



Office of
Environment
& Heritage

Your reference: DA 41-03-99 MOD 8
Our reference: DOC13/40908; FIL12/11569
Contact: David Paull, 4908 6837

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

Attention: Elle Donnelley

Dear Mr Mooney

RE: SUBMISSION FOR THE BULGA OPEN CUT SEDIMENT DAM (DA 41-03-99 MOD 8)

I refer to your email dated 6 August 2013 seeking comment from the Office of Environment and Heritage (OEH) regarding the Bulga Open Cut Sediment Dam, a modification to an existing development application (DA 41-03-99 MOD 8). OEH provides advice in relation to biodiversity, Aboriginal cultural heritage, flooding and surface water management.

OEH notes that the proposal is to facilitate the construction and operation of a new sediment dam to capture surface water run-off from the common boundary emplacement area. The proposed dam will have a total capacity of between 100 and 130ML and will involve the:

- removal of 1.1 hectares of Bull Oak Forest and 0.03 hectares of Central Hunter Grey Box - Ironbark Woodland endangered ecological community (EEC)
- excavation of a small area of an upper portion of a tributary which flows into Loders Creek.

A review of the EA, including Section 6.3 and Appendix 4 was undertaken by OEH to assess the potential impacts of the project on Aboriginal cultural heritage, in accordance with OEH's Aboriginal cultural heritage assessment guidelines and the requirements of Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act). The details of this review is provided in **Attachment 1** and summarised below. OEH has identified the following outstanding issues in the EA included:

- inadequate Aboriginal cultural heritage assessment process. Further details are required in accordance with the appropriate Aboriginal cultural heritage assessment guidelines to complete the Aboriginal cultural heritage assessment
- incomplete level of detail of Aboriginal cultural heritage impact assessment and the provision of management and mitigation measures
- insufficient level of evidence of the Aboriginal community consultation process. Additional information is required by the proponent to conclude the consultation process.

A review of the EA, including Section 6.2 and Appendix 3 was undertaken by OEH to assess the potential impacts of the project on threatened biodiversity, in accordance with the requirements of the *Threatened Species Conservation Act 1997*. This review is given below.

OEH acknowledges that the Bull Oak Forest and the Grey Box Woodland are not mature communities and lack habitat features such as hollows, groundcover, etc. OEH notes the avoidance

measures undertaken to retain adjacent areas of mature Central Hunter Grey Box - Ironbark Woodland EEC.

With respect to biodiversity issues, OEH notes that a due diligence assessment was undertaken by Cumberland Ecology which involved a one day site visit and desktop assessment. The mitigation measures taken involve commitments to restrict activity within the footprint and to control any water runoff into Loders Creek such that it is compliant with licence conditions.

While the habitats in question are of a lower quality than the surrounding vegetation and the extent of removal minor, these ecological communities are natural regrowth, containing seed-bank and as such may provide foraging habitat for locally occurring threatened species. In order to achieve a 'no net loss' outcome (as per a Tier 2 outcome in the OEH Interim Offset Policy 2011), OEH requests that, as part of Bulga Coal Management's wider operations, existing natural regeneration areas be enhanced to include an additional one hectare where Central Hunter Grey Box - Ironbark Woodland EEC and/or Bull Oak Forest may regenerate.

There are no additional matters concerning flooding or surface water management.

If you require any further information regarding this matter please contact David Paull, Regional Biodiversity Conservation Officer, on 4908 6837.

Yours sincerely



22 AUG 2013

RICHARD BATH
Senior Team Leader - Planning
Regional Operations

Enclosure: Attachment 1

ATTACHMENT 1

ABORIGINAL CULTURAL HERITAGE

An important component of the environmental assessment is the consideration of development proposal's potential or likely impact on Aboriginal cultural heritage values. OEH acknowledges that Section 6.3 and Appendix 4 of the EA provide some preliminary details to address this matter. However, the current modification proposal does not provide an appropriate and adequate level of archaeological and cultural detail to support the development application.

Significant inadequacies in the EA include:

- addressing and documenting the information requirements detailed in the draft '*Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*' (Department of Environment and Conservation 2005)
- assessing and documenting the requirements detailed in OEH's '*Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*' (2010) and '*Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*' (dated 2011).

The Aboriginal cultural heritage assessment for the proposed modified project application is therefore incomplete.

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 project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation. These include grinding grooves, artefact scatters, isolated finds, culturally modified trees, burials, camp sites and potential artefact deposits (PADs). There is also a possibility that currently undetected cultural material may be present within the project area in those areas where Aboriginal objects have not been previously identified. The proponent's archaeological consultant also supports this view.

OEH also acknowledges that the proponent has undertaken a ground inspection by RTCA Staff early in 2013. However, details regarding the inspection undertaken have not been provided in support of the EA. In particular, the exact date of the inspection, who conducted the inspection (and their associated cultural heritage experiences and/or credentials), details of the inspection methodology and accurate documented results of any Aboriginal cultural heritage values identified, including details about their location, extent, scale and cultural significance. The Aboriginal cultural heritage impact assessment is therefore incomplete.

In order to address this matter, OEH recommends that the proponent provide additional details of the ground inspection (or any other recent archaeological field assessment/survey) of the project area in support of the project application.

Further, in the event that additional Aboriginal objects/sites have been identified during the ground inspection (or any additional filed assessments/surveys) the objects must be recorded and managed in accordance with the requirements of sections 85A1(c) and 89A of the *National Parks and Wildlife Act 1974* (NPW Act).

Impact on Aboriginal cultural heritage

OEH reminds the proponent that they have a responsibility to manage any likely impact on Aboriginal cultural heritage values of the project area in compliance with the requirements of the NPW Act. OEH's preference would be to avoid impacting Aboriginal objects.

OEH notes that at this stage, the Aboriginal cultural heritage impact assessment process is incomplete.

Management of Aboriginal cultural heritage

In the event that avoidance of impact or harm to Aboriginal objects is impractical or impossible, the proponent will be required to develop an appropriate management strategy in consultation with representatives of the local Aboriginal community and in compliance with the appropriate legislative provisions.

This may involve the submission to OEH of an application for an Aboriginal Heritage Impact Permit (AHIP), following the determination of the development application. The application should address all likely and possible impacts from all aspects of the proposed development on all likely and potential Aboriginal cultural heritage values of the project area. The applicant will also be required to provide a range of current documentation to support the application.

The proponent should familiarise themselves with OEH's AHIP requirements, provided in: *'Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants'* (dated May 2011). Refer to: www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf for further information. The guide should be read in conjunction with the NPW Act and the National Parks and Wildlife Regulation 2009.

In order to obtain an AHIP the proponent will also be required to demonstrate consultation with the local Aboriginal community complies with OEH's *'Aboriginal cultural heritage consultation requirements for proponents 2010'* and meet the essential application criteria. Support for the proposal from the local Aboriginal stakeholders is an essential part of this process. Refer to: www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf for further information.

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 refers to Section 5.2 and Appendix 4 of the EA. It is noted that the proponent has initiated consultation with representatives of the local Aboriginal community. However, no detailed evidence of the consultation process has been provided by the proponent in support of the EA. This is concerning and the consultation process is therefore incomplete.

In order to progress this inadequacy, OEH recommends that the proponent provide additional detailed evidence of the consultation undertaken with the local Aboriginal community in support of the project modification application, to form a complete submission. In particular, OEH is seeking community views regarding the cultural significance of any identified Aboriginal cultural heritage values of the modified project area and commentary regarding any proposed management or mitigation strategies in the event that the project is likely to impact or harm Aboriginal objects.

OEH has developed the *'Aboriginal cultural heritage consultation requirements for proponents 2010'* to assist proponents with consultation with the Aboriginal community. While these guidelines are aimed at proponents seeking an AHIP under the NPW Act, the guidelines provide a useful reference to guide broader community consultation during the development of a major project application.

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 registered Aboriginal parties identified for the project are regularly informed of any progress.

Conclusion

OEH has no additional concerns with the Aboriginal cultural heritage assessment for the modified project application subject to the resolution of the above matters.

