

Drayton South Coal Project

Aboriginal Heritage—Preliminary Assessment Report Review

Report prepared for Darley Australia and Coolmore Australia

October 2015



Report Register

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The report has been reviewed and approved for issue in accordance with the GML quality assurance policy and procedures.

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Executive Summary

Located in the Upper Hunter Valley, within the Local Government Area of Muswellbrook, the Drayton South Coal Project (DSCP) is a proposal for an open cut mine which the proponents indicate will have an operational life of 15 years. The Drayton South coal mine will produce thermal coal and the volume of the resource is said by the proponent to be 73.3 million tonnes. The DSCP is the subject of an assessment under an Environmental Impact Statement (EIS) 2015. A prior Environmental Assessment in 2012 was undertaken for a previous proposal for the project.

GML Heritage Pty Ltd (GML) was commissioned by Darley Australia and Coolmore Australia to provide an overview of Aboriginal heritage values with regard to the DSCP area, the surrounding Country and regional Aboriginal cultural landscape.

A review of the Department of Planning and Environment (DP&E) and the Office of Environment and Heritage (OEH) EIS reviews have been undertaken. This review identifies a number of Aboriginal heritage issues arising from the EIS and OEH and DP&E reviews.

The key issues concerning Aboriginal heritage are:

1. The DSCP Aboriginal heritage SEARs have not yet been met;
2. the current EIS has not adhered to relevant OEH Guidelines for Aboriginal consultation;
3. the extent of known Aboriginal cultural heritage values has not been identified, mapped or assessed during the EIS process;
4. the Plains Clans of the Wonnarua People (PCWP) registered Native Title claim has not been recognised;
5. the archaeological resource of the DSCP area is inadequately identified and assessed by the EIS; and the
6. cumulative impact on Aboriginal heritage values has not been recognised or assessed.

The combined effect of these key Aboriginal heritage issues is that the DSCP would result in potential adverse impacts on Aboriginal heritage sites, places and cultural values.

1.0 Documents Relevant to Aboriginal Heritage

The Drayton South Coal Project (DSCP)'s Aboriginal heritage requirements were defined through the project's Secretary's Environmental Assessment Requirements (SEARs) issued 19 December 2014.

The DSCP was subject to an Environmental Impact Statement (EIS) prepared for Anglo America by Hansen Bailey. Documents presented by Hansen Bailey (on behalf of Anglo American Coal Pty Ltd) to the NSW Department of Planning and Environment (DP&E) for review and project approval included:

- Drayton South Coal Project Environmental Impact Statement, Executive Summary, May 2015.
- Drayton South Coal Project, Environmental Impact Statement, Volume 1 Main Report, May 2015.
- Drayton South Coal Project, Environmental Impact Assessment, Volume 5—Section O Aboriginal Archaeological and Cultural Heritage Impact Assessment, March 2015. (AECOM 2015).
- Project SEARs in Hansen Bailey 2015: EIS Appendix C. (Hansen Bailey 2015a).

On behalf of Anglo American Coal Pty Ltd, Hansen Bailey prepared a response to submissions (Hansen Bailey 2015b).

Matters and impacts concerning Aboriginal heritage have been reviewed by the DP&E and the Office of Environment and Heritage (OEH). The regulator's three written responses have been reviewed for the preparation of this report. These are:

- DP&E State Significant Development Assessment Drayton South Coal Project SSD 6875, August 2015—(DP&E 2015);
- OEH Re: Proposed Drayton South Coal Project (SSD-6875), letter to DP&E, 19 June 2015—(OEH June 2015); and
- OEH Re: Proposed Drayton South Coal Project (SSD-6875) – Response to Submission Report, letter to DP&E, 14 August 2015—(OEH August 2015).

With respect to Aboriginal heritage sites, places and potential values, GML has reviewed Aboriginal cultural heritage aspects in association with the DSCP and the immediate region surrounding the DSCP area. This document presents further detail of Aboriginal cultural heritage, which could be impacted by the DSCP, beyond that identified by AECOM 2015.

2.0 Aboriginal Heritage Critique

The review of the SEARs (Hansen Bailey 2015a), the Aboriginal heritage assessment (AECOM 2015), contrast against the known extent of Aboriginal heritage aspects in the region, response to submissions (Hansen Bailey 2015b), and the regulators review of documents (DP&E 2015, OEH June 2015, and OEH August 2015) has identified six key inter-related matters concerning Aboriginal heritage. The six key matters are:

1. The DSCP Aboriginal heritage SEARs have not been met;
2. For the current EIS, Aboriginal consultation has not adhered to relevant OEH Guidelines;
3. The registered Native Title claim under the *Native Title Act 1993* (Cth) has not been addressed;
4. The extent of known Aboriginal cultural heritage values has not been identified, mapped or assessed during the EIS process;
5. The archaeological resource of the DSCP area is inadequately identified and assessed by the EIS; and
6. Cumulative impacts on Aboriginal heritage values has not been recognised or assessed.

2.1 DSCP Project SEARS

The DSCP's Aboriginal heritage SEARs are presented in Hansen Bailey 2015: EIS Appendix C, pages C-5, C-31 to C-33, C-37 and C-40.

C-5 detailed the requirement for an assessment of 'the likely impacts of the development on Aboriginal heritage (cultural and archaeological), including consideration of the significance of these objects or declared places to Aboriginal people.' The EIS (AECOM 2015) focuses on Aboriginal archaeological heritage, with limited acknowledgment of relevant cultural heritage in the values assessment (AECOM 2015: Section 8.4). Aboriginal historical and aesthetic values are not detailed, described or assessed.

C-33 required the EIS to 'identify and describe Aboriginal cultural heritage values that exist across the whole area that will be affected by the development and document these in the EIA'. This requirement stipulates a process that extended beyond the DSCP area, to the extent that values are present in the Aboriginal cultural landscape.

C-33 required Aboriginal consultation to be undertaken following the OEH 2010 (DECCW) process. For this DSCP this process was undertaken for a prior EIS prepared in 2011, not the current 2015 EIS. Refer to Section 2.2 for further details.

C-40 required a program of archaeological test excavation, which has not been undertaken. 'The result of the surface survey is to inform the need for targeted test excavation to better assess the integrity, extent, distribution, nature and overall significance of the archaeological record. The results of surface surveys and test excavations are to be documented in the EIS'. Refer to Section 2.4 for further details.

The SEARs require an assessment of both cultural and archaeological Aboriginal heritage values, and the impacts on these values as well as relevant heritage management and mitigation strategies. The

following sections describe the effect of not adequately addressing the SEARs—with reference to Aboriginal consultation, and the Aboriginal heritage values that may be impacted by the DSCP.

Until the project SEARs are met Aboriginal heritage values connected to the DSCP area have not been presented to the DP&E, the OEH or the PAC. As such, it is not possible to understand the impact, the consequences of the potential impacts and to develop appropriate Aboriginal heritage management strategies.

2.2 Aboriginal Consultation

For the current EIS, Aboriginal consultation has not adhered to relevant OEH Guidelines (DECCW, *Aboriginal cultural heritage consultation requirements for proponents 2010*. April 2010). The Aboriginal consultation process for the 2015 DSCP EIS was continued from previous 2011 consultation.

Given the length of time between the two EIS a new process of Aboriginal consultation registration (Stage 1) would have been expected. For non-SSD projects, assessed under the *National Parks and Wildlife Act 1974*, the OEH would be unlikely to accept a consultation registration process which was four years old—the proponent would be required to recommence registration from Stage 1.

Had Stage 1 of the consultation process been repeated, the NTS Corp would have identified the presence of the registered Aboriginal native title claimant—the Plains Clans of the Wonnarua People (PCWP).

The EIS and AECOM 2015 have not identified the registered Native title claimant and have not consulted with them in respect to regional Aboriginal heritage values, or the impacts of the proposal on their culture and traditions, as identified in their Native Title application.

To date, the Registered Native Title claimant (the PCWP) has not been identified, recognised or involved in the EIS consultation process.

2.3 Aboriginal Heritage

The project SEARs required an assessment prepared in line with ‘*OEH Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (April 2011)*’. In summary the guideline document clearly articulates the need to assess social, aesthetic, historical and scientific Aboriginal significance (2011: Page 11). The requirements for the assessment of ‘harm’ were to include both direct ‘harm’ and ‘indirect harm’:

Direct harm may occur as the result of any activity which disturbs the ground including, but not limited to, site preparation activities, installation of services and infrastructure, roadworks, excavating detention ponds and other drainage or flood mitigation measures, and changes in water flows affecting the value of a cultural site.

Indirect harm may affect sites or features located immediately beyond, or within, the area of the proposed activity. Examples of indirect impacts include, but are not limited to, increased impact on art in a shelter site from increased visitation, destruction from increased erosion and changes in access to wild food resources.

A review of Aboriginal cultural heritage and directly connected with the DSCP area has identified a total of 27 separate, but connected, Aboriginal cultural values associated with the DSCP area. Succinctly, the area and surrounding landscape contains significant Aboriginal song lines, travelling routes, traditional resources, aesthetic values including extensive view corridors and associated (archaeological) places/sites connected to the long term use of the area by Aboriginal people. GML understands that these Aboriginal heritage values are living and remain in use by Aboriginal people.

Mapping of these Aboriginal heritage values identifies that Aboriginal heritage is directly and indirectly associated with the DSCP area. A large number of Aboriginal cultural heritage places and values exist in association with the project area. Of these the project EIS identified nine, approximately one third of the total, and provided an impact assessment for only two of the known Aboriginal heritage values.

Therefore, the project EIS has not identified the range or extent of known Aboriginal cultural heritage. The Aboriginal values have not been subject to a heritage values assessment, GIS mapping, assessment of harm or appropriate management and mitigation planning—as required by OEH 2011. Given this, should the project proceed, Aboriginal heritage will be both directly and indirectly harmed, without management or mitigation, as a consequence of an incomplete values assessment, detailing the range of Aboriginal scientific, social, historical and aesthetic values.

2.4 Archaeology within the DSCP Area

The project SEARs required an assessment prepared in line with ‘DECCW, Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (24 September 2010).

A review of AECOM 2015 provides evidence for an adequate and a complying Aboriginal archaeological background review, surface archaeological survey, values and impact assessment to surface archaeology, and management detailing with surface based archaeology. Only the surface based archaeological resource has been the subject of assessment and impact analysis. No assessment of the nature and extent of Aboriginal archaeological subsurface deposits has been made, beyond the map of ‘archaeological sensitivity’ (AECOM 2015: Figure 10).

DECCW (2010: Section 3.1) states:

Archaeological test excavation will be necessary when (regardless of whether or not there are objects present on the ground surface) it can be demonstrated through Requirements 1, 2, 3, 4, and 5 that sub-surface Aboriginal objects with potential conservation value have a high probability of being present in an area, and the area cannot be substantially avoided by the proposed activity....

Test excavations contribute to the understanding of site characteristics and local and regional prehistory and they can be used to inform conservation goals and harm mitigation measures for the proposed activity.

Both the project’s SEARs and requirements under DECCW (2010: Section 3.1) required a program of archaeological test excavation to be undertaken so that the nature of subsurface archaeology within the DSCP area can be understood and assessed. AECOM 2015: Figure 10 defines those areas wherein there is ‘a high probability of archaeology being present’ and ‘the area cannot be substantially avoided by the proposed activity’. Such areas should have been subject to archaeological test excavation.

Indeed, the EIS’s archaeological management requirements (AECOM 2015: Section 11.2.1) detail that archaeological test excavation is required to ‘establish the nature and extent of subsurface archaeological materials within each sample area’. Therefore, in accordance with the project’s SEARs and requirements under DECCW 2010, the subsurface Aboriginal archaeological resource of the DSCP area has not been adequately identified and assessed by the EIS. The actual impact on Aboriginal archaeological sites cannot be known or understood until test excavation is completed for all areas coloured orange, within the proposed activity area in AECOM 2015: Figure 10.

2.5 Cumulative Impacts to Aboriginal Heritage

AECOM 2015: Section 10 provides an assessment of ESD and the cumulative impact to identified Aboriginal sites listed on the OEH's AHIMS database for the surrounding region, defined as a 30km by 30km study region. AECOM 2015: O-92 states:

...a total of 154 isolated finds and artefact scatters finds will be impacted by the Project. On current evidence, these sites represent 5.9% of all known artefact scatters and isolated finds within the study region.

AECOM 2015 does not include an analysis of impact or cumulative impact associated with any Aboriginal values other than stone artefacts. There is no cumulative impact assessment on social, historical or aesthetic values as they relate to Aboriginal cultural heritage.

It should also be noted that reliance on the OEH's AHIMS database for provision of data is potentially not reflective of the true extent of Aboriginal values and sites, because AHIMS is unable to represent Aboriginal sites in any form other than point data. Therefore an entire Aboriginal song line would be represented by a single point, rather than a polygon which covered a large area of Country. As such, the cumulative impact on all regional Aboriginal heritage values has not been recognised or assessed—only on stone artefacts.

An assessment of cumulative impacts on Aboriginal aesthetic and social values across this Country (which are not isolated locations, separated or distinct from other sites, but directly connected items, dependent on one another) would show how open cut mining has already removed significant portions of the Aboriginal traditions, Dreaming, initiation and creation stories in the area.

The construction of bund walls, excavation of open pits, and prevention of access to land and traditional resources impacts cultural connections and the relationships between Aboriginal heritage items. An archaeological mitigation strategy is not able to conserve the social, aesthetic and historical values because such Aboriginal cultural values cannot be recovered by rehabilitation or conserved through environmental offsets. Aboriginal values associated with social, aesthetic and historical aspects should be recognised as unique and dependent on retention of existing landforms and vegetation communities.

2.6 Conclusion

It is concluded that with reference to the DSCP area, the anthropological, archaeological and other traditional evidence clearly demonstrate the local Aboriginal community has a long standing connection in terms of occupation and use of the land and that the region contains numerous places and values of cultural significance.

The project's EIA SEARs are yet to be achieved because:

- there has been an absence of consultation with the Native Title claimants;
- the Burra Charter process has not been followed, with an absence of assessment considering the cultural significance of the region, compatible land use, setting, social and aesthetic values; and
- a program of archaeological test excavation is required and this has not been undertaken.

It is concluded that the Aboriginal heritage assessment component of the EIA has not considered the impact of the DSCP on local or regional Aboriginal traditions or culture, heritage or connection to

Country. The Aboriginal archaeological and cultural heritage assessment (AECOM 2015) has not considered the value of, or impacts to, 25 of the 27 cultural heritage aspects identified in the region.

The key finding is that an accurate, comprehensive and adequate assessment of the local and regional Aboriginal heritage values and assessment of Aboriginal heritage impact to Aboriginal values has not been undertaken.

In heritage conservation, it is accepted professional practice that investigations and amendment must be undertaken prior to decisions being made. This practice ensures that there are no unintended impacts on significance cultural values. Given that the Aboriginal heritage values have not been fully assessed as part of the EIA process, the potential impacts on the State, and potentially Nationally significant, Aboriginal cultural heritage within and in the vicinity of the DSCP cannot be determined at this time.