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Your reference: SSD-11826681 and  
SSD-11826621  
Our reference: DOC23/60225 and  
DOC23/60557

Dear Joe,

**Heritage NSW - Advice on Environmental Impact Statement (EIS) - State Significant  
Development (SSD-11826681 and SSD-11826621) – HVO North and South Open Cut Coal  
Continuation Project**

Thank you for your referral uploaded to the Major Projects Portal on 30 January 2023 seeking advice on the above State Significance Development (SSD) proposals. This advice is for both the HVO North and HVO South Open Cut Coal Continuation Projects as a single Environmental Impact Statement (EIS) was provided in support of both SSDs.

In preparing this advice the following document has been reviewed:

- Appendix N – Aboriginal Cultural Heritage Assessment– prepared by EMM, dated December 2022.

Based on the Aboriginal Cultural Heritage Assessment Report (ACHAR), provided in support of the EIS, there is insufficient information provided for Heritage NSW to advise the Department on whether the management recommendations are adequate and if the ACHAR substantially complies with the SEARs. In order to establish the nature and extent of the Aboriginal cultural heritage values proposed for impact by this development additional information and, possibly, further investigations are required.

We have included detailed advice in **Attachment A** and recommended draft Conditions of Approval in **Attachment B**. Heritage NSW is available to provide further advice on any additional assessment work conducted. Please note that the above comments relate only to Aboriginal cultural heritage regulation matters. Heritage NSW may provide separate comments in relation to environmental heritage considerations.

If you have any questions regarding these comments, please contact Corey O’Driscoll, Senior Assessments Officer, at Heritage NSW on 6229 7079 and [corey.odriscoll@environment.nsw.gov.au](mailto:corey.odriscoll@environment.nsw.gov.au).

Yours sincerely

**Sam Gibbins**  
A/Manager Assessments  
Heritage NSW  
Department of Planning and Environment  
(As Delegate under *National Parks and Wildlife Act 1974*)  
Date: 27 February 2023

## Attachment A – Detailed Aboriginal Cultural Heritage Advice

### Aboriginal Cultural Heritage Assessment Report (ACHAR)

- Undertaken as a requirement of the SEARs was the re-excavation and dating of AHIMS site #37-2-1877 (Carrington Mine Colluvial Deposit 1 [CM-CD1]), which identified that the lower deposits dated between ~9,000-16,000 years ago. The test excavation program across the project area identified four areas (5, 9, 11, and 12) that contained a minimum of 50 cm of sediment and relatively high numbers of artefacts. However, the ACHAR did not discuss whether, in light of the results from CM-CD1, these four areas had the potential to contain Pleistocene deposit.
  - Further information is also required on the extent that the landform associated with CM-CD1 may extend further into the disturbance area and whether any potential sub-surface archaeological deposits may be impacted.
- There are several examples within a regional context (e.g., Spur Hill, Wambo, along Wollombi Brook, Ravensworth Mine) where large numbers of artefacts and/or Pleistocene aged material have been identified on terraces in the vicinity, but not directly adjoining, the Hunter River, Wollombi Brook, and Bowmans Creek. Further explication is required in Section 5 of the ACHAR on the potential for Pleistocene aged deposits within the project area. Following this updated assessment, the predictive model may require updating and additional areas may require further investigation.
- Following the test excavation results, dating of CM-CD1, and updated Section 5, detailed assessment and mapping are required of potential localities within the project area that have not been subject to test excavations that may contain highly significant sub-surface materials.
- Further details are required on the proposed salvage excavation methodologies for areas 5, 9, 11, and 12 as well as any additional areas identified in the above reassessment. The methodology should also include provisions for redesign and avoidance if the materials identified are of high local and/or regional significance.
- Heritage NSW notes that the Aboriginal Heritage Information Management System (AHIMS) search is greater than 12 months old at the time of submission. Heritage NSW requires, as per Requirement 1b of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (DECCW 2010) ('the Code of Practice'), that AHIMS searches are contemporaneous with the project. We consider that AHIMS searches of over 12 months old need to be updated. Please provide an updated AHIMS extensive search.
- Further details are required regarding the three scarred trees identified as part of the ACHAR, including:
  - Provisional management options for the scarred trees in the event of their removal;
  - Further explication on the number of scarred trees that have been impacted in a regional context and the different management options that have been used for their removal and/or conservation; and
  - Further information on the potential uses of the removed bark from the scarred trees, as there is potential for use as a burial covering.
- Consideration must be given to the potential impacts the project may have on the Aboriginal cultural heritage values associated with the Section 10 application under the *Aboriginal and Torres Strait Islander Heritage Protection Act (1984)* that encompasses several areas in the HVO North Project Area. Additional archaeological investigation may be required within these areas, subject to the Section 10 application.

- Generally, Heritage NSW does not permit vehicle surveys as a replacement for pedestrian surveys, as per Requirement 5 of the *Code of Practice*. It is understood that vehicle survey was undertaken where the land was inaccessible owing to dense vegetation cover (thistle) and where heavily disturbed. Please clarify where vehicle survey was employed owing to past disturbances and where it was used owing to inaccessibility. Further, please provide additional information on whether these areas, and other areas not subject to survey, will require survey if conditions change prior to proposed impacts.
- Please update mapping of test pit locations to include the number of artefacts recovered in each unit.
- Please clarify the extent of expected disturbances within the transmission line relocation areas.

#### Consultation

- Please provide additional documentation of the consultation process as there may be a gap of 10 months between November 2021 and September 2022. Heritage NSW requires that consultation with Registered Aboriginal Parties (RAPs) is continuous. Under our guidelines, breaks in consultation of over six months may not constitute continuous consultation. If an unexplained break of greater than six months has occurred, the applicant may be required to restart the consultation process.
- Please provide evidence that the Test Excavation methodology was provided to the RAPs. The ACHAR notes that the methodology was discussed during an onsite meeting with the RAPs present, however it is unclear if the methodology was provided in writing to all RAPs.
- Further information is required on the consultation undertaken with the Plains Clans of Wonnarua People (PCWP). It is understood from the details provided in the ACHAR that PCWP chose to not provide further information as part of the consultation process. However, from the provided correspondence and information in the ACHAR it is apparent that additional discussions were had, which have not been provided in the ACHAR.
- Further explication is required on the comments made by Wattaka Wonnarua Cultural Consultants Services (represented by Mr. Des Hickey) regarding the details provided in the Cultural Values Report. While we understand that Wattaka Wonnarua Cultural Consultants Services were afforded the opportunity to participate, Heritage NSW would recommend that the assessment of Cultural Values and further interviews be an ongoing process to ensure additional Wonnarua voices are included.

#### Significance Assessment

- The significance assessment stated that 84% of all extant Aboriginal cultural heritage sites to be impacted by the development are of low significance. While a number of these sites are isolated artefacts and/or low-density artefact scatters, many of the sites are part of larger site complexes. The ACHAR and Significance Assessment must take into consideration the influence these larger site complexes (including destroyed sites) have on the overall significance of the sites and the landform within which they are situated.
- Please clarify and map where impacts have occurred to sites, the relevant approvals impacts were conducted under, and the current status of these approvals (e.g., expired, expiry date). It is unclear in the significance assessment and Appendix I of the ACHAR, which sites have been impacted and to what extent this has impacted their designated significance. Please provide additional justification on how works conducted under prior approvals have influenced the significance of applicable sites.



### Consideration of Ecologically Sustainable Development (ESD) and cumulative impact

The ACHAR argues that ESD and cumulative impact will be addressed through the conservation of materials *ex situ* and that as many of the sites are considered to be of low scientific significance this is appropriate. However, as explained above, we have concerns about the accuracy of the significance assessments that may limit the reliability of this argument. Limitations in the considerations of ESD and cumulative impact include:

- The ACHAR argues that cumulative impact will be managed through conservation of materials collected as part of the salvage program. Little consideration was given to the additional loss of at least 220 known sites as a result of the project. When coupled with the loss of over 700 sites in the local area, the cumulative impact to Aboriginal cultural heritage is quite large. The ACHAR argues that *ex situ* conservation may be comparable to *in situ* preservation, however, unlike the Kiribati case study provided, the impacts from the project are avoidable.
- There is limited consideration for the avoidance and conservation of significant ACH sites. The ACHAR outlines that 84 sites will be avoided by the project, including one Pleistocene aged site, however, most of these have been deemed to be of low scientific significance with a greater number of moderate to high significance sites being impacted rather than conserved.

### Aboriginal Cultural Heritage Management Plan (ACHMP)

- Heritage NSW recommends that an ACHMP be developed and implemented for the project. Heritage NSW recommends the requirement for an ACHMP should be included in the Conditions of Approval and that an ACHMP be created and approved by Department of Planning and Environment prior to any development activities occurring within the project area. Recommended conditions for an ACHMP have been included in **Attachment B**.
- Included in the ACHMP should be provisions for project redesign if sites of high local and/or regional significance, as agreed to by the RAPs, are identified during the course of salvage excavations.
- Please clarify the procedure that HVO will undertake in the transition from Aboriginal Heritage Impact Permits (AHIPs) to an ACHMP. For example, will the AHIPs be surrendered following project approval and/or will the AHIP methodologies be incorporated into the ACHMP?



## **ATTACHMENT B: RECOMMENDED DRAFT CONDITIONS FOR ABORIGINAL CULTURAL HERITAGE**

Below are our recommended draft conditions for the protection of Aboriginal Heritage and the implementation of an Aboriginal Cultural Heritage Management Plan.

### **Aboriginal Heritage**

- 1) All reasonable steps must be taken so as not to harm, modify or otherwise impact Aboriginal objects except as authorised by this approval.
- 2) The Registered Aboriginal Parties (RAPs) must be kept informed about the SSD. The RAPs must continue to be provided with the opportunity to be consulted about the Aboriginal cultural heritage management requirements of the SSD.

### **Aboriginal Cultural Heritage Management Plan**

- 3) Prior to carrying out any development, the Applicant must prepare an Aboriginal Cultural Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:
  - a) be prepared by suitably qualified and experienced persons;
  - b) be prepared in consultation with the RAPs;
  - c) be reviewed by Heritage NSW;
  - d) include a methodology for a test excavation and salvage excavation program (with RAP participation) for sites to be impacted with consideration to understanding site characteristics, and local and regional archaeological context;
  - e) include a description of the measures that would be implemented for:
    - i) protecting the Aboriginal heritage items identified within the project footprint or items located outside the approved development footprint, including fencing of the Aboriginal heritage items prior to commencing construction;
    - ii) salvaging and relocating the Aboriginal heritage items located within the approved development footprint;
    - iii) salvaging, relocating or avoiding any Aboriginal heritage items located within the approved development footprint identified during test excavations of the site;
    - iv) include updated baseline mapping of the heritage items within and adjoining the development disturbance footprint;
    - v) include updated mapping of all areas that have been and will be subject to monitoring, test excavations, and salvage excavations;
    - vi) include conservation options for the mitigation and avoidance of impacts to AHIMS registered sites situated within and outside the project footprint;
    - vii) prepare a methodology outlining when RAPs must be notified of changes to the Aboriginal Cultural Heritage Management Plan;
    - viii) include a procedure for assessing significance of Aboriginal Objects identified during the monitoring, test excavations, and salvage excavation and ensure that the management and mitigation measures are considered for all sites, and with special consideration for those of high significance;
    - ix) include a strategy for the long-term management of any Aboriginal heritage items or material collected during the test excavation or salvage works;
    - x) include an Unexpected Aboriginal Objects and Human Remains Procedure to manage unexpected Aboriginal objects and cultural values, and human remains, in accordance with any guidelines and standards prepared by Heritage NSW.

- (1) the Unexpected Aboriginal Objects and Human Remains Procedure must be prepared by a suitably qualified and experienced heritage specialist in relation to Aboriginal cultural heritage, in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) and submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction.
- (2) the Unexpected Aboriginal Objects and Human Remains Procedure, as submitted to the Planning Secretary, must be implemented for the duration of construction.
  - xi) ensuring workers on site receive suitable heritage inductions prior to carrying out any development on site, and that records are kept of these inductions; and
  - xii) ongoing consultation with the RAPs during the implementation of the plan; and
- f) at the completion of Aboriginal cultural heritage test and salvage excavations, an Aboriginal Cultural Heritage Excavation Report(s) must be prepared by a suitably qualified expert. The Aboriginal Cultural Heritage Excavation Report(s) must:
  - i) be prepared in accordance with the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*, 2011, and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, 2010; and
  - ii) document the results of the archaeological test excavations and any subsequent salvage excavations (with artefact analysis and identification of a final repository for finds).
  - iii) The RAPs must be given a minimum of 28 days to consider the draft report and provide comments before the report is finalised. The final report must be provided to the Planning Secretary, Heritage NSW, the relevant Councils, and the relevant Local Aboriginal Land Council, and the RAPs within 24 months of the completion of the Aboriginal archaeological collections and excavations (both test and salvage).
- g) where previously unidentified Aboriginal objects are discovered, all work must immediately stop in the vicinity of the affected area. Works potentially affecting the previously unidentified objects must not recommence until Heritage NSW has been consulted with. The measures to consider and manage this process must be specified in the Unexpected Aboriginal Objects and Human Remains Procedure and include registration in the Aboriginal Heritage Information Management System (AHIMS).