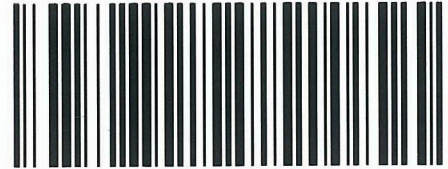




**Office of  
Environment  
& Heritage**



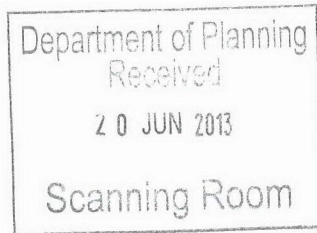
PCU045429

Our reference:  
Contact:

DOC13/25827  
Phil Purcell  
02 6883 5341

Director, Mining and Industry Projects  
Major Projects Assessment  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Attn: David Kitto



11 June 2013

Dear David,

**Re: Aboriginal Cultural Heritage Publicly Exhibited Environmental Impact Statement**

Please accept OEH apologies for the delay in providing comments on the Aboriginal cultural heritage assessment for the Watermark Project. The extensive nature of the Project and the ACH issues related to it required a detailed examination. Overall, OEH accept the findings of the assessment report including proposed mitigations to minimise harm to Aboriginal objects. The OEH review identified matters which are discussed overleaf.

OEH recommend prior to project determination that the matters surrounding the cultural identification of scar bearing trees is concluded. OEH presents a list of additional recommendations for implementation during the phased development of the Aboriginal Heritage Management Plan, post determination.

Details of the OEH response and recommendations are provided overleaf.

If you have any questions regarding this matter please contact myself on 02 6883 5317 or Phil Purcell on 02 6883 5341.

Yours sincerely

**PETER CHRISTIE**

**Regional Coordinator  
North West Region**

Attachment Overleaf: OEH review of the Watermark Project Aboriginal cultural heritage assessment.

# Watermark Coal Project Public Exhibition

## Office of Environment and Heritage Response – Aboriginal Cultural Heritage

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### Acronyms used within this document:

ACH – Aboriginal cultural heritage

EL – Exploration Lease

EA – Environmental assessment

AHMP – Aboriginal heritage management plan

RAPs- Registered Aboriginal Parties

New England NW (SRLUP) - New England North West Strategic Regional Land Use Plan

OEH – Office of Environment and Heritage

### 1. SUMMARY

The Aboriginal culture and heritage assessment (ACH) provides an adequate overview for the area of land covered by the Watermark EL relative to areas of proposed high impact. The OEH review has identified several matters one of which, the identification of Aboriginal scarred tree issue, will need to be addressed prior to project determination. OEH expect that other matters discussed will be adequately addressed during the development of the Aboriginal Heritage Management Plan (AHMP) post approval.

### 2. INTRODUCTION

The ACH assessment is separated into 5 studies that covers, descriptions of the archaeological record, the Aboriginal cultural, social, and contemporary context of the region, an arboreal evaluation of scarred trees, a geomorphology study to assist archaeological observations, and a geotechnical examination of two axe grinding groove sites to assess the possibility of removal.

OEH has examined the ACH assessment against the Director General Requirements (DGRs) and also considered the Project proposal in the context of Policy identified in the New England North West Strategic Regional Land Use Plan (SRULP). This was undertaken for further scrutiny due to the size of the proposal and the complex issues that have evolved from the assessment findings.

The extensive ACH subject matter and the complex manner in which it has been presented prompted OEH to request a single summary report that presents a clear overview of the ACH assessment including issues and recommendations. To that end OEH accept the synopsis prepared by Hansen and Bailey (2013) relative to the points raised by OEH in a letter to Planning NSW dated 22/11/2012.

OEH comments cover the main topics of:

- 1 Aboriginal consultation
- 2 Archaeological findings including, Aboriginal scarred trees, axe grinding groove sites, landuse history, the cumulated impacts to Aboriginal sites, and the proposed mitigation strategies and recommendations.
- 3 Aboriginal cultural heritage values assessment (Connect for Effect 2012).

### 3. ABORIGINAL CONSULTATION

The Project DGRs instruct the Proponent to demonstrate effective consultation with Registered Aboriginal Parties (RAPs) in determining impacts and selecting options and mitigation strategies. OEH view is that the Proponent has complied with the DECCW Aboriginal consultation requirements (DECCW 2010) and the

earlier draft guidelines (DEC 2005). The consultation summaries show that 145 Aboriginal people registered their interest in the project and many were active participants in field work or were actively sought out for comments on the project proposal, the assessment findings, and the appropriateness of management recommendations.

OEH understands from the documentation that in addition to the 145 Registered Aboriginal Parties (RAPs) a series of on-going meetings, presentations, and field visits were conducted with people nominated by the RAPs as Elders who speak for the Mooki and Walhallow area. This process is reported to be repeated throughout the assessment as additional parties from wider afield registered their interest in the project. Overall, the report shows that consultation adequately provided registered parties with opportunities to understand the impacts to ACH and raise any cultural concerns.

The extensive number of participants resulted in a wider than usual range of views and perspectives on Aboriginal cultural heritage management and the manner in which assessments should be conducted. It is evident from the report findings that the large number of RAPs and the extensive interest shown in the project has had a bearing on the Aboriginal engagement process. As a result, OEH is concerned that the development of the Aboriginal Heritage Management Plan (AHMP) will be affected by managing input from an extensive number of stakeholders registered in the project. Consultation with the RAPs will need to be effective when developing the AHMP. OEH wishes to stress that the AHMP is the key instrument of compliance that directs the Proponent to those actions designed, in consultation with the RAPs, to avoid or minimise harm to Aboriginal sites.

#### *Recommendation*

The Proponent should ensure that Aboriginal engagement systems are productive when developing the AHMP.

## **4. ARCHAEOLOGICAL FINDINGS**

### **4.1 Research**

OEH acknowledges the work compiled by AECON and believes it offers potential for increasing knowledge of the regional archaeological record. The AECON identification of potential locations with archaeological deposits (subsurface) is supported by the geomorphology investigation with recommendations for further work to be undertaken during the AHMP. OEH supports research and excavation in those areas identified in the AECON report as having a high yield for subsurface objects.

However due to the deleterious impact on Aboriginal sites from the proposed development and impacts regionally OEH advocates that research should be aligned to the challenges facing ACH in the Gunnedah Basin as documented in the New England NW SLRUP (DPI 2012:68). OEH wishes to highlight to Planning NSW and the Planning and Assessment Commission (PAC) evidence of the cumulated impacts to ACH from regional landuse that has been sourced from the OEH Aboriginal Heritage Information System (AHIMS). Attachment 1 presents an aerial map which highlights the location of the sites recorded within the Watermark EL relative to regional landuse impacts. As a result of these impacts OEH argues that there is a significant need for establishing a baseline of Aboriginal cultural heritage information that can assist future planning and development decisions in areas of the Basin. Further research of the Watermark findings are well placed to contribute to that need.

OEH's view of the AECON research design is that it has not yet fully evolved to a point where it succinctly explores ways to interpret Aboriginal cultural heritage for the Watermark precinct in a way that sets up a baseline model for the region. OEH wishes further research refinement through the AHMP process and advises that it serves the key functions of aiding government decision-making on significance evaluation, and informs Aboriginal people about their history for use in intergenerational education, and interpretation programs that target diverse audiences. OEH also stresses that research programs should also be

developed with the lessons learnt from the cumulated impacts to ACH in the Hunter Valley, and previous research conducted in that region.

OEH wishes to raise the following observations of the archaeological findings to date. Research themes are listed in the recommendations that follow.

- The AECON report, supported by the geomorphology investigation, has argued that the majority of Aboriginal objects (stone artefacts) are of low significance based on an evaluation of disturbance history which has affected the likelihood that *in situ* deposits have survived. OEH view is that heritage investigations in Environmental Assessments are not limited to identifying *in situ* deposits. To focus solely on disturbance history when making site evaluations negates attempts by Aboriginal people to promote cultural values of the archaeology.
- The report's calculation of disturbed land within the Watermark EL is 76.1% moderately disturbed (pastoral) and 22.3% undisturbed, with the remaining 1.7% indicating high disturbance. Whilst the geomorphology study argues impacts to Aboriginal site integrity from land use and erosion, the spatial relationship between Aboriginal sites (objects) and multiple landform types remains intact and therefore useful for exploring questions about Aboriginal landuse.
- The wide spatial pattern of known objects within the EL boundary remains unexplained. OEH argue that there is merit in exploring the relationship between low occupancy locations, based on low frequency of artefacts, to areas of higher artefact density.
- The theme of landscape has factored significantly in the RAP submissions and the values expressed by the RAPs show that ACH values are not limited to intra site analyses but extend to inter site relationships as well including non site values such as vegetation, habitat, and landform variation (i.e. 'the environment').
- AECON have initiated an analysis program using a sample selection of stone artefacts observed within the Watermark EL. OEH wish to see the analysis expanded during the implementation of the AHMP and the parameters of research weighted towards exploring research questions that aide future EA projects in the region and which interpret the Watermark sites.
- The RAPs have also indicated a strong interest in exploring the interpretation of Aboriginal sites within the EL and wish to have revealed more information about Aboriginal occupation for the Liverpool Plains. This has a direct bearing on those community recommendations requesting the development of Aboriginal community interpretation programs.
- The discovery of a *tula slug*, WM-AS9-11, east of the normal range for *tula* technology is significant and indicates either movement across several landscapes or adoption of tool technology not reported outside of the semi arid/arid zones. OEH consider this an interesting find and hope that further examination of its presence remains ongoing. The identification of the bifacially prepared axe blank of andesitic greywacke, WM-AS13-11, is also interesting but expected given its locality to the Tamworth "Daruka" quarry.

### Recommendation

OEH requests that further work is undertaken through the AHMP process to interpret the known and unknown distribution of Aboriginal sites across the Watermark EL. OEH requests that further archaeological research of Aboriginal heritage is geared towards developing site significance (scientific) with Aboriginal cultural interpretations of site significance and landscape values. As research opportunities are linked to the implementation of mitigation strategies OEH consider it appropriate that this recommendation is actioned during the development stage of the Aboriginal Heritage Management Plan process, post project approval.

OEH recommend the following archaeological research themes.

- Research of the Watermark EL sites that will strategically assist in identifying the significance of sites distinct to the Gunnedah Basin
- Research models designed to be inclusive of Aboriginal cultural interpretation and be developed through a consultation program.
- Artefact analysis programs that develop a regional picture of Aboriginal landuse and that assist with identifying site significance and interpretation.

#### **4.3 Proposed ACH Assessment Mitigations And Recommendations**

The Project DGRs instruct the Proponent to outline appropriate mitigation and management measures and to evaluate the effectiveness and reliability of both. In view of this OEH consider that the management recommendation for establishing ACH offset areas on Shenua owned lands at '*Watermark Gully Cultural Heritage Offset Area*' and the '*Mooki River Cultural Heritage Offset Area*' is appropriate to the scale of loss of Aboriginal sites that will be incurred by the proposed mine operation.

OEH acknowledges that the extent of harm to Aboriginal objects and sites has in some instances been reduced through recommending community collection and excavation salvage projects (AECOM 2013:100-6). OEH recognises that several sites will be avoided and expect that this will be formalised in the conditions of approval and managed accordingly in the AHMP.

#### *Recommendation*

In considering the impacts proposed for Aboriginal heritage within the Watermark EL and the cumulated impacts to heritage regionally OEH supports the ACH recommendations for the identified ACH Offset areas. It is requested that the Proponent engage with OEH to discuss conservation options for the long term protection of the Aboriginal Offset areas.

#### **4.4 Identification Of Aboriginal Scarred Trees**

The AECON (2013) archaeological assessment report has determined that six scar bearing trees are not the result of traditional Aboriginal practices. Several RAP submissions are strongly opposed to this determination. An arborist evaluation of the trees is included in the ACH assessment but opposing views remain deadlocked. The results of the arborist study have been only partially conclusive. Three trees have been judged as possible Aboriginal scarred trees, four unlikely, and two either due to Aboriginal or European activities, with one determined as a result of traditional Aboriginal practices. It is further reported that the RAP were not present during the arbores evaluation.

The arguments provided from both perspectives lack documented evidence, particularly the views maintained from several of the RAPs. The AECON archaeological assessment refers to the DEC (2005) Aboriginal scarred tree manual however given the opposition to their results OEH believes that the assessment indicate how the manual's criteria was used when evaluating each tree in question, especially with regards to landuse history, and Aboriginal traditional tree usage. The ethno historical references referred to in Aboriginal Culture Heritage Values Assessment (ACHVA) report introduce a range of Aboriginal tree use but this has not been applied to the trees in question but discussed generally and therefore of limited use to the archaeological evaluation.

The archaeological assessment (AECON 2013) states that Aboriginal known scarred trees are dominate throughout the region based on the results of an analysis of AHIMS database but argue that evaluating the cumulated impacts to scarred trees in the region is affected by limitations of the database particularly when making comparisons between known examples and those recently recorded. OEH wishes to draw focus to the listings of Aboriginal scarred trees per land tenure type which are more numerous on travelling stock

routes (TSRs) where they intersect watered areas. Surviving scarred trees on private land are significantly less due to the widespread land clearing on the Liverpool plains. By way of comparing likely areas of surviving scarred trees, timbered areas on TSRs offer optimal locations to measure comparisons with other tenure type. Areas of state forests such as, Vickory, Breeza and Leard, have been subject to intense forestry activities for many decades making the identification of scarred trees problematic as both European usage and Aboriginal usage from traditional times to contemporary overlap each other.

The confirmation of the trees' heritage status needs to be concluded. On this matter please consider the following quote from the DEC (2005) Scarred Tree Manual.

*Scarred trees are a highly significant expression of Aboriginal culture in New South Wales and this is recognised through their protection as Aboriginal heritage sites by the provisions of the National Parks and Wildlife Act 1974 (NSW). It is important therefore to ensure their future protection through recording and appropriate management, but it is equally important to ensure that scars are only registered if there are compelling grounds for believing they are of Aboriginal origin and not a result of a natural or incidental impact.*

*Scarred trees of historical European origin are also protected by state legislation for non-Indigenous heritage sites and places. However, it can be very difficult to make a clear distinction between scars of Aboriginal and European origin except where there is compelling documentary or physical evidence.*

#### *Recommendation*

Undertake further evaluation of the trees that are currently subject to opposing interpretations. The evaluation is to be inclusive of Aboriginal participation and considerations. Conclusions to be evidenced based.

### **4.5 Aboriginal Burials**

Aboriginal burials are possible within the Mooki River precinct and adjoining lands. Should skeletal remains appear OEH requires that the process of action follow the DECC Skeletal Manual except where the need for an AHIP is extinguished under Division 4.1 of the *EPA Act 1979*. OEH insist that cultural sensitivity is used if ancestral remains are encountered as reflected in the manual. OEH do not accept the practice of remains being removed from the site without strong support from the RAPs. Any examination of remains to determine ethnicity, age, gender and other observations should be conducted on site unless circumstances clearly prevent a conclusive result, or the burial is in immediate threat. Should the remains be removed the Proponent will be responsible for overseeing the process of repatriation and consulting with the RAPs in that process.

#### *Recommendation*

Should remains be encountered refer to the procedures set out in the DECC Skeletal Manual.

### **4.6 Axe Grinding Groove Sites WM-GG1-11 and WM-GG3-12**

The location of two axe grinding grooves within areas of unavoidable impacts has triggered significant cultural concerns from the several of the RAPs. OEH recognises those views that have voiced deep concerns over the removal of the axe grinding grooves but accept the risks and cost benefits of the project proposal in this circumstance where impacts seem unavoidable due to the proposed size of the open pit relative to the locations of the axe grinding grooves. However given the strong views about the site's significance as expressed in the correspondences OEH expects that the archaeological excavation

program and pre-removal program of works, including further technical assessment and recording, will be adequately undertaken through the AHMP.

The geotechnical study reports that removal of the axe grinding grooves is possible. OEH expect that all possible measures are put in place to ensure that the removal of the sandstone boulders will not adversely impact upon the grinding grooves. OEH further expect that the temporary storage of the boulders and the eventual return is adequately managed and that these actions are sufficiently detailed in the AHMP.

## **5. ABORIGINAL CULTURAL HERITAGE VALUES ASSESSMENT**

The work produced by Connect for Effect summarises a body of archival work that canvasses the historical, social and contemporary context of Aboriginal connection to the landscapes of Gunnedah Basin. The information presented has contributed to developing a useful summary of non-site values across the Basin. OEH sees merit in several of the recommendations in the report that are linked to offering Aboriginal people opportunities to reconnect to cultural landscapes and activities that are aimed at reinvigorating future generation interest in them.

However the report's exclusion of oral history transcriptions and historical records pertinent to the Mooki and Walhallow districts which were gathered during the Brigalow Belt South bioregion assessment (RACD 2002) is perplexing. These data sets would provide clear and reliable accounts expressed by local Aboriginal people about various values pertaining to the region.

OEH accepts the efforts by the ACH Values assessment in presenting the Aboriginal cultural, social, and contemporary values and agree in principle with the author's approach. However some sections of the report lack clarity particularly with regards to the current EA framework and similarly when considering the report's wide suite of recommendations. The report's extensive range of material and wide selection of policy on ACH management is unsuited to Environmental Assessment where the results are difficult to transfer to the area covered by the development footprint. The framework adopted by the author is better suited to a regional study where the context of Aboriginal perspectives and historical events can be collaborated with archaeology and ecology. This then would form a platform to develop ways to promote the social, cultural and economic aspirations in several of the report's recommendations. Some of the report's recommendations are applicable to a wider area of Aboriginal interest affiliated to the Gunnedah Basin. In that circumstance the aspirations to improve the disadvantaged social and economic standpoint of Aboriginal people have a more realistic chance of negotiation and success.

## ATTACHMENT 1

### Regional Context of landuse impacts to ACH

OEH AHIMS data shows a wide arc of intense landuse adjacent to the Watermark EL. Culturally sensitive landforms, based on known Aboriginal site frequency with riverine landscapes, exist along the Mooki and its tributaries and the large lacustrine wetland of Lake Goran. These two distinct landscapes have been significantly modified by intense agricultural pursuits. Collectively these landscapes abut the Watermark EL boundaries to the east, west and south. Nestle between are the sensitive landforms that dominate the Watermark EL landscape and where 53 Aboriginal sites have been recorded. These sites may therefore form a sample of remaining evidence that is left to interpret Aboriginal landuse across the three landscapes. OEH argue that this has a bearing on the scope of mitigation and management for Aboriginal sites likely to be harmed within the EL.

**Figure 1.0 Aboriginal sites recorded on the Watermark EL relative to regional landuse.**

