At the end of the life of the vent shaft however, the development footprint will be rehabilitated with CPW species negating the need for the ongoing retention of the offset area.



This recent information differs from that provided in the EA. The EA states that *'the 3.5 hectares represents 8.6 percent of the local occurrence of this critically EEC (that is, CPW),'* and this impact *'is considered to be a significant proportion of the local occurrence.'* The EA further identifies impacts on CPW and its habitat as being *'permanent,'* and raises some uncertainty over the actual length of operation and the timeframe for rehabilitation.

DECCW does not support the Proponent's more recent position of temporarily protecting the offset area until the development footprint is ready for rehabilitation, as it is inconsistent with the *Principles for the Use of Biodiversity Offsets in NSW* (DECCW, 2009). In addition, it will be more than 30 years before rehabilitation can commence and ecosystem function takes long-periods to develop for example, hollow bearing trees are rarely less than 220 years old. Fundamentally reconstruction of ecological communities involves high risks and uncertain biodiversity outcomes and thus the Proponent's position is not supported.

The Proponent, through an Statement of Commitment (SoC), commits to offset an area of CPW, however do not commit to any legal mechanism or instrument to ensure the conservation of the area in perpetuity. This is on the basis that this *'may restrict its value or use at some future time.'* This SOC is inadequate for the reasons discussed above.

DECCW would be able to provide recommended conditions of approval for the project if the Proponent agreed to amend the existing offset SOC by either:

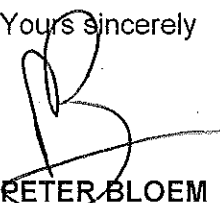
1. retaining the existing offset and securing it in perpetuity through a mechanism agreed in consultation with DECCW;

or

2. identifying another suitable offset area and securing it in perpetuity if the original offset area is to be earmarked for development. This offset should be developed and agreed in consultation with DECCW. This offset should take into account the above principles. It should preferably be located within the *Priority Lands* identified in the recently released *DECCW CPW Recovery Plan*.

If you wish to discuss the above matters further please call Greg Newman on (02) 4224 4100 in our DECCW Wollongong Office.

Yours sincerely



PETER BLOEM
Acting Director Metropolitan
Environment Protection and Regulation

10/2/11

cc: BHP BILLITON – ILLAWARRA COAL
(Attention: Bruce Blunden)
PO Box 514
UNANDERRA NSW 2526

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