

6 February 2015

Director-General
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Via Web Submission

Director-General,

Submission on Boggabri Coal Mine Modification Application 4 - Boundary and Infrastructure Alterations

We refer to Idemitsu Australia's application for modification to their planning approval for the Boggabri Coal Mine (**Mine**), application number 09_0182 MOD4 (**Modification**), which has been placed on exhibition by the Department of Planning and Environment (**DPE**).

NTSCORP Limited (**NTSCORP**) is the native title service provider for NSW and the ACT, with statutory responsibilities under the *Native Title Act 1993* (Cth) (**NTA**) to protect the native title rights and interests of Traditional Owners and native title claimants and holders in NSW and the ACT. NTSCORP makes the following submissions on the Modification.

Concerns about compliance with cultural heritage consultation procedures

NTSCORP refers to the consultation process detailed in the Office of Environment and Heritage's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (**Consultation Guidelines**). Insite Heritage Pty Ltd (**Insite**) detail in Appendix C to the Environmental Assessment (**EA**) submitted in support of the Modification the consultation process undertaken in respect of the cultural heritage impacts of the Modification if approved.

NTSCORP has concerns that this does not follow the requirements of the Consultation Guidelines. It appears that Insite has dealt with the consultation process as an ongoing process from their original consultation for the Mine, without reference to the Consultation Guidelines. NTSCORP submits that the DPE should require Idemitsu Australia to detail how this process has complied with the Consultation Guidelines, to the satisfaction of the DPE.

Particularly, NTSCORP notes that it does not have any records of receiving any notification of the consultation process for the Modification, as required under section 4.1.2 of the Consultation Guidelines.

Items of significance not included in the significance assessment

At section 6.2.1 of the main EA, and further detailed in Appendix C, it is stated that scarred tree BC52 will be impacted by the Modification, particularly the extension of sediment dam 12. It is also stated that there may be further impacts to site BC42.

We would expect therefore, that the cultural heritage significance assessment undertaken in Appendix C, would include an assessment of the significance of BC52 and BC42. However, we could identify no such assessment in Appendix C. Section 4.2.2 which asserts to include a significance assessment, does not make any reference to BC52 and BC42, and instead focusses only on potential megafauna remains.

Therefore we submit the DPE should require a revised cultural heritage significance assessment to be conducted, which includes an assessment of the significance of BC52 and BC42, before assessing the Modification. Without this, the DPE will not be able to properly assess the impact of the Modification upon the cultural heritage value of the area.

Lack of clarity around how items of significance will be managed

Section 6.2.1 of the EA provides that the expansion of sediment dam 12 may impact upon BC52 and BC42 requiring them to be salvaged. In section 2.1.5 of Appendix C, however, it states that these sites will be impacted by the extension of sediment dam 12. Clearly there is an internal inconsistency about the impacts of the Modification upon cultural heritage items.

This is mirrored in the consultation documentation. The consultation correspondence in Appendix B of Appendix C indicates that BC52 may have to be salvaged, however does not mention BC42.

NTSCORP submits that DPE should require Idemitsu Australia to clarify this discrepancy. In approving the Modification, DPE should have sufficient information available to know precisely what and how cultural values will be impacted by the Modification, in determining whether to grant approval for the Modification.

It should also be considered whether the consultation process has properly informed stakeholders of the impacts of the Modification on cultural heritage values. If not, then NTSCORP submits that the consultation process has not been appropriate.

In relation to the specific salvage processes proposed by Idemitsu Australia, NTSCORP cannot comment as there is not sufficient information available. The recommendations in section 6 of Appendix C indicate that BC52 will be salvaged in accordance with modified section 5.3.3 of the Cultural Heritage Management Plan. This Cultural Heritage Management Plan has not been made available in the exhibition process. The management plan on the listed website (<https://www.idemitsu.com.au/content/cms/Management+Plans/502/>) cannot be the one referred to, because no section 5.3.3 exists in that plan. The DPE should consider whether this failure to exhibit the actual salvage and management methodology to be used means there is not sufficient information available to assess the true impact of the Modification on cultural heritage.

No detail on compliance with the Native Title Act

NTSCORP submits that the NTA should be included as relevant Commonwealth legislation in section 4.2 of the EA. Particularly, Idemitsu Australia should be required to detail whether the Modification will constitute a 'future act' under the NTA, and, if so, how it will be validated. This is particularly important given that the Modification falls within the boundaries of the Gomeroi People native title claim, Federal Court Proceedings NSD 2308 of 2011.

If you require any clarification on these matters, please do not hesitate to contact the undersigned on (02) 9310 3188 or at rmackay@ntscorp.com.au. We request that the DPE notify us how the concerns outlined in this submission have been considered in the DPE's assessment and decision-making process.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ross Mackay".

Ross Mackay
Solicitor - Strategic Development