



Mr. Joe Fittell
Team Leader
Department of Planning & Environment
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Your reference: SSD-11826681 and SSD-11826621
Our reference: DOC23/994077 and DOC23/994186

Dear Joe,

Response to Submission Report - 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 1 November 2023 seeking advice on the Response to Submission Report for the above State Significant Development (SSD) proposals. This advice is for both the HVO North and HVO South Open Cut Coal Continuation Projects as a single Response to Submission (RtS) Report was provided in support of both SSDs. In preparing this advice Heritage NSW has reviewed the following documents:

- Relevant sections of Hunter Valley Operations Continuation Project: Submissions Report – prepared by EMM Pty Ltd, dated November 2023
- Appendix C – Aboriginal Cultural Heritage Assessment (Addendum) - prepared by EMM Pty Ltd, dated November 2023

Heritage NSW provided comment on the Environmental Impact Statement (EIS), advising that additional information was required to ensure that the management recommendations were adequate and that the Aboriginal Cultural Heritage Assessment Report (ACHAR) substantially complied with the project SEARs. Heritage NSW identified a number of matters that required clarification, as well as several recommendations for further research. The main points included:

- Further discussion on the potential for further Pleistocene (>10,000 years old) aged deposits to be contained within the project area. Additional information should include information on landforms, regional predictive models, and updated mapping.
- Additional documentation on the consultation process undertaken.
- Greater detail on proposed salvage methodology for scarred trees.
- Further consideration of the cumulative impacts the project will have on Aboriginal cultural heritage (ACH) & discussion on how & where redesign has occurred to avoid impacts.
- Several administrative and mapping updates, & other areas of clarification.

The Submissions Report, Addendum ACHAR, and geomorphological assessment have adequately addressed each of the above comments. The Addendum ACHAR outlines that project will impact 204 of the 279 extant ACH sites within the project area, of which ten are of moderate and two are of high scientific significance. Heritage NSW acknowledges that the applicant has undergone several phases of redesign to avoid impacts to a regionally significant archaeological site (CM_CD1), sites along Parnell Creek, and five scarred trees. The changes to the significance assessment of the 279 sites, with several sites originally deemed to be of moderate to high significance changed to moderate, is adequately justified.

While many of the sites proposed for impact are deemed to be of low significance, based on their archaeological significance, they are nonetheless culturally significant as they provide a tangible connection to the past. The consultation process undertaken for the EIS and additional RtS



consultation outlined that one Registered Aboriginal Party (RAP) has objected to the project, while three others outlined that the project will continue to impact the cultural landscape of the Hunter Valley and limit their ability to pass on cultural knowledge associated with the project area. The applicant has committed to avoiding the culturally significant scarred trees at the request of the RAPs and to a number of social enhancement activities.

The proposed Management and Mitigation Measures (Section 10 of the ACHAR and Section 6 of Addendum ACHAR) have committed to salvage excavations at several sites (Areas 9, 11, and 12, 37-5-0571, 37-2-0449, and 37-2-1504) and surface collection at all surface artefacts within the disturbance footprint. As the RAPs have not raised objections to these measures and they meet standard expectations for salvage methodologies, Heritage NSW deems them to be adequate. However, given that test excavations have not been possible at some locations, provisions must be included in the Conditions of Consent and Aboriginal Cultural Heritage Management Plan (ACHMP) for additional consultation with the RAPs, Heritage NSW, and the Department of Planning and Environment regarding additional mitigation or management requirements if regionally significant and/or highly culturally significant (e.g., burial, ceremonial grounds) finds are identified during the salvage operations. Where feasible, this may include consideration of project redesign to avoid further impacts. Heritage NSW requests that the salvage excavation methodology is submitted for review and comment prior to commencement of the excavations, as there are several changes required from the proposed methodology, including, but not limited to, spacing of units and implementation of mechanical excavation to work at depth (>1.5 m).

Heritage NSW concurs with that an ACHMP be implemented prior to any works associated with the project and that development and implementation of the ACHMP be included in the Conditions of Approval (CoA). In addition to the proposed mitigation measures, Draft CoAs for an ACHMP have been provided in **Attachment A**.

Heritage NSW reserve the right to recommend modifications to the proposed salvage methodology presented in the Addendum ACHAR (pg 153-161) upon review of the ACHMP. Please ensure consultation is continued with the RAPs throughout the SSD submission process and the development of the ACHMP. Heritage NSW requires that the Addendum ACHAR is provided to the RAPs for comment. Any comments provided must be included in the ACHMP and any concerns raised provided to Heritage NSW and the Department of Planning and Environment as soon as practical.

Heritage NSW has no further comments on the proposal at this time. If you require further information please contact Corey O'Driscoll, Senior Assessments Officer, at Heritage NSW on 6229 7079 and corey.odriscoll@environment.nsw.gov.au

Yours sincerely

Nicole Davis

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Manager Assessments

Heritage NSW

Department of Planning and Environment

As Delegate under National Parks and Wildlife Act 1974

Date: 29 November 2023



ATTACHMENT A: 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.
- 3) If regionally significant and/or or highly culturally significant (e.g., burial, ceremonial grounds) finds are identified during the salvage operations, consultation must be undertaken with the RAPs, Heritage NSW, and the Department of Planning and Environment for consideration of additional mitigation or management requirements, potentially including project redesign to avoid further impacts to the Aboriginal cultural heritage.

Aboriginal Cultural Heritage Management Plan

- 4) 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 whose appointment has been endorsed by the Secretary;
 - b) be prepared in consultation with Aboriginal Stakeholders and reviewed by Heritage NSW;
 - c) include a description of the measures that would be implemented for:
 - i) protecting the Aboriginal objects and sites identified within the project footprint or located outside the approved development footprint that will not be subject to harm by approved activities, including fencing of the Aboriginal heritage items prior to commencing construction;
 - ii) salvaging and relocating the Aboriginal objects and sites located within the approved development footprint that will be subject to harm;
 - iii) include updated baseline mapping of the Aboriginal objects and sites within and adjoining the development disturbance area;
 - iv) include updated mapping of all areas that have been and will be subject to monitoring and salvage excavations (including as a result of past approvals);
 - v) include conservation options for the mitigation and avoidance of impacts AHIMS registered sites situated within and outside the project footprint;
 - vi) prepare a methodology for ongoing consultation with Registered Aboriginal Parties, including consultation regarding changes to the ACHMP;

- vii) include a procedure for assessing significance of Aboriginal objects identified during the monitoring and salvage excavation and ensure that the management and mitigation measures are considered for all sites, and with provision for additional consultation with RAPs and Heritage NSW regarding those of high significance;
- viii) a strategy for the long-term management of any Aboriginal objects collected during the test excavation or salvage works;
- ix) a contingency plan and reporting procedure for the management of Unexpected Heritage Finds and Human Remains that is prepared by suitably qualified and experienced heritage specialist in relation to Aboriginal cultural heritage, in consultation with the RAPs and in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010). The relevant procedures must be submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction. The Unexpected Heritage Finds and Human Remains Procedure, as submitted to the Planning Secretary, must be implemented for the duration of construction;
- x) 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