

Date: 14 August 2012

Attention: Paul Freeman (Planner)
Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2001

Re: Submission-Comments-Tasman Extension Project, Environmental Impact Statement-Appendix K - Aboriginal Cultural Heritage Assessment

ALLA (Hello in Awabakal) Paul,

We have reviewed the **Tasman Extension Project, Environmental Impact Statement-Appendix K - Aboriginal Cultural Heritage Assessment** and we have many concerns regarding the content of the document and the ramifications of the proposed management and mitigation on our Cultural Heritage.

We are also of the opinion that the document as well as the process to date, overlooks important factors in regard to consultation and lacks a Cultural Significance Assessment from the Awabakal People who are now, under the Commonwealths Native Title Act, the Registered Native Title Claimants for the proposed mining application boundary for the Tasman Extension Project area.

Serious consideration needs to be afforded to the management and mitigation recommendations that this document is putting forward and needs to include in depth an Appropriate Cultural Heritage Assessment because as it does not take into consideration the Awabakal People as Registered Native Title Claimants and our view regarding our Traditional Country and also the legislative obligation by Donaldson Coal regarding consultation now with and only with the Awabakal People.

Considering the information supplied it gives us no other option but to say up front that we do not agree with this document in its current form and it is lacking in many respects and does not reach anywhere near the standard that is expected by the legislative requirements.

Below we bring to your attention in the following dot points some outstanding issues that we believe need to be addressed within this document. Unfortunately, we believe there are many issues within this document due to a total lack of consultation with the Awabakal People in regard to our Cultural Heritage and how it should be managed to be able to address them all here.

- First, we would like to draw your attention to the fact that we, the Awabakal People, are recognised under Commonwealth Legislation as Registered Native Title Claimants over the proposed mining application area for the Tasman Extension Project.

- a. The Federal Court Decision File Number is NSD951/2012
- b. The National Native Title Tribunal Number is NC12/3-1

This then means that Donaldson Coal has an obligation under the law to only deal with those People who are Claimants under the Native Title Act.

This is also supported in the **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment** dot point t) of the *Executive Summary* which states;

'The AHMP will be revised in the event that a Native Title Claim is granted within the Project area, with future Aboriginal involvement in the area that is the subject of the granted Claim to only involve the successful Claimant;'¹

¹ **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment** dot point t) *Executive Summary*. A report for Donaldson Coal April 2012 by Southeast Archaeology

- Under the heading *Executive Statement* of the **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment** dot point 1) It says;

'Provisions relating to Aboriginal heritage will be included in an Aboriginal Heritage Management Plan (AHMP) for the Project. These provisions will be formulated in consultation with the registered Aboriginal parties and the Department of Planning and Infrastructure and the OEH and specify the policies and actions required to manage the potential impacts of the Project on Aboriginal heritage after Part 4 approval is granted. The AHMP will comprise detail that, subject to Part 4 Project Approval, will guide management of the Aboriginal heritage resource in lieu of a Section 90 Aboriginal Heritage Impact Permit. The primary elements of the AHMP are outlined below:'

Further to this above statement we would ask if the AHMP is to *'...be formulated in consultation with the registered Aboriginal parties...'*

- a. Why is there already 3 pages attributed to an AHMP?? Why has it attained this level of content before there is even an approval of the proposed Tasman Extension Project?
- It also states in the Executive Summary that;

'The following recommendations are made on the basis of legal requirements under the Environmental Planning and Assessment Act 1979 and National Parks and Wildlife Act 1974, the results of the investigation and consultation with the registered Aboriginal parties:'

- a. How can this also state that *'The following recommendations are made on ... the results of the investigation and consultation with the registered Aboriginal parties'*
 - 1) when there has been very limited consultation with us and what consultation (if it can be termed as this) could not be as in-depth as what is being portrayed and relayed within this Executive Summary. It is ridiculous to even contemplate that you could arrive at this level of information that already takes up 3 pages before you have even started to consult with the appropriate People.

It is also disturbing and that all this information within this document needs to be reviewed and revised now at this point in time as there has been a decision regarding Native Title and this then changes completely the dynamics of the whole structure of this **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment Report** because as it is already stated in the Executive Summary that;

'The AHMP will be revised in the event that a Native Title Claim is granted within the Project area, with future Aboriginal involvement in the area that is the subject of the granted Claim to only involve the successful Claimant;'

- a. If this would need to be done as a legal obligation by Donaldson Coal for the AHMP (in this case an assumption was made by the authors within this document that the AHMP may already be in place by the time Native Title is decided) then this should now apply to this document also known as the **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment** and should render it invalid under the legislative requirements and needing to be revised in consultation with the Registered Native Title Claimants because there has been a Native Title decision for the Awabakal People over the area well before any AHMP is put in place and before any decision has been made on approval of the proposed project.
 - b. This issue was pointed out to Donaldson Coal representatives very early in the piece regarding a Native Title Claim and they as usual ignored what was relayed to them by the Aboriginal Stakeholders!!
- We also have concerns that this project has failed dismally in regard to the same level of commitment to Aboriginal Stakeholder consultation and the same exemplary conduct shown to us in relation to the **Oceanic Coal Aboriginal Cultural Heritage and Archaeological Assessment - Continued Operations Area, West Wallsend Colliery** and subsequent

Cultural Heritage Management Plan. We were part of this process and this was a completely different procedure where we felt we were part of the project and actually had a voice and our concerns were dealt with in a very professional manner and we could see results of a mutual partnership to see our Cultural Heritage be afforded the appropriate consideration and even preserved completely in some instances. As stated earlier, compared to this process now it is like the difference between having a tongue and being able to speak your own words and be heard, and then not having a tongue and being kept quiet and frustrated while someone else speaks their words and says they are yours. Maybe this **Tasman Extension Project, Environmental Impact Statement-Appendix K- Aboriginal Cultural Heritage Assessment** needs to emulate that of the **Oceanic Coal Aboriginal Cultural Heritage and Archaeological Assessment - Continued Operations Area, West Wallsend Colliery** and subsequent **Cultural Heritage Management Plan** which has now been widely proclaimed as the standard other proponents and projects need to aspire to.

- Also we would question where is the Cultural Significant assessment within the document which is supposed to outline what the Aboriginal Cultural significance of the area is and in what regard we hold it significant to us from the Aboriginal Stakeholders point of view??. There needs to be some framework for this at the front of this report (in consultation with us) as now under the legislative requirements it is the Cultural Significance report that should be presented first and then the archaeological report that follows this in the document. This has not been done in the first instance and therefore presents this document in the light of already not meeting current legislative requirements or standards. Again where is the Cultural Significance report within this document??
- For us as Awabakal People the artefact scatters, isolated finds and the axe grinding grooves are all part of our Cultural Heritage and are considered by us to be of high significance. For archaeologists there is a clinical 'put it in a box' view 'so it can be categorised and assessed when stacked up against criteria that someone has formulated to fit it into their bigger picture' type of response. This is fine in some circumstances but it doesn't always work. Not always can we narrow things down to squeeze them into the box of our choosing that we want them to fit into. We are talking about the influence of a lot of variables over many centuries. Therefore to restrict something to a standard that is only defined by someone who formulates a process so as to control or have it conform to their opinion, is not looking out to see what is there, but confines their perspectives which then limit the true boundaries of that same process. We should look past those things that limit and constrain us; there is always more than meets the eye!!

Impacts

- Impacts on our Cultural Heritage is stated in Table 16 starting on page 196-204 and covers a whole gamut of 'probably, partial, possibly total etc.
 - a. We do not support any impacts to our Cultural Heritage by any mining activity as all our Cultural Heritage is significant to us.

Director-Generals Requirements for Heritage

- We draw your attention to **Appendix 1** within the draft report *Director-General's Requirements*. On page 223 of the document the requirements are set out under the heading of *Heritage*. This states that '*an Aboriginal cultural heritage assessment (including both cultural and archaeological significance) which must:*
 - *Demonstrate effective consultation with Aboriginal communities in determining and assessing impacts, and developing and selecting mitigation options and measures;*
 - *Outline any proposed impact mitigation and management measures (including an evaluation of the effectiveness and reliability of the measures)*
- a. As to the first dot point, there has been no other consultation with us other than being given the opportunity to make some written comments on the draft report and two days one in field one in house. As far as we are concerned, this does not equate to an effective mechanism to help produce constructive dialogue that can contribute to developing and selecting viable options for mitigation and management measures for our Cultural Heritage.

- ❖ We believe that the consultation has been inadequate as there have been no workshops with the Aboriginal Stakeholders to discuss in depth the related impacts to Cultural Heritage from the proposed project or mitigation and management options.
 - ❖ There is no Cultural significance assessment attached to this document because there has been a failure to consult with us in regards to the Cultural significance of the area or our Cultural Heritage which is located in this area.
 - ❖ As to the second dot point, many of the proposed impact mitigation and management measures just seem to be adopted and carried over from other projects because they did not consult with us concerning these recommendations.
- Also on page 705-706 under sub heading *Appendix 6 Aboriginal Community Consultation* you will find correspondence from Awabakal Descendants Traditional Owners Aboriginal Corporation Managing Director Shane Frost to Josh Peters and Peter Kuskie which outlines our disbelief that we have no additional days to discuss in depth and workshop other than the comment period and the one day in the field and one day in house to workshop as a group the Cultural significance of the sites within the proposed project area. This just goes to show that attempts were made to see if there would be reasonable time afforded to what would be expected for the scale of this proposal. But as others have pointed out in their correspondence '*We believe we have been pushed aside and totally disrespected in these proceedings*' (*Keepa Keepa Elders* page 695-696 of the document).

Therefore, when taking these points into consideration, we believe that the document does not meet the Director-Generals Requirements for Heritage or the OEH Requirements 2010.

- Taken from *Attachment 1 page 2 Office of Environment and Heritage Recommended Director General's Requirements for Tasman Extension Project –Environmental Assessment* it says under sub heading Specific Issues dot point 4 please note;

The EIA must assess and document the archaeological and Aboriginal significance of the sites Aboriginal cultural heritage values.

- 1) We believe the document fails in this regard as there is very little Aboriginal Significance which is supported by consultation with the Aboriginal Stakeholders.
- 2) Under *Appendix 6 Aboriginal Community Consultation* on page 1 of the *Donaldson Coal Tasman Mine Extension-Meeting and Site Inspection with Registered Aboriginal Parties 27 January 2012, Meeting Notes* it states that;

Following the inspection, discussion was held with stakeholders and it was informally agreed that the best way forward was for SD to complete the subsidence assessment, PK to complete the draft heritage assessment report (noting some incomplete sections on cultural values), the draft to be provided to stakeholders and further meetings to be held in March to work through the draft report.

- 3) Note that the bracketed sentence says '*(noting some incomplete sections on cultural values)*'. This goes to show that even the archaeologist was indicating there were areas devoid of Cultural Values within the draft report!! This again shows this document is not in line with the Director General's Requirements.
- 4) And as to the closing sentence is saying '...the draft to be provided to stakeholders **and further meetings to be held in March to work through the draft**' notice it says meetings but unfortunately this did not eventuate and subsequently there was only one (1) day (Thursday 22 March 2012) allocated to the task of consultation and discussion of the Aboriginal Cultural Heritage Assessment. This meeting ended in quite an ordinary fashion with no outcomes whatsoever from the discussions other than the Aboriginal Stakeholders asking for a workshop so that the Cultural Heritage Values could be assessed and the mine indicating that they would speak with us in the coming week!! Again there was one (1) response to say thank you for our attendance at the meeting and the information gleaned from this meeting (there was none) would be added to what Donaldson believes to be adequate information for the Cultural Heritage Assessment. Again inadequate consultation as far as we are concerned!
- 5) It is also to be noted that on page 733 of this document there is another response from an Aboriginal Stakeholder that under issue #50 they say;

It has been requested that each reported and previously recorded site is to be given individual ratings for cultural significance. I want to report that all the sites within their associated fauna and flora environments are rated as having high cultural significance, all within this very special sacred and spiritual landscape. Even the draft report states that the area “hosts Aboriginal heritage evidence (including cultural sites and values) in the form of a cultural landscape that is not replicated elsewhere locally”. In regard to the meeting held on 22 March 2012, our organization supports an inclusion of an Aboriginal Cultural Assessment compiled in consultation with the Aboriginal stakeholders and traditional owners to cover all aspects of environmental and heritage significance of the Mt Sugarloaf area.

- 6) Note that they support an Aboriginal Cultural Assessment compiled in consultation with the Aboriginal stakeholders and Traditional Owners to cover all aspects of environmental and heritage significance of the Sugarloaf area. Again this has been ignored.

- Also taken from *Attachment 1 page 2 Office of Environment and Heritage Recommended Director General's Requirements for Tasman Extension Project –Environmental Assessment* it says under sub heading Specific Issues dot point 6 which says;

The EIA must provide documentary evidence to demonstrate that effective community consultation with Aboriginal communities has been undertaken in assessing impacts, developing protection and mitigation options and making final recommendations. OEH supports broad-based Aboriginal community consultation and as a guide DECCW's 'Aboriginal cultural heritage consultation requirements for proponents 2010' provides a useful model to follow. This requirement is available on OEH's website at:

- 1) Consultation has not been anywhere near to the required standard so the process fails to meet the legislative requirements as outlined above.

- Again taken from *Attachment 1 page 2 Office of Environment and Heritage Recommended Director General's Requirements for Tasman Extension Project –Environmental Assessment* it says under sub heading Specific Issues dot point 7 which it is noted as stating;

If impacts on Aboriginal cultural heritage values are proposed as part of the final development, an assessment of the proposed impacts in the context of 'inter generational equity' and cumulative impact must be undertaken. This assessment must examine both cultural and archaeological perspectives equally at both the local and regional levels, with consideration given to the site level and broader landscape level.

- 1) This statement above has definitely not been addressed as there is no mention of '**Intergenerational Equity**' within the document. Therefore this document again does not meet the Director Generals Requirements and leaves serious questions as to why is this the case and if this is the case (as is already shown), then there needs to be a revision of the document and the previous points need to be complied with to gain approval.

Intergenerational Equity

We believe that there has been a drastic oversight within this document which noticeably fails to address the question of Intergenerational Equity. If Cultural Heritage sites are compromised of which they are going to be as stated in the document that the grinding groove sites and shelter is predicted.

Where is the intergenerational equity and offsets for the possible destruction of our Cultural Heritage??

We must ask ourselves what is intergenerational Equity?? We see *Intergenerational Equity* as a provision for future generations to benefit from what has transpired in the past and to have been left as much as the previous generation.

Below are provided three (3) examples we have included quoted from international organisations/standards from around the world which explain what *Intergenerational Equity* represents;

- a. **Intergenerational equity:** A core proposition is that future generations have a right to an inheritance (capital bequest) sufficient to allow them to generate a level of well-being no less than that of the current generation. Also refers to fairness in the treatment of different members of the same generation.²*
- b. **Intergenerational equity:** Meeting the needs of the present without compromising the ability of future generations to meet their own needs.³*
- c. **Inter-generational equity:** The principle of equity between people alive today and future generations. The implication is that unsustainable production and consumption by today's society will degrade the ecological, social, and economic basis for tomorrow's society, whereas sustainability involves ensuring that future generations will have the means to achieve a quality of life equal to or better than today's.⁴*

Does Donaldson Coal think they adequately address **Intergenerational Equity** in their underground mining activities and the potential to impact Awabakal Cultural Heritage sites within that underground mining area?

- We would now like to solicit a response from Donaldson Coal in regard to these important questions below.
 - a. What measures have been put in place within this document so as to address the issue of Intergenerational Equity in the event of possible damage or disturbance to Awabakal Aboriginal Cultural Heritage if potential surface impacts from subsidence eventuate?*
 - b. How has and will Donaldson Coal address the question now of Intergenerational Equity for future generations of Awabakal People?*

Suitable Offsets

- A couple of questions to ponder and address are;
 - a. Where are offsets addressed within this draft report regarding the possible destruction of our Cultural Heritage sites?? This is an important issue that we have not seen any mention of within this document but have seen plenty of evidence to show that there will be impacts to our Cultural Heritage!!
 - b. Why is it that there seems to be nothing to protect our Cultural Heritage and to leave something for those who are to come in the future but allows for if it is properly recorded beforehand (and considered low significance or possibly no impact) it is ok then for it then to be destroyed?? This is blasé to say the least!!

Are these questions going to be adequately addressed before a project approval is issued we would hope so!

Keepa Keepa Pathways???

- We have a problem with the use of the words Keepa Keepa Pathways that are used regularly throughout this document as these pathways are denoted by a name chosen by someone that is not from this area and not a Traditional Owner. These Pathways are not Keepa Keepa Pathways but Awabakal Peoples Pathways used for thousands of years by **OUR PEOPLE the AWABAKAL!!!** This is not a word from our Awabakal Language and does not describe a grass tree within our Traditional Country and should not be used in conjunction with this area. The Sugarloaf Range which incorporates the Mount Sugarloaf area is known by a totally different name by our People and has been for generation upon generation, this name will continue to be used by us and is not being promoted for the use by others.

² From Website 'www.traditionalknowledge.info/glossary.php'

³ From Website 'www.konsult.leeds.ac.uk/public/level1/sec17/index.htm'

⁴ From Website 'www.ic.gc.ca/eic/site/ee-ee.nsf/eng/h_ef00016.html'

- a. We would ask that the use of this term be discontinued and all references to it to be extracted from this document before approval is granted.

Indigenous Land Use Agreements (ILUA)

- In reference to a statement on page 120 of this document last paragraph where it states that there is 'An existing ILUA' with Tasman Mine. Was the National Native Title Tribunal contacted to verify this and what was the outcome??

Traditional Owners of the Mount Sugarloaf and Range Area

- There are also many claims made within this document by various people and groups to being Traditional Owners over the proposed Tasman Extension Project mining area and surrounding area. We as Awabakal People are the only ones who have a legitimate right to make this claim as we have now been recognised through the Commonwealths Native Title process as the Registered Native Title Claimants for this area and therefore the right to be officially recognised as the Traditional Owners of this region! Anyone can make claims but the real test is can they back them up with the proof!!
 - a. Therefore we would request that the document needs to be revised for many obvious reasons but also to incorporate what is fact instead of leaving unsupported and misleading information in a document that will be more than likely referred to for future reference by other archaeologists and consultants among others.

Statement of significance of this area to Awabakal Traditional Descendants

It also must be remembered that the significance of place to our people does not just rely on the presence of artefacts, grinding grooves, scars or any visible evidence associated with the site or area. Although what does remain in the physical realm whether small or large, does connect us to our Ancestors and our Cultural Heritage being the physical reminder of what helped govern and guide the everyday lives of our people. With this physical evidence we can touch the very stones (artefacts) that they (our Ancestors) worked and fashioned into tools and implements. We can visit the sites they also visited and utilised and left us as reminders of their physical presence within the landscape that makes up our Traditional Country. Unfortunately in this day and age it has become too easy due to ignorance, lack of connection and insufficient understanding of the entire picture, not to mention so called progress, to devalue and debase our People and our Cultural Heritage which has belonged and survived in this area for thousands of years. The fact that this area is a contributing part of what makes us who we are and where we come from cannot be defined just as something tangible. The feeling of the area and the extensive connection we have with it, the awareness of knowing this is a connection that is confined to just a handful of people living today because it was **OUR** Ancestors that walked upon it. This is sufficient enough for us to be resolute in knowing that we are part of the reason of what makes this place significant. Our people, the Awabakal, have for centuries looked after this area as part of our greater Traditional Tribal Country and we believe that in today's climate we as Awabakal Descendants need to continue to be involved in the Protection, Preservation, consultation and management issues that affect the Traditional Tribal Country of our Ancestors. We consider our involvement paramount and if neglected or overlooked in this process, we believe it is to the detriment of the community and the complete understanding of the Awabakal People and the wellbeing of the area in question. This land holds secrets which are significant to us, many stories from the past connect us to it and these stories will continue to live and be significant because they live in us and are what makes us by birthright, Awabakal People.

Therefore it is imperative that people understand that all of our Cultural Heritage is of great importance to our People, whether it is an isolated find or artefact scatters that are encountered, it is all significant. From the smallest to the largest they are all relevant. Then again, a place may be just as significant to us without any physical evidence or application or designation being placed upon it. A landscape as devoid of physical evidence as is common sense and morality by those who enforce or support much of the legislation that not always, but on many occasions, ultimately sees the demise of the very Cultural Heritage that they themselves have vowed to protect and through their much celebrated but sadly misplaced enthusiasm, is more than often overlooked on many occasions by those who should know better but unfortunately don't.

As outlined above this area is very significant to us as Awabakal People the Traditional Owners and Registered Native Title claimants of this area. These Cultural Heritage Values that remain around this area are a glimpse into the lives of our Ancestors and are paramount and integral to the future intergenerational equity and Cultural Heritage and Knowledge of our People, the Awabakal. It is where our People have lived for generations. Our Ancestors fought for centuries for the place they came from

and all that had been passed down to them!! This today is the legacy we have inherited. We still fight to protect and preserve the integrity and uniqueness of the Awabakal People. We think of the future; will those to come endure and continue this generational legacy??

We thank you for the opportunity to provide our response and comments for this document. We look forward to your reply and if you need further clarification regarding the information we have provided please don't hesitate to contact us at your earliest convenience. Our contact details are as follows.

NGI NOA (Farewell in Awabakal)

Shane Frost-Managing Director: Awabakal Descendants Traditional Owners Aboriginal Corporation

Email: shanefrost@bigpond.com Phone: 49964325 Fax: 49964325 Mobile: 0428320671

Cultural Heritage Sites - Physical reminders of our Ancestors; once they are gone, they are gone forever and impossible to bring back!! THINK first and make WISE decisions last!!