



Office of  
Environment  
& Heritage

Your reference: Lt\_XCN06-034\_OEH\_20121120  
Our reference: DOC12/49139; FIL12/7057  
Contact: Robert Gibson, 4908 6851

Mr David Mooney  
Senior Planner, Mining Projects  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Mooney

**RE: BULGA UNDERGROUND MINE – PROPOSED BLAKEFIELD NORTH LONGWALL MODIFICATION AND GAS-FIRED POWER PLANT (DA 376-8-2003 MOD 5)**

I refer to your email dated 26 November 2012 seeking comment on a section 75W modification, under the *Environmental Planning and Assessment Act 1979*, for the Bulga Underground Mine consent (DA 376-8-2003). The Office of Environment and Heritage (OEH) understands that the modification includes the following:

- realignment of the longwall layout of the Blakefield North underground mine, including the expansion of the longwall extraction width up to the previously approved 400 metres
- an increase in the pre and post gas drainage infrastructure for the Blakefield seam in the Blakefield North underground mine (similar to that employed in the Blakefield South underground mine)
- to modify the Blakefield North underground mine ventilation from the Bulga Surface Operations pit, to ventilation via two new ventilation shafts on the surface in appropriate locations for the proposed mine
- the construction of a small-scale power generation plant (up to 32MW), and associated pipeline and infrastructure, to manage the increased methane production from gas drainage included within this modification proposal.

OEH has reviewed the Environmental Assessment (EA) with regards to Aboriginal cultural heritage and threatened biodiversity issues. OEH's comments and recommended conditions for approval are provided in **Attachment 1**.

If you have any questions concerning this advice, please contact Robert Gibson, Regional Biodiversity Conservation Officer, on 4908 6851.

Yours sincerely

**RICHARD BATH**  
**Head – Hunter Planning Unit**  
**Regional Operations**

**10 DEC 2012**

Enclosure: Attachment 1

## **ATTACHMENT 1:**

### **REVIEW OF THE DOCUMENT TITLED 'ENVIRONMENTAL ASSESSMENT: PROPOSED MODIFICATION TO DA 376-8-2003 UNDER PART 3A OF THE EP&A Act 1979; BLAKEFIELD NORTH UNDERGROUND MINE PROJECT' (DA 376-8-2003 MOD 5) WITH RECOMMENDED CONDITIONS OF APPROVAL FOR ABORIGINAL CULTURAL HERITAGE AND THREATENED BIODIVERSITY ISSUES**

OEH has reviewed the EA for the proposed modification to the Bulga Mining Complex with regards to Aboriginal cultural heritage and threatened biodiversity issues and provides the following comments and recommended conditions for approval.

## **ABORIGINAL CULTURAL HERITAGE**

### **Aboriginal cultural heritage values**

OEH acknowledges the significance of the local environment to the local Aboriginal community. OEH notes the existence of numerous registered Aboriginal sites in the immediate locality and acknowledges that the proposed modified project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation. These sites include artefact scatters, isolated finds, camp sites, grinding grooves, culturally modified trees, shelters and potential artefact deposits (PAD). There is also a strong possibility that currently undetected cultural material may be present within the project area in those areas where Aboriginal objects have not been previously identified.

OEH also acknowledges the results of the field assessment of the project area undertaken in January 2011, which located the surface expressions of a number of previously recorded artefact scatter sites and enabled the site boundaries of some of these sites to be extended. The results of the additional sub-surface investigation program undertaken during May 2012 are also acknowledged and it is noted that an additional artefact scatter site and associated PAD were identified in the SIS1 and VW1 Study Area.

A search of the Aboriginal Heritage Information Management System (AHIMS) revealed that this new Aboriginal site has not been registered in AHIMS. The proponent is therefore advised to promptly complete Aboriginal Site Recording Forms for this site and submit to the AHIMS Registrar, as per the requirements of Section 89A of the *National Parks and Wildlife Act 1974* (NPW Act). Any management outcomes for these sites must be included in the information provided to AHIMS (Phone: 9585 6470, Address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, E-mail: [ahims@environment.nsw.gov.au](mailto:ahims@environment.nsw.gov.au)).

### **Impacts on Aboriginal cultural heritage**

It is noted that the development proposal is likely to impact a number of Aboriginal cultural heritage values associated with the project area, including the significant Beltana Grinding Groove Site ('BMU 1') and artefact scatter sites. Impacts will primarily occur as a result of mine subsidence and the construction of surface infrastructure (gas wells, access tracks, transmission lines, gas drainage plant, pipeline maintenance facility and power generation plant) associated with the proposal.

It is therefore expected that the proponent develop culturally appropriate management strategies in compliance with the requirements of the NPW Act and in consultation with the registered Aboriginal parties (RAPs) for the project.

### **Management of Aboriginal cultural heritage**

OEH refers to Section 6.2 of the AHA (Management and Mitigation of Recorded Aboriginal Sites) and Section 6.7.4 of the EA (Mitigation Measures).

OEH acknowledges and supports the proponent's commitment to update the currently approved Aboriginal Cultural Heritage Management Plan for the broader project area to incorporate the additional management of the Aboriginal cultural heritage values associated with this project. It is also recommended that this process is undertaken in consultation with the RAPs for the project.

OEH refers to Section 1.4.3 of the EA. It is noted that Aboriginal site 'BMU 1' is located within the project area and this site is subject to a separate development approval issued in accordance with the requirements of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). OEH notes that in 2007 the proponent had previously applied to OEH for an Aboriginal Heritage Impact Permit (AHIP) in accordance with the provisions of Section 90 of the NPW Act. It is noted that AHIP #2776 was issued by OEH on 6 September 2007, for a period of five years, and this site was partially impacted by underground mining activities. However, this AHIP has now expired. Accordingly, further impacts to site 'BMU 1' cannot occur without a new approval from OEH. It is also noted that Aboriginal site 'B6' has not been subject to an AHIP issued by OEH. Therefore, if the proposed development is likely to impact or harm these two sites, it is expected that the proponent develops appropriate management strategies which comply with the NPW Act. This would require the submission to OEH of an AHIP application for consideration following any approval of the development application. It is also recommended that any revision of the Aboriginal Cultural Heritage Management Plan address this matter.

OEH also understands that these matters are likely to be addressed by the proponent as a component of a separate development application for the proposed Bulga Optimisation Project.

### **Local Aboriginal community consultation**

Effective heritage management requires knowledge of values or cultural significance. An understanding of what makes a place culturally significant, and why, enables appropriate decisions to be made about the management of that place. OEH recognises and acknowledges that Aboriginal people are the primary source of information about the value of their heritage and how this is best protected and conserved and must have an active role in any Aboriginal cultural heritage planning process.

OEH acknowledges a summary of the consultation with the local Aboriginal community has been provided by the proponent regarding the proposed modification in Appendix 1 of the Aboriginal Heritage Assessment. However, OEH notes that there is no evidence of consultation from a majority of the RAPs (11 out of 12) in support or otherwise of the final management recommendations presented in Section 7 of the Aboriginal Heritage Assessment and Section 6.7.4 of the EA. Further, it is noted that the only response provided from one of the RAPs did not support the final management recommendations. The lack of evidence of consultation and support concerning the management recommendations indicates that the consultation process for the Aboriginal cultural heritage assessment is incomplete.

In order to progress this inadequacy, OEH recommends that the proponent undertake additional consultation with all RAPs in order to form a complete submission. OEH would also expect the proponent to detail any contrary or differing positions to those of the RAPs if there is some disagreement with the outcomes of the assessment process. OEH has drafted a recommended condition of approval below to address this matter.

OEH also encourages the proponent to maintain continuous consultation processes with the community for the entire life of the project and for all Aboriginal cultural heritage matters associated with the project area. As a general rule, gaps in the consultation process of six months or more will not constitute a continuous consultation process. Where a proponent or developer envisages a gap of more than six months it is recommended that RAPs are regularly informed of any progress.

### **Conclusion**

OEH has no additional concerns with the Aboriginal cultural heritage assessment for the modified project application and recommends that the following conditions of approval for Aboriginal cultural heritage are reflected in any approval conditions for the project.

### **RECOMMENDED CONDITIONS OF APPROVAL FOR ABORIGINAL CULTURAL HERITAGE**

1. The applicant must comply with Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act), prior to commencing any development activities and during the development.

2. The proponent must consult with and involve all the registered local Aboriginal parties for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
3. The proponent must update the existing Aboriginal Cultural Heritage Management Plan for the project area in consultation with the registered Aboriginal parties to detail procedures for managing all Aboriginal cultural heritage values associated with the project area. This process must be undertaken prior to commencing any ground disturbance or development works subject to the development.
4. In the event that ground disturbance identifies a new Aboriginal object/s within the project area, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified cultural heritage specialist and representatives of the local Aboriginal community must be contacted to determine the nature, extent and significance of the finds. The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by the OEH) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with representatives of the local Aboriginal community, and the cultural specialist to develop an appropriate management strategy for all objects/sites which complies with the requirements of the NPW Act.
5. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until the NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact the OEH's Environment Line on 131 555 and representatives of the local Aboriginal community. No works are to continue until the OEH provides written notification to the proponent.
6. All Aboriginal sites impacted by the project must have an Aboriginal Site Impact Recording form completed and be submitted to OEH's AHIMS Registrar within three months of being impacted.
7. An Aboriginal Cultural Education Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the registered Aboriginal parties.

## **THREATENED BIODIVERSITY**

OEH notes that the main likely impact on threatened biodiversity stems from the clearing of native vegetation for the gas drainage infrastructure. Impacts to threatened biodiversity may also include harm from mine subsidence of the new longwall panel plan for Blakefield South that is greater than that assessed when consent was first granted on 23 February 2004. These matters are discussed below:

### **Biodiversity offsets**

According to the EA, the impacts of this proposed gas drainage infrastructure is forecast to clear up to 34 hectares of land, which includes up to five hectares of Central Hunter Box – Ironbark Woodland in the NSW North Coast and Sydney Basin Bioregions Endangered Ecological Community (EEC). In addition, the likely mine subsidence impact of the realigned longwalls would affect about 709 hectares of land that includes about 103 hectares of Central Hunter Box – Ironbark Woodland EEC and about 0.15 hectares of Hunter Valley Weeping Myall Woodland of the Sydney Basin Bioregion EEC. OEH acknowledges that some of the forecast mine subsidence impacts have been covered in the previously-issued consents and that much of the area to be affected by mine subsidence for this project also falls within the footprint of the proposed Bulga Optimisation Project for which the proponent has already commenced discussions with OEH with regards to possible biodiversity offsets. Therefore, consideration of possible mine subsidence impacts for this project will focus on areas outside the footprint of the Bulga Optimisation Project that are greater than impacts already considered.

The proposed changes to the plan of longwall panels for Blakefield North would result in a reduced number of panels of larger width (from 265 metres to 400 metres) that would now be stacked, as opposed to offset, with the longwall panels in the overlying Whybrow Seam. This will result in increased mine subsidence impacts. Where these changes lead to harm to threatened species (such *Acacia pendula*), populations, communities or their habitats, particularly outside the footprint of the Bulga Optimisation Project, then OEH requests that the proponent makes a commitment to offset them appropriately (see below).

It is not clear how the proposed development fits with the proposed flora and fauna corridors for the Bulga Coal Continued Underground Operations Project as required under consent condition 43 in Schedule 4 of DA 376-8-2003 for it appears that the proposed modification would develop some of the proposed corridor habitat areas.

On 26 November 2012, the proponent met with OEH to discuss the Bulga Optimisation Project. During this discussion of offsets for the Bulga Optimisation Project, the likely offsetting requirements for the modification were raised. OEH advised the proponent that they would be required to justify the rationale behind any offsets offered, especially if 'substitution ratios' are used to match non like-for-like vegetation communities between the offset and the development area. In addition, the offsets for the current modification would need to be specified so that they can be clearly linked to this project without the risk of being double countered for any future project.

### **Pre-clearing surveys**

OEH acknowledges that the proponent discusses a proposed tree clearing protocol in the EA (Appendix 6) and endorses this approach.

### **Conclusions**

OEH notes that the proposed modification would clear about five hectares of EEC vegetation and would lead to enhanced mine subsidence of areas that also support EEC vegetation and threatened species. OEH therefore recommends that the proponent prepares a biodiversity offset package for the known harm to threatened biodiversity to come from this project, and make a commitment for offsetting in the event that mine subsidence also causes harm to threatened biodiversity. OEH also recommends some standard conditions for the tree felling protocol and what to do in the event that a threatened fauna species is found during this process (see below).

### **RECOMMENDED CONDITIONS OF APPROVAL FOR THREATENED BIODIVERSITY**

1. That any clearance of threatened species, populations or communities, or their habitats, or harm caused by mine subsidence due to this development must be offset in accordance with OEH offsetting policy. That is, either the 'Principles for the use of biodiversity offsets in NSW' (DECC, 2011) or the 'NSW OEH interim policy on assessing and offsetting biodiversity impacts of part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects (OEH, 2011).
2. That pre-clearing surveys are conducted by a suitably qualified and experienced ecologist (as per DEC, 2004).
3. That the translocation of any threatened fauna found in the development site are conducted in line with OEH policy – 'Policy for the Translocation of Threatened Fauna in NSW' (NPWS 2001).

### **References:**

- DECC (2011) Principles for the use of biodiversity offsets in NSW. 17 June 2011. NSW Department of Environment and Climate Change, Sydney. [www.environment.nsw.gov.au/biocertification/offsets.htm](http://www.environment.nsw.gov.au/biocertification/offsets.htm)
- DEC (2004) Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities. Working Draft. November 2004. Department of Environment and Conservation (NSW) [www.environment.nsw.gov.au/resources/nature/TBSAGuidelinesDraft.pdf](http://www.environment.nsw.gov.au/resources/nature/TBSAGuidelinesDraft.pdf)

NPWS (2001) Policy for the Translocation of Threatened Fauna in NSW. Policy and Procedure Statement No. 9, Threatened Species Management, NSW NPWS, Hurstville, NSW  
[www.environment.nsw.gov.au/resources/nature/policyFaunaTranslocation.pdf](http://www.environment.nsw.gov.au/resources/nature/policyFaunaTranslocation.pdf)

OEH (2011) NSW OEH Interim policy of assessing and offsetting biodiversity impacts of Part 3A, State significant developments (SSD) and State significant infrastructure (SSI) projects. 25 June 2011. NSW Office of Environment and Heritage, Sydney.