



## Office of Environment & Heritage

Your reference:  
Our reference:  
Contact:

DOC13/43318  
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Howard Reed  
Manager, Mining and Industry Projects  
Major Projects Assessment  
Department of Planning and Infrastructure  
GPO Box 39  
Sydney NSW 2011

Attention: Steve O'Donoghue

Dear Steve

### **RE: Cobbora Coal Project – Response to PAC Recommendations and revised Project Preferred Project Report**

I refer to your request received on 14 August 2013, seeking comment from the Office of Environment and Heritage (OEH) on the response to the Planning Assessment Commission (PAC) recommendations and revised Preferred Project Report (PPR) for the Cobbora Coal Project. Please accept our apologies for the delay in our response.

OEH previously reviewed the original PPR and RTS (dated 4 February 2013) and provided comments to the Department of Infrastructure and Planning (DoPI) on 13 March 2013. Subsequent comments on a revised Biodiversity Offset Package (BOP) (dated 15 July 2013) were provided on 1 August 2013. OEH has now reviewed the revised PPR (including the BOP) and the proponent's response to the recommendations of the PAC (dated 12 August 2013).

### **Biodiversity**

Based on the information presented in the revised PPR and BOP, OEH understands that impacts on biodiversity values have been reduced overall in comparison to the previous proposal (however it is noted that impacts to higher condition areas of the Box Gum Endangered Ecological Community will increase by 6ha).

The impacts of the revised proposal now include:

- Removal of 1,911ha of native vegetation (reduced by 196ha), including:
  - 14km of cliff-line habitat;
  - Known and potential habitat for up to 43 threatened fauna species and eight threatened flora species<sup>1</sup>; and

<sup>1</sup> **Note:** Table 2.3, p. 9 of the BOP lists only 27 threatened species in total, in comparison to the 43 threatened fauna species and 8 threatened flora species considered in the EA; in the absence of justification from the proponent for excluding certain species from consideration in the BOP, OEH refer to its response to DoPI of 13 March 2013.

- Removal of 216ha of Endangered Ecological Communities (EEC) (including 138ha of derived native grassland).
- Removal of approximately:
  - 200 *Acacia ausfeldii* individuals;
  - 127 *Homoranthus darwinioides* individuals;
  - 480 *Zieria ingramii* individuals; and
  - 9 *Tylophora linearis* individuals.
- Indirect impacts associated with noise, dust, light spill and fragmentation, including potential impacts to OEH Estate.

The BOP is assessed by OEH as providing:

- A **Tier 2 'no net loss'** outcome for:
  - 5 out of 13 vegetation communities impacted, including one (Box Gum Woodland) out of three EECs.
  - two threatened flora species (*Acacia ausfeldii* and *Zieria ingramii*)
  - 10 threatened fauna species.
- A **Tier 3 'mitigated net loss'** outcome for:
  - 8 vegetation communities (including Inland Grey Box and Fuzzy Box woodland EECs),
  - 5 threatened flora species
  - 32 threatened fauna species.

Should the proposed Cobbora Coal Project be approved, OEH requests that the issues highlighted in OEH's previous submission dated 1 August 2013, and the comments and recommendations included in Attachment 1 to this letter, be addressed by DoPI in the conditions of any approval granted.

### **Aboriginal Cultural Heritage (ACH)**

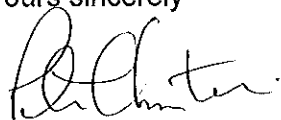
OEH has no additional comments to make beyond those in our previous submissions dated 19 November 2012 and 13 March 2013.

OEH reiterates the following recommendations relating to the drafting of any conditions of approval:

1. A condition should be included instructing the construction of adequate protection and stabilisation of creeks associated with protected Aboriginal sites within the Project Area, and which ensures that adequate measures are put in place in the Aboriginal Heritage Management Plan to manage sensitive areas exposed to traffic thoroughfares.
2. A condition should be included that instructs the Proponent to resource suitable research that examines the cultural heritage values in areas of biodiversity offsets as a way of contributing towards Aboriginal landscape knowledge for intergeneration opportunities, and future planning decisions.

If you have any questions regarding this matter please contact me on 02 6883 5317.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Christie'.

**PETER CHRISTIE**  
**Regional Manager, North West**  
**Regional Operations Group**

2 September 2013

Attachment 1. Biodiversity

## ATTACHMENT 1- Biodiversity

### **Offset Security**

As previously advised, uncertainties remain with regard to the intended transfer of land to the OEH (National Parks and Wildlife Service) Estate. OEH note the proponent's consideration of alternative offset mechanisms and their commitment to manage offset areas for conservation prior to dedication as conservation reserves, or until other conservation measures are implemented on the title.

Ultimately, priority should be given to securing offsets using either (or a combination) of the following mechanisms:

- a. dedication of land as a public reserve under the NPW Act
- b. establishment of biobank sites with a Biobanking Agreement under the *Threatened Species Conservation Act 1995* (TSC Act); or
- c. retirement of biobanking credits, where appropriate credits are available.

Second order priority offsetting mechanisms (in order of preference) are:

- d. establishment of a conservation agreement with the Minister for the Environment under the NPW Act;
- e. establishment of a trust agreement with the Nature Conservation Trust under the *Nature Conservation Trust Act 2001*;
- f. establishment of a planning agreement by a planning authority under the EPA Act; or
- g. establishment of a conservation property vegetation plan under the *Native Vegetation Act*.

### **Recommendation 1:**

OEH recommend that a minimum and prescribed standard of in-perpetuity offset mechanism (in line with the advice above) be required as a condition of any approval granted.

### **'Indirect' Offsets**

To date, a Tier 3 'mitigated net loss' outcome only has been achieved for:

- 8 vegetation communities, including the Inland Grey Box Woodland Endangered Ecological Community (EEC), the Fuzzy Box Woodland EEC and ecosystem credit threatened species;
- Large-eared Pied Bat species credits (breeding habitat);
- Eastern Cave Bat species credits (breeding habitat);
- *Tylphora linearis*; and
- *Homoranthus darwinoides*.

In the publically exhibited Environmental Assessment (EA)<sup>1</sup> for the Cobbora Coal Project the proponent indicated that should further surveys and additional offsets indicate that the proposal still did not meet the Tier 2 'no-net loss' standard for 'red-

flag' vegetation types and species credit threatened species, 'indirect' or 'non land-based' offsets would be investigated and negotiated with OEH and SEWPaC (p.31).

In the EA (p.31), the proponent considered such indirect or non land-based offsets for threatened species to potentially include '*investment in key projects aimed at threatened species management in the region*' such as '*research into the feasibility of seed collection and propagation, soil seedbank salvage and translocation of threatened plants from the disturbance areas*'. The proponent specifically flagged the possible indirect offset actions for *Z. ingramii*, *H. darwinoides*, *T. linearis* and the Large-eared Pied Bat (p. 33). No specific statements were made in the EA about the type of indirect offsets which might be pursued in relation to red-flag vegetation types for which a Tier 2 outcome was not achieved.

The publically exhibited 'Updated Biodiversity Offset Strategy' (dated 30 January 2013<sup>2</sup>) went further, proposing that '*If each of the affected threatened species, EECs and other vegetation types are not found in the potential and unsecured offset sites, management and research funding may be used to form [sic] outstanding offset requirements. Such measures may include investment in key projects aimed at threatened species and TEC [Threatened Ecological Community] management in the region*' (p. 27). A broader list of potential management and research funding options was provided in that document.

The revised Biodiversity Offset Package (BOP)<sup>3</sup> (dated 12 August 2013) refers generally to investigation of the feasibility of seed and cutting collection, propagation establishment and translocation of threatened flora species from the Project area to the offset areas (p. 17). However whilst some specific actions are proposed for *Z. ingramii* and *H. darwinoides*, there is no discussion of potential indirect offsetting options for *T. linearis*. Similarly there is no discussion of potential indirect offsetting options for the cave roosting bats, the Inland Grey Box Woodland EEC or the Fuzzy Box Woodland EEC.

The degree to which additional surveys have been undertaken within the proposed offset properties is unclear. It will be important for targeted surveys of the proposed offset areas for threatened species with outstanding credits to be undertaken. Should these surveys not yield additional populations (*T. linearis* in particular), more detailed consideration of indirect offsetting options would be needed if the proponent intends to address commitments made in the EA and other publically exhibited documents.

[Note: Additional comments regarding *Homoranthus darwinoides* and cave roosting bats are provided under separate headings below].

## **Recommendation 2:**

To address the commitments made in the EA and subsequent exhibited documents, OEH recommends that as a condition of any approval granted the proponent should be required to identify and discuss with OEH feasible indirect offsetting options targeted to priority recovery actions for the Endangered Ecological Communities and threatened species habitat not fully met by within the land-based offsets. Agreed actions should be incorporated in the Biodiversity Offset Management Plan and Integrated Landscape Management Plan.

See additional comments below.

## ***Biodiversity Offset Management Plan and Integrated Landscape Management Plan***

The proponent proposes the development and implementation of a Biodiversity Offset Management Plan (BOMP) and an Integrated Landscape Management Plan (ILMP) within 12 months of approval of the Project.

Based on the revised BOP<sup>3</sup>, species credits for *Zieria ingramii* are generated from the offset areas at eight separate locations (BOP Table 3.2, p. 27). The proponent also commits to undertaking propagation trials, a proposed translocation program and managing additional populations of this species that are not contained within offset areas but which occur within the Project Area outside the mining footprint (BOP p. 28).

Similarly, the proponent commits to propagation trials for *Homoranthus darwinoides* and proposes to manage an additional population of 100 individuals of this species (adjacent to the impacted individuals) located on CHC property outside of the project area and offset properties (BOP p. 25).

### **Recommendation 3:**

OEH recommends that as a condition of any approval granted, DoPI require the BOMP and ILMP (or similar plans) to be completed and implemented prior to the onset of impacts arising from the Project.

### **Recommendation 4:**

OEH recommends that any approval conditions require the completion of adequate and targeted biodiversity surveys in the offset areas to provide the baseline data necessary to inform the adaptive management of these areas as part of the BOMP and ILMP, and the need for any additional 'indirect' offsetting measures to meet commitments made in the EA and subsequent documents.

### **Recommendation 5:**

The BOMP and ILMP will need to address and accommodate the complexities associated with the proposed propagation trials for and management of additional populations of *Z. ingramii*, *H. darwinoides* and any other targeted threatened flora species outside of offsets areas, to ensure the co-ordinated management of these species. This requirement should be specifically reflected in any approval conditions.

## ***Threatened Cave-roosting Bats***

A species credit surplus (and thereby a Tier 2 offset outcome) is achieved for all of the species credit threatened fauna species listed in Table 4.3 (BOP p. 41), with the exception of the two cave-roosting bats, *Chalinolobus dwyeri* (Long-eared Pied Bat) and *Vespadelus troughtoni* (Eastern Cave Bat).

A Tier 3 'mitigated net loss' offset outcome is not preferred by OEH; moreover, a 'mitigated net loss' offset for the removal of a resource that is irreplaceable (i.e. caves and overhangs) is of considerable concern. Critical habitat elements for these species, such as roosts and dens for the have not yet been identified in the local landscape.

**Recommendation 6:**

OEH recommends that the conditions of any approval granted require the proponent to fund a regional study to identify critical habitat elements for cave roosting bats in the local landscape. OEH is willing to provide advice on such a study as required.

***Indirect impacts and fauna movement structures***

With regard to the assessment of indirect impacts (such as noise, light spill and dust etc), OEH notes the way in which the proponent has addressed the need to offset these impacts within the revised BOP. Nevertheless, OEH remains concerned about the potential for indirect impacts to adversely impact adjacent biodiversity offsets and the Goodiman State Conservation Area (SCA).

As for direct biodiversity impacts, OEH is of the view that priority should be placed on avoidance and mitigation of indirect impacts in the first instance. Therefore detailed design and management measures should include consideration of how indirect impacts on biodiversity values may be avoided or mitigated.

The revised BOP also presents general information on how the design and placement of the proposed fauna movement structures have been chosen. However it remains unclear why an overpass has only been considered for one location.

**Recommendation 7:**

OEH recommends that any approval conditions relating to the monitoring and adaptive management of indirect impacts such as light spill, dust and noise, contain the specific requirement to monitor and mitigate the impacts of these factors on biodiversity assets in the area.

**Recommendation 8:**

OEH recommends that any approval conditions relating to the development of the ILMP (or similar plan) for the project area require the proponent to fully justify the design and placement of all fauna movement structures and monitor their usage.

***Other ongoing management issues***

OEH has previously highlighted its interest in potential downstream environmental impacts as a result of the project, as well as fire management issues (particularly with regard to OEH Estate adjacent to the Project Area). OEH would appreciate the opportunity to have further input to the on-going management of these issues.

**Recommendation 9:**

It is requested that as part of any approval granted:

- OEH be provided with the opportunity to be part of the consultation with State Water, prior to finalisation of the extraction strategy.
- OEH be included as a member of the river management committee.

- The proponent be required to develop a mitigation and remediation strategy which outlines the process that will be followed if adverse impacts on the in-stream habitat quality are detected or anticipated
- The proponent be required to consult directly with OEH (National Parks and Wildlife Service) to refine the proponent's commitments with regard to fire management.

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<sup>1</sup> EMM (2012) *Cobbora Coal Project Environmental Assessment. Appendix H Terrestrial Ecology Assessment*. Report for Cobbora Holding Company Pty Ltd dated 17 September 2012.

<sup>2</sup> EMM (2013a) *Cobbora Coal Project Preferred Project Report and Response to Submissions. Appendix H Updated Biodiversity Offset Strategy*. Report for Cobbora Holding Company Pty Ltd dated 30 January 2013.

<sup>3</sup> EMM (2013b) *Response to Recommendations of the Planning Assessment Commission Review Incorporating a Revised Preferred Project Report. Appendix G Biodiversity Offset Package*. Report prepared for Cobbora Holding Company Pty Ltd dated 12 August 2013.