



Office of
Environment
& Heritage

Your reference: MP 05_0136 MOD 3
Our reference: DOC13/6345; FIL13/3091
Contact: Robert Gibson, 4908 6851

Mr Paul Freeman
Senior Planner, Mining Project
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Freeman

RE: ABEL UNDERGROUND MINE - MODIFICATION 3 (MP 05_0136 MOD 3) ENVIRONMENTAL ASSESSMENT REVIEW AND RECOMMENDED CONDITIONS OF APPROVAL

I refer to your email dated 6 March 2013 seeking comment and recommended conditions of approval from the Office of Environment and Heritage (OEH) on the exhibited Environmental Assessment (EA) for the proposed modification to the Abel Underground Coal Mine. It is noted the proposed modification is being dealt with through section 75W of the *Environmental Planning and Assessment Act 1979*.

OEH understands that the proposed modification involves the inclusion of longwall and shortwall coal mining in a mine that has previously only been mined by bord and pillar methods which would increase the rate of mining from about 4.5 million tonnes of Run of Mine (ROM) coal per year, to about 6.1 million tonnes of ROM coal each year. The modification includes changes and upgrades to the Coal Handling and Processing Plant to accommodate the increased coal mining rate, and may include the clearing of up to 11.1 hectares of remnant woody vegetation for management of tailings.

The EA presents limited details in the assessment of threatened biodiversity, and in this context, OEH has made a number of assumptions in order to complete the review. A summary of OEH's assessment, advisory comments and a recommended condition of approval is 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

20 MAR 2013

RICHARD BATH
Head – Hunter Planning Unit
Regional Operations

Enclosure: Attachment 1

ATTACHMENT 1

REVIEW OF PROPOSED MODIFICATION TO ABEL UNDERGROUND COAL MINE (MP 05_0136 MOD 3)

The Office of Environment and Heritage (OEH) has reviewed the Environmental Assessment (EA) for the proposed modification of the Abel Underground Coal Mine, including Appendices F and I, for potential impacts on Aboriginal cultural heritage and threatened biodiversity. OEH provides the following comments and recommended conditions of approval.

THREATENED BIODIVERSITY ASSESSMENT

The proposed modification involves allowing for longwall and shortwall mining to undermine up to about 460 hectares (ha) of land (about 210 ha of which is endangered ecological community (EEC): EA, section 3.3, Figure 6), clearing about 0.16 ha for a new downcast ventilation shaft, clearing about 2.2 ha for the revised alignment of the approved conveyor route and possible clearing of up to 11.1 ha of woody vegetation if alterations to the Bloomfield U Cut South void are needed for storage of tailings (EA, section 4.8; Figure 15). The EA assessment states that, with the exception of possible clearing around the Bloomfield U Cut South void the impacts of the proposed modification are commensurate in scale and nature to currently approved activities for the same area and nature of impact as the original and approved project (MP 05_0136: approved on 7 June 2007) The EA does not provide evidence to support this claim (as described in OEH's threatened biodiversity assessment guidelines (DEC, 2004)), and OEH notes that contrary to section 4.8.2 of the EA, that large parts of the vegetation communities mapped in the project area are EECs (NPWS, 2000).

OEH notes that consent condition 17 in schedule 4 of the original consent required the provision of a biodiversity offset of at least 20 ha, of which 10 ha must be Lower Hunter Spotted Gum – Ironbark EEC for the clearing of about 12 ha around the Coal Handling and Processing Plant, including clearing for a conveyor belt system. OEH understands that this clearing has not yet occurred and that the consent condition did not require the provision of the offset until clearing had been undertaken, which has not yet taken place. Under current biodiversity offsetting policy such an offset would now need to be provided up-front.

The current modification includes the change in route of the as yet to be built conveyor belt and so its offset requirements are covered by the existing consent condition.

However, the possible clearing of about 11.1 ha of woody vegetation adjacent to the Bloomfield U Cut South void would result in the clearing of Lower Hunter Spotted Gum – Ironbark Forest EEC (as per NPWS (2000)) and OEH expects that it would be offset in accordance with OEH policy. The EA for this project states that this area contains no threatened biodiversity without providing any data to support this claim, and unless and until that situation changes OEH requires that clearing of this vegetation must be appropriately offset.

The EA indicates that the northernmost area of proposed shortwall mining in the Upper Donaldson Seam has as little as 50 metres depth of cover (EA, pg. 26) in an area with about 60 ha of EEC vegetation. Section 4.2.4 of the Main Report of the EA discusses likely subsidence impacts, including surface cracking. Surface cracking is more likely where the depth of cover is reduced, and in the Hunter Coalfields it is more likely where the depth of cover is less than 100 – 120 metres (NSW Scientific Committee, 2005). OEH recommends that the proponent commit to offset any harm to threatened species, communities, populations or their habitats, particularly where unexpected mine subsidence has already occurred on this mine site (EA, section 4.2.1).

Finally, the EA for this development is short on details such as survey effort, the qualifications and experience of those involved in the biological assessment, and relies on site data for the 2006 EA for the original project that is now more than five years old. OEH has been able to fill in many of the gaps from other data sources but any subsequent environmental assessments for the Bloomfield site must meet

OEH's requirements in order for OEH to perform its assessment role fully, and for the process to be fully open and transparent.

RECOMMENDED CONDITION OF APPROVAL

1. That any vegetation clearing or impacts of underground coal mining that impacts on threatened species, populations or communities, or their habitats, for this development outside any other existing consents 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 use of the Biobanking Assessment Methodology in accordance with '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).

References

DEC (2004) Threatened Biodiversity Survey and Assessment: guidelines for Developments and Activities. Working Draft. November 2004. NSW Department of Environment and Conservation, Hurstville.

www.environment.nsw.gov.au/resources/nature/TBSAGuidelinesDraft.pdf

NPWS (2000) Lower Hunter – Central Coast Regional Environment Management Strategy (LHCCREMS). April 2000. NSW National Parks & Wildlife Services, Hurstville.

NSW Scientific Committee (2005) 'Alteration of habitat following subsidence due to longwall mining – key threatening process listing – final determination. 15 July 2005. NSW Scientific Committee, Hurstville.

www.environment.nsw.gov.au/determinations/LongwallMiningKtp.htm

ABORIGINAL CULTURAL HERITAGE ASSESSMENT

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, camp sites, grinding grooves, culturally modified trees and a rock shelter. 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 additional field assessments of the project area during April 2012, which have located 16 Aboriginal sites closely associated with the modification application. It is noted 12 new Aboriginal sites were identified. These sites include artefact scatters, culturally modified trees, grinding grooves and a potential archaeological deposit (PAD) located within a rock shelter.

Impacts on Aboriginal cultural heritage

It is noted that the development area is likely to be impacted by a range of predicted subsidence effects and through the construction of additional surface infrastructure. The proposal is therefore likely to impact a number of Aboriginal cultural heritage values associated with the project area, including Aboriginal objects and cultural places.

Aboriginal Heritage Management Plan

OEH refers to the consolidated Ministers Condition of Approval (MCoA) #29. It is acknowledged that the Aboriginal Heritage Management Plan (Working Draft 2.0, dated August 2012) (the AHMP) has been revised for the project area as a result of the modification application. This process is supported by OEH.

OEH has subsequently taken this opportunity to review the content of the AHMP and provides the following comments for consideration.

OEH refers to Section 3 of the AHMP. It is recommended that further details are provided by the proponents, which are detailed separately in the section below titled 'Advice'.

OEH refers to Section 4.2 of the AHMP. Effective management of Aboriginal cultural heritage must be done in collaboration with local Aboriginal people. The AHMP refers to a number of circumstances where consultation with Aboriginal people is critical in the management actions drafted in the AHMP. However, at present there is no Aboriginal 'voice' in the current AHMP. It is noted that no details have been provided within the AHMP detailing the consultation process undertaken by the proponent during the revision of the plan.

OEH refers to Section 4.4 of the AHMP. It is noted that this section refers to a "*qualified archaeologist*" engaged in the management of recorded Aboriginal sites in the surface impact area. However, Section 4.5.1 of the AHMP refers to "*an appropriately qualified expert*" engaged to assess potential impacts on Aboriginal cultural heritage values and Section 4.5.2 of the AHMP details an "*appropriately qualified and experienced archaeologist*". These experts should be considered one and the same, describing a suitably qualified archaeological and cultural specialist who has relevant experience in managing Aboriginal cultural heritage.

The specialist would also contribute during proposed monitoring programs, status reports, record and update site records, undertaking further archaeological investigations/assessments, have expertise in current legislative policy and processes and would engage in consultation with local Aboriginal communities.

OEH refers to Sections 4.4 and 4.5.2 of the AHMP. It is noted that Aboriginal objects (including surface material, lithic quarries, midden material and removed rock hosting grinding grooves) may be temporary removed and stored in a temporary storage facility during the course of the project. The proponent is reminded to ensure they comply with the provisions of Section 89A and 85A of the *National Parks and Wildlife Act 1974* (NPW Act) if and when undertaking these procedures.

OEH refers to Section 4.3 of the AHMP. OEH reminds the proponent that they have a responsibility to ensure that all details of Aboriginal cultural heritage values identified within the broader mining area (the Aboriginal Site Database) have also been recorded and registered with OEH's Aboriginal Heritage Information Management System Registrar. Details of proposed management of these sites should also to be provided to OEH in the information submitted to AHIMS. AHIMS contact details: Phone: 9585 6470, address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, e-mail: ahims@environment.nsw.gov.au.

OEH refers to Section 4.5.2 of the AHMP. Please refer to comments below regarding the preferred management of all grinding groove and rock shelter sites located directly above the proposed longwall or shortwall mining areas.

Work in the immediate vicinity of the newly identified Aboriginal site should only recommence following formal approval from the consent authority.

OEH acknowledges that the proponent has committed to implementing an Aboriginal cultural heritage training and awareness program for construction personnel associated with the project. Details of this program should be incorporated into the AHMP. Further, OEH recognises that Aboriginal people are the determinants of the significance of Aboriginal cultural heritage and it is acknowledged that this project occurs on Country. It is therefore strongly recommended that this program be developed and implemented in collaboration with representatives of the local Aboriginal community. Evidence of inductees should be collated, securely stored by the proponent and be made available to relevant authorities upon request.

Other management matters

OEH refers to Section 4.9.3 of the EA entitled Grinding Grooves. It is noted that following baseline recording of all grinding groove sites the proponent has not committed to any additional management actions at grinding groove sites assessed as being of low significance or those sites where subsidence impacts are assessed as unlikely or very unlikely to occur. This appears to be direct contrast to Section 11.10 of the Amended Statement of Commitments (SoCs), dated 28/05/2007, prepared for the Abel Underground Mine. This section indicates that all grinding groove sites which may be inferred to be undermined will be monitored prior to and following undermining activities.

OEH refers to the Section 11.10 of the Amended Statement of Commitments, dated 28/05/2007, prepared for the Abel Underground Mine. It is noted that the proponent intended to prepare annual reports documenting the results of the Aboriginal cultural heritage monitoring commitments on an annual basis. These annual reports were to be provided to the relevant Local Aboriginal land Council and OEH once prepared. A search of OEH's records could not locate a copy of each annual monitoring report following the project approval in 2007.

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 also encourages the proponent to maintain continuous consultation processes with the Aboriginal 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 envisages a gap of more than six months it is recommended that representatives of the local Aboriginal community are regularly informed of any progress.

Advice

Following OEH's assessment of the EA for the proposed modification OEH wishes to convey the following advice and recommendations to DP&I with regards to Aboriginal cultural heritage matters:

- the proponent develop culturally appropriate management strategies to alleviate any likely or possible impact in consultation with the registered Aboriginal parties (RAPs) for the project and in compliance with the Ministers Condition of Approval (MCoA)
- Section 3 of the AHMP includes further details on the nature and extent of the relevant statutory obligations the proponent is responsible for in accordance with the provisions of Part 6 of NPW Act. These include referencing the various provisions or sections of the Act and Regulations relevant to the reporting and recording of Aboriginal objects, the long term care of Aboriginal objects and consultation processes
- the proponent amends the AHIMP to include all details as now required by recent amendments in the of the NPW Act to ensure that the AHMP remains current
- Section 3 of the AHIMP is amended to include the relevant statutory responsibilities and provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which govern the proposed developments of the project area
- the AHMP clearly demonstrates that effective community consultation with the local Aboriginal community has been undertaken in the development and implementation of the revised policies and actions contained within the AHMP
- section 4.4 of the AHMP uses consistent terminology, particularly with respect to describing the suitably qualified archaeological and cultural specialist who has relevant experience in managing Aboriginal cultural heritage

- Section 4.1 of the AHMP is amended to include the roles and responsibilities of the archaeological and cultural specialist
- the archaeological and cultural specialist is provided with an opportunity to attend the proposed annual meeting to discuss the operation and effectiveness of the AHMP, heritage reports or work implemented in accordance with the AHMP. The experience and expertise provided to them would be invaluable and allow them to better perform their role
- Section 4.3 of the AHMP is amended to include processes and the commitment to ensure that all details of Aboriginal cultural heritage values identified within the broader mining area (the Aboriginal Site Database) are registered with OEH's Aboriginal Heritage Information Management System Registrar
- Sections 4.4, 4.5.2 and 4.6 of the AHMP have the now outdated references from the former Department of Environment and Climate Change replaced by current best practice guidelines. These include OEH's 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales' (2010), the 'Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW (2010)', the 'Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW' (dated April 2011) and the 'Aboriginal cultural heritage consultation requirements for proponents 2010'
- during the proposed annual review process, a review of best practice standards and guidelines is undertaken to ensure any management and mitigation strategies undertaken by the proponent occur in accordance with the appropriate and relevant archaeological and cultural standard
- the third dot point in Section 4.7 of the AHMP, which describes procedures when previously unidentified Aboriginal sites are identified as a result of development activity, is amended to ensure the incident is promptly reported to the consent authority without delay
- the an additional dot point is added to Section 4.7 of the AHMP with words of the following effect:
 - A suitably qualified archaeological specialist and representatives of the local Aboriginal community must be contacted to determine the nature, extent and significance of the Aboriginal object(s). The site must 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 include a section containing definitions or a glossary of key terms used throughout the AHMP
- the SoCs are adhered to by the proponent and post mining assessment are undertaken at all grinding groove sites located within the subsidence areas regardless of any potential risk of impact to determine the adequacy of any conservation measures undertaken in the vicinity of these significant sites
- monitoring of all rock shelters occur pre and post underground mining for all rock shelters identified within the areas likely to be impacted by subsidence or located directly above the proposed longwall or shortwall mining areas. This should occur regardless of the results of the significance assessment to ensure the former SoCs are adhered to
- Condition 28 in Schedule 4 of the consent issued for the Abel Underground Mine on 7 June 2007 is redundant because under Section 89J of the EP&A Act, an approval issued by OEH in accordance with the requirements of the Section 90 of the NPW Act to lawfully impact or harm Aboriginal cultural heritage values are not applicable to development applications determined under Part 3A of the EP&A Act
- the management of any additional likely impact or harm to Aboriginal objects as a result of the proposed modification application is addressed during the revision of the AHMP and in consultation with the RAPs for the project
- in order for OEH to assess the effectiveness of the proposed ongoing Aboriginal cultural heritage monitoring programs, a copy of each annual monitoring report is provided to OEH within three months of its completion
- a critique of the results of the monitoring programs is undertaken by an archaeological specialist in order to determine whether the current management strategies detailed in the AHMP are effectively and satisfactorily managing the associated impact or harm to Aboriginal objects as a result of the project.