



Our ref: DOC20/419320

Senders ref: SSI 9973 MOD 1

Rose-Anne Hawkeswood
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Planning & Assessments
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Dear Ms Hawkeswood

Subject: Eastern Gas Pipeline – Modification 1 – Port Kembla Lateral Modification

Thank you for your e-mail dated 13 May 2020 requesting comments on the abovementioned major project modification. In response, we provide the following comments with relation to Aboriginal cultural heritage and biodiversity.

Biodiversity & Offsets

We have reviewed the Biodiversity Development Assessment Report (BDAR) and raise no objections to the findings. We note that the consultant has allocated some regrowth vegetation to the plant community type (PCT) 838, associated with the Illawarra Lowlands Grassy Woodland threatened ecological community (TEC), and a small drainage swale to PCT 781, associated with the Freshwater Wetlands on Coastal Floodplains TEC.

Impacts to both of the communities are minor and are proposed to be offset through the retirement of credits. Should the modification be approved, we recommend that appropriate conditions of consent be recommended requiring the retirement of the requisite credits. We remain available to assist with drafting of conditions of consent upon request.

Aboriginal cultural heritage

The due diligence process has been followed

We provided comment on an earlier version of the Aboriginal cultural heritage due diligence assessment prepared by Biosis (2019). A revised version of the Biosis due diligence assessment dated 25 March 2020 has been provided with the Modification Report. Revisions to the due diligence assessment include further detail of the level of previous disturbance in the proposed impact footprint.

Due diligence is a legal defence in relation to the provisions of the National Parks and Wildlife Act (NPW Act) 1974 in the protection of Aboriginal objects. Due diligence as an assessment process has limitations including that there are no formal Aboriginal community consultation requirements and there is no requirement for a full archaeological assessment in accordance with our guidelines.

As exercising due diligence is a legal defence only, the Department does not have a role in approving or endorsing due diligence assessments. The proponent must ensure that a suitably robust assessment has been implemented. The limitations of this due diligence assessment include:

- Low ground surface visibility
- That the survey team could not access some parts of the proposed easement (Biosis 2020, p.29)
- That formal Aboriginal community consultation was not conducted.

Biosis (2020) argues that there is low to nil potential for the proposed works to harm Aboriginal objects and recommend no further Aboriginal cultural heritage assessment.

Aboriginal community consultation in accordance with the NPW Regulation has not occurred

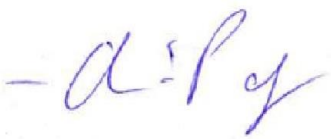
We note that Biosis has consulted with the Illawarra Local Aboriginal Land Council (ILALC), however, formal consultation with the broader Aboriginal community has not occurred. This means there is a risk that Aboriginal cultural heritage values that may be impacted have not been identified.

We advise that:

- If any future re-consideration of the level of prior disturbance suggests that landforms with potential to contain Aboriginal objects may be impacted then a full Aboriginal cultural heritage assessment in accordance with our guidelines must be conducted.
- If the impact footprint changes then an updated Aboriginal cultural heritage assessment must be conducted.
- If the impact footprint changes and areas of potential archaeological deposit will be harmed, the applicant must conduct archaeological test excavation and formal Aboriginal community consultation in accordance with clause 60 of the NPW Regulation 2019.
- Our understanding is that this project does not have approval to harm Aboriginal objects. Therefore, if this Modification is approved, a procedure should be developed to manage the discovery of Aboriginal objects during works (e.g. incorporating the Biosis (2020 pp.40-41) recommendations #2 and #3).
- If Aboriginal objects are found during works then work in that area must stop and the find must be reported to Environment Line by calling 131 555. Formal Aboriginal community consultation and archaeological assessment in accordance with our guidelines is likely to be required.

If you have any questions about this advice, please do not hesitate to contact Calvin Houlison, Senior Conservation Planning Officer, via calvin.houlison@environment.nsw.gov.au or 4224 4179.

Yours sincerely



2/6/20

Chris Page

Senior Team Leader, Planning (Illawarra)
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Relevant guidelines – Aboriginal cultural heritage

- *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW.* OEH 2011. Available online at:
<http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>
- *Code of practice for archaeological investigation of Aboriginal objects in New South Wales,* DECCW 2010. Available online at:
<http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>
- *Aboriginal cultural heritage consultation requirements for proponents 2010.* DECCW 2010. Available online at:
<http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>
- *Due diligence code of practice for the protection of Aboriginal objects in New South Wales,* DECCW 2010. Available online at:
<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>
- *Applying for an Aboriginal Heritage Impact Permit guide for applicants, OEH (2011).* Available online at:
<http://www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf>