



Our ref: DOC21/70656-5
Senders ref: MP09_0161-Mod-2

Mr Jack Turner
Senior Environmental Assessment Officer
Energy Resource Assessment
Department of Planning, Industry and Environment
email: jack.turner@planning.nsw.gov.au

Response submitted via the NSW Government Major Projects Portal

Dear Mr Turner

Advice on Modification Report – State Significant Development – Wongawilli Coal – MOD 2 – North West Mains Development (MP09_0161-Mod-2)

Thank you for the opportunity to provide comment on the above Modification Report for the Wongawilli Colliery MOD 2. We understand the application relates to extending the North West Mains Development alignment and relocating and constructing some infrastructure at the Wongawilli Colliery underground mine to extend the life of the mine by an additional five years.

Please note we have prepared our advice in relation to the Aboriginal cultural heritage assessment and matters under the *National Parks and Wildlife Act 1974* only. If you are seeking advice in relation to matters under the *Heritage Act 1977* then a separate referral should be submitted to Heritage NSW with that request by emailing: heritagemailbox@environment.nsw.gov.au.

In preparing our advice we have reviewed the following information provided on the Major Projects Portal:

- Wongawilli Colliery Modification Report, PA 09_0161-Mod 2, North West Mains Development prepared by EMM and dated 23 December 2020 (EMM 2020).
- Wongawilli Colliery North West Mains Modification: Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Biosis and dated 9 November 2020 (Biosis 2020a).
- Wongawilli Colliery North West Mains Modification: Archaeological Report prepared by Biosis and dated 9 November 2020 (Biosis 2020b).
- Wongawilli Colliery Subsidence and Geotechnical Assessment for Approval to Modify Project Approval 09_0161 prepared by SCT Mining Research and Assessment Group and dated November 2020 (SCT 2020).

Summary of Heritage NSW Aboriginal Cultural Heritage Regulation advice

We have reviewed the above information and recommend that some additional Aboriginal cultural heritage assessment work is conducted. The two key aspects of this recommendation are firstly for consideration of cumulative impact on Aboriginal cultural heritage of MP09_0161, as the assessment is currently only limited to the proposed additional works under this Modification. Secondly, we recommend that additional consultation is conducted with the Illawarra Local Aboriginal Land Council (ILALC) given their objections raised during the assessment process.

We have attached additional detailed comments at Attachment A.

In summary, we advise Energy Resource Assessments that:

- Additional Aboriginal community consultation needs to be conducted with the ILALC to appropriately consider and address their concerns.
- An amended ACHAR (Biosis 2020a) needs to be prepared documenting the outcomes of the consultation process, including outlining the steps taken by the applicant to address the concerns of the ILALC.
- A stronger assessment of cumulative impact across this mining lease needs to be included in the amended ACHAR. This is to address the overall impact of these works on Aboriginal cultural heritage values and provide appropriate management and mitigation measures.
- The Modification Report (EMM 2020, p.170) needs to be revised to accurately reflect the outcomes of the Aboriginal community consultation process and provide appropriate management measures to respond to these concerns.
- Once the ACHAR and Modification Report are amended, an Aboriginal Heritage Management Plan needs to be prepared to provide a framework for the ongoing consultation with the Aboriginal community and management of cumulative harm to Aboriginal cultural heritage through this project.

If you have any questions about this advice, please contact Rose O'Sullivan, Archaeologist, Aboriginal Cultural Heritage Regulation – South, at Heritage NSW, on 4224 4177 or email rose.osullivan@environment.nsw.gov.au.

Yours sincerely



Jackie Taylor
Senior Team Leader, Aboriginal Cultural Heritage Regulation– South
Heritage NSW
24 February 2021

Encl: Attachment A: Detailed Aboriginal Cultural Heritage Regulation Comments - Wongawilli Coal – (MP09_0161-Mod-2)

ATTACHMENT A: DETAILED ABORIGINAL CULTURAL HERITAGE REGULATION COMMENTS - WONGAWILLI COAL – (MP09_0161-MOD-2)

An Aboriginal cultural heritage assessment has been conducted

Biosis (2020a and b) conducted an Aboriginal cultural heritage assessment of that land near the Avon Dam that is subject to proposed impacts through this modification application. We note no Aboriginal cultural heritage sites have been recorded within this study area, although recorded sites do occur close by.

There are 12 Registered Aboriginal Parties (RAPs) for this project. Representatives of the RAPs assisted with the field survey. The Aboriginal cultural heritage assessment recognises the broader Aboriginal cultural significance of the landscape within which the works are proposed (EMM 2020, p.171). This includes the nearby Illawarra Escarpment that has highly significant Aboriginal cultural values.

We note that highly significant Aboriginal cultural heritage sites, including the Whale Cave rock art site, are within a few kilometres of the proposed works area. The Whale Cave rock art site was the subject of recent media regarding Illawarra Local Aboriginal Land Council (ILALC) concerns about the rock art being damaged by past mining activities.

The field survey encountered steep slopes and no Aboriginal cultural heritage sites, Aboriginal objects or areas of predicted archaeological deposit were identified. The survey focused on the land immediately above the proposed works (Biosis 2020b, p.40). We note this survey does not encompass any additional land that may also be subject to subsidence as a result of the proposed work. We do note that the Subsidence and Geotechnical Assessment (SCT 2020) concludes that no subsidence or perceptible damage to natural or built features was expected from the proposed works under this Modification.

A stronger assessment of cumulative harm is recommended

The Aboriginal cultural heritage assessment (Biosis 2020a) does not adequately consider the cumulative impact of this mining approval on Aboriginal cultural heritage. There are recorded sites close to the proposed extension including rock shelters with art, grinding grooves and stone artefacts. In addition, there are many recorded Aboriginal cultural heritage sites within the broader mining lease approved under MP09_0161.

As the proposed Modification will facilitate ongoing mining under MP09_0161, we recommend that a stronger assessment of cumulative impact across this mining lease is provided by the applicant. This needs to address the overall impact of these works on Aboriginal cultural heritage and provide appropriate management and mitigation measures.

The Illawarra Local Aboriginal Land Council raised objections to the assessment process

We note objections to the assessment process were raised by the ILALC as reported in the ACHAR (Biosis 2020a, pp.21-22).

The ILALC explained that the proposed works will, in their opinion, cause harm to Aboriginal objects including rock shelters, grinding grooves and art sites (Biosis 2020a). A broader impact will occur to the Aboriginal cultural landscape and associated stories and songlines, as well as water flows and other cultural values.

The ILALC objection focused on the scientific assessment process that does not adequately reflect Aboriginal cultural heritage values and impacts. The response explained that mining projects in this region have caused significant damage to Aboriginal cultural heritage sites and intangible values. Issues of assuming that Aboriginal cultural values can be properly identified and recorded and that Aboriginal community members need culturally appropriate timeframes and resources to provide the requested information are raised by the ILALC.

It is not clear how the applicant has responded to the concerns raised by the ILALC. Section 4.4.4 of the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW 2010) require applicants include a copy of their response to comments received from the RAPs in the ACHAR. While Biosis (2020a, p.22) reports that they were unable to contact the ILALC to further discuss this response, it does not appear that the applicant has responded formally to the ILALC concerns.

We note that other RAPs supported the methodology and that those representatives involved in the field assessment also reported the high cultural values of the landscape within which this project is located (Biosis 2020a, p.22). Yerramurra provided support for some of the comments made by the ILALC. Yerramurra also provided cultural information for the ethnographic context that was reflected in the finalised ACHAR (Biosis 2020a).

A more detailed response to the concerns raised by ILALC is recommended

Given the concerns raised by ILALC, we recommend that the applicant is required to conduct additional consultation with the ILALC. This consultation needs to include:

- Meeting with the ILALC to discuss their concerns directly. This should include discussion around any additional assessment and mitigation requirements or opportunities.
- Considering and documenting options to address the impact on intangible values raised by the ILALC.
- Considering and documenting options to manage remediation (particularly in relation to subsidence impacts on the landscape, including the broader mine area and not only the land subject to this Modification Application).
- Adding the ILALC objections to the overview of consultation provided in the Modification Report (EMM 2020, p.170). That section currently omits the response from the ILALC which misrepresents the outcomes of the consultation process.

Aboriginal cultural heritage management recommendations are included in the Modification Report

Notwithstanding the concerns raised by the ILALC, the Aboriginal cultural heritage management recommendations included in the Modification Report appear appropriate (EMM 2020, p.172). However, the recommendations proposed would benefit by addressing the ILALC concerns and being an accurate representation of the Aboriginal cultural heritage consultation. The recommendations in the Modification Report also need to be amended to provide appropriate management and mitigation measures based on a consideration of the overall cumulative impact of these works on Aboriginal cultural heritage.

Following additional consultation, we suggest that an Aboriginal Heritage Management Plan is prepared to provide a framework for the ongoing consultation with the Aboriginal community. This needs to include provision for ongoing assessment and monitoring of any Aboriginal cultural heritage sites and values that may be identified within the project area in the future.