



Office of
Environment
& Heritage

Your reference: MP06-0311 MOD 3
Our reference: DOC15/267523-2
Contact: Steve Lewer, 4927 3158

Mr Hamish Aiken
Team Leader
Resource Assessments – Planning Services
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Aiken

RE: REVIEW OF MANNERING COLLIERY MODIFICATION 3 ENVIRONMENTAL ASSESSMENT – SECTION 75W MODIFICATION TO MP06-0311 (MOD 3)

I refer to your letter dated 14 July 2015 requesting comment on the Mannering Colliery Modification No. 3 Environmental Assessment (EA) report for a modification under Section 75W of the *Environmental Assessment and Planning Act 1979* to the approved Major Project 06-0311. The Office of Environment and Heritage (OEH) understands that the modification proposal involves:

- an increase in the maximum rate of ROM coal handling and dispatch at the mine from 1.1 Mtpa to a maximum of 1.3 Mtpa
- an extension of the project approval period from 31 March 2018 to 30 June 2022
- minor vegetation clearing adjacent to infrastructure for the purpose of asset protection from bushfires.

OEH has undertaken a review of the EA titled 'Mannering Colliery – Modification 3, Environmental Assessment, Section 75W Modification to MP06-0311', prepared for LakeCoal Pty Ltd by EMGA Mitchell McLennan Pty Limited (EMM) and dated June 2015. OEH's detailed comments are provided in **Attachment A**.

In summary, OEH has concerns with some sections of the EA with respect to threatened species; namely survey effort and lack of a compensatory habitat package and/or biodiversity offsets. OEH requests that these concerns be appropriately addressed prior to recommended conditions of approval being provided.

If you require any further information regarding this matter please contact Steve Lewer, Regional Biodiversity Conservation Officer, on 4927 3158.

Yours sincerely

6 AUG 2015

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

Enclosure: Attachment A

ATTACHMENT A: OEH REVIEW OF MANNERING COLLIERY MODIFICATION 3 ENVIRONMENTAL ASSESSMENT – SECTION 75W MODIFICATION TO MP06-0311 (MOD 3)

THREATENED SPECIES

OEH has undertaken a review of Section 5.5 – ‘Ecology’ and Appendix F – ‘Assessment of significance’ of EA. The EA states that approximately 0.4 hectares (ha) of native vegetation will be modified for a proposed ‘asset protection zone’ (APZ), which includes 0.35 ha of ‘Swamp Sclerophyll Forest on coastal floodplains’ endangered ecological community. The vegetation to be impacted upon has been described as (i) Swamp Mahogany Swamp forest, (ii) Smooth-barked Apple – Red Bloodwood open forest, and (iii) planted exotic vegetation. No threatened species were recorded during the site visit / survey (dated 8 April 2015).

Surveying

OEH notes that no specific fauna surveying was undertaken on the proposed impact footprint and as such OEH is unable to assess the impacts on threatened species given the lack of specific supporting data and to some extent questions how certain assumptions within the EA ‘Assessment of Significance’ (Appendix E) can be justified without an appropriate field survey being undertaken. OEH acknowledges that the impact area is small (approx. 0.4 ha), however, our survey guidelines are not scale dependant and do not extinguish the use of certain methodologies on the basis of size. As such OEH would have expected the relevant fauna surveys for expected species and/or guilds to have been undertaken and in accordance with methodologies and sampling effort specified in the recommended guidelines (DEC 2004, DECC 2009). OEH acknowledges in some instances surveys or components of them may not be undertaken, however, adequate justification is required as to why such techniques or surveys were not carried out. A single site visit to conduct habitat assessments and opportunistic sightings is insufficient to determine the likelihood absence / presence of potential threatened fauna.

Similarly, limited flora survey work has been undertaken, particularly targeted searches for threatened species (such as *Tetratheca juncea*). Additionally OEH questions why the orchids: *Cryptostylis hunteriana*, *Diuris praecox* and *Genoplesium insignis* which were considered a potential for the nearby Chain Valley Colliery impact site but not for this site when there is similar habitat / vegetation involved. OEH would have expected targeted searches to have been undertaken for these species and at the appropriate flowering time when they would likely be detected. Although a small impact area is involved, these small cryptic orchid species could easily occur in large numbers on a very small area. For example the largest population of *Diuris praecox* which is in excess of 200 plants, and located in the Newcastle local government area, occurs over an area of less than 0.1 ha. The lack of surveys brings into question the validity and assumption made about the impacts on threatened flora within the EA.

If the Department of Planning and Environment requires OEH to make an assessment of the impact on threatened species, both flora and fauna (including their habitat) then appropriate surveying in accordance with accepted guidelines must be undertaken or conversely you assume presence of all likely occurring species. This will allow for an informed assessment of the proposal. To ensure that the flora and fauna surveys are compliant with OEH guideline, OEH must be satisfied that the following issues have been adequately addressed with respect to survey effort:

- a suitable survey design was adopted
- appropriate survey methodologies were utilised (as specified in the guidelines) and applied at a scale commensurate to detect the target species or guild
- targeted surveys were adequate and the subject species chosen were appropriate
- all surveys were conducted at the appropriate time with respect to seasonality and weather conditions (e.g. flower phenology)
- all surveys / methodologies adequately cover the study area, including all vegetation / habitat types and indirect impact areas.

Threatened species assessment

OEH has not completed a detailed review of the threatened species assessment section of the EA for reasons outlined above, though does concur for threatened fauna the site is unlikely to impact on significant habitat.

Biodiversity offsets

Although OEH acknowledges that the proposed development area and impacts to biodiversity are likely to be small, there is no lower limit with respect to scale of the development for the provision of offsets / compensatory habitat. As such OEH would have expected the EA to address the provision of biodiversity offsets and/or compensatory measures under Section 5.5.3 'Mitigation and Management'. However, no details on offsets or compensatory measures have yet been provided.

OEH notes that the proposed impact area (disturbance for APZ) is approximately 0.4 ha of native vegetation (including an area of 'Swamp Sclerophyll forest on coastal floodplains' endangered ecological community), which when assessed under the BioBanking Assessment Methodology (OEH 2014) to determine the biodiversity cost would likely generate in the order of up to five (5) 'ecosystem credits'. The current market value of ecosystem credits in the Hunter is around \$2000 per credit and as such the biodiversity value of the 0.4 ha of native vegetation to be removed is in the order of up to \$10,000. OEH recommends that the proponent should either retire the appropriate biodiversity credits or provide funding, equivalent to the biodiversity value that is being lost, to either a site specific environmental project that benefits threatened species or towards an action(s) that benefits a likely potential threatened species (as listed under OEH's 'Saving Our Species' program). To determine the exact number of biodiversity credits the proposed impact area would generate, OEH recommends that the proposal be assessed under the BBAM (OEH 2014). If the proponent does not wish to undertake such an initiative then OEH would expect a suitable biodiversity offset (commensurate to the impact site) be set aside and managed in perpetuity under one of the following conservation mechanisms:

- the establishment of BioBanking sites with BioBanking agreements under the *Threatened Species Conservation Act 1995*
- the dedication of land under the *National Parks and Wildlife Act 1974*
- a Trust Agreement under the *Nature Conservation Trust Act 2001*
- a Planning Agreement under s93F of the *Environmental Assessment and Planning Act 1979*.

Note: OEH no longer supports public positive covenant under s88E of the Conveyancing Act 1919 or Conservation Agreements under the National Parks and Wildlife Act 1979 as appropriate conservation mechanisms to secure and/or manage biodiversity offsets.

References:

DEC (2004) *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*. Draft, Department of Environment and Conservation, Hurstville; available at: www.environment.nsw.gov.au/resources/nature/TBSAGuidelinesDraft.pdf.

DECC (2009) *Threatened Species Survey and Assessment Guidelines: Field Survey Methods for Fauna – Amphibians*. April 2009. Department of Environment and Climate Change (NSW), Goulburn Street, Sydney.

OEH (2014) *BioBanking Assessment Methodology*. Office of Environment and Heritage, detailed at: www.environment.nsw.gov.au/biobanking/bbreview.htm.

ABORIGINAL CULTURAL HERITAGE ASSESSMENT

OEH has reviewed the Aboriginal cultural heritage assessment for the Mannering Colliery Modification Application (06-0311 MOD3) prepared by EMM 2015. OEH concurs with the assessment provided which concludes that there may be negligible increase in potential impacts by the proposed modification. The closest known Aboriginal site is one kilometre to the north-east of the proposed modification footprint and will not be impacted. There are no other known sites that will be impacted by the proposed modification. OEH notes that all activities will continue to be managed in accordance with the Mannering Colliery's Aboriginal Heritage Management Plan. OEH has no other concerns with respect to Aboriginal cultural heritage and the proposed development modification application proceeding.

FLOODING AND FLOODPLAIN MANAGEMENT

OEH offers the following comments on the floodplain management components of the proposed modification of the Mannering Colliery major project approval (MP06-0311).

Schedule 3 of the current Project approval details the requirement for the Water Management Plan to be developed in consultation with NOW. OEH recommends that this Water Management Plan should be reviewed and updated, where required, following subsidence episodes, to ensure that this infrastructure continues to function as designed with these proposed works.

There are no adverse impacts on surface flooding of private properties as a result of the proposed development, based on the information provided in the EA. There have been some significant subsidence incidents in the Mannering Park / Chain Valley Bay areas in the past, which far exceeded the levels of subsidence predicted in the EA. Thus, there is potential for a greater adverse impact on terrestrial and aquatic ecosystems and surface water flooding than what is predicted in the EA.

If subsidence is greater than that predicted in the EA, then it is anticipated that appropriate rectification works will be undertaken, and this is considered by others as part of this approval process.

In its current form, the floodplain management components of the Planning Proposal are generally supported by OEH to modification of the Mannering Colliery major project approval (MP06-0311).

OEH – AUGUST 2015