



Mr Andrew Rode
Senior Environmental Assessment Officer
Resources Assessments
Department of Planning, Industry & Environment

Your reference: SSD-8445
Our reference: DOC20/626428-9

By email: andrew.ode@planning.nsw.gov.au

Dear Mr Rode

**HERITAGE NSW – ABORIGINAL CULTURAL HERITAGE REGULATION
SSD RESPONSE TO SUBMISSIONS, SECOND AMENDMENT**

Address: Tahmoor South coal mine - Tahmoor, Wollondilly LGA

Proposal: Extension of underground coal mining

SSD application no: SSD-8445, received 4 August 2020

Thank you for referring the Response to Submissions report for the above State Significant Development (SSD) application to Heritage NSW via the NSW Major Projects Portal. We understand that the Department of Planning, Industry and Environment (DPIE) is seeking Aboriginal Cultural Heritage Regulation advice on the applicant's amended Response to Submissions report (known as the 'second amendment').

Aboriginal cultural heritage regulation is now part of Heritage NSW

On 1 July 2020 the Aboriginal cultural heritage regulation functions were transferred from the Biodiversity and Conservation Division (BCD) in DPIE to Heritage NSW in the Department of Premier and Cabinet. Please be assured that both BCD and Heritage NSW are committed to ensuring a smooth transition.

In preparing the following advice we have reviewed the following material available on the Major Project Portal:

- EMM & SIMEC 2020, *Tahmoor South Project, Second Amendment Report and Response to Submissions*, dated 3 August 2020, including:
 - Appendix A: Updated Project Description
 - Appendix B: Subsidence Assessment (prepared by MSEC, dated July 2020)
 - Appendix J: Rehabilitation Strategy
 - Appendix L: AHIMS site card (52-2-1599).

Previous Aboriginal cultural heritage regulation advice remains relevant

The changes to the proposed coal mine layout in the Second Amendment Report do not change the Aboriginal cultural heritage impact assessment that was provided with the first Response to Submissions report. Previous BCD comments therefore remain relevant to consideration of this SSD application (DOC20/236184, 25 March 2020).

Aboriginal cultural heritage regulation advice on the RTS second amendment

We reiterate previous comments provided by BCD (DOC20/236184, 25 March 2020) in relation to Aboriginal cultural heritage regulation. We have provided a summary of our advice below, and detailed comments at **Attachment A**.

We advise Resources Assessments that:

1. We support further reduction in the length of Longwalls 101 (now labelled 101B) and 103B as per previous BCD advice (DOC20/236184). This would provide stronger protection to the Dog Trap Creek site complex by removing longwall mining under an additional three Aboriginal cultural heritage sites (rock shelters with art).
2. Tahmoor Coal has committed to preparing a Heritage Management Plan (HMP) to guide the protection and management of Aboriginal cultural heritage through the life of the proposed expansion. We support this action. The HMP is to be prepared in consultation with the Registered Aboriginal Parties and Heritage NSW. The HMP needs to address the matters set out in **Attachment B**.
3. The impact of changed hydrological patterns in Dog Trap Creek to Aboriginal cultural heritage values must be considered.
4. An AHIMS site impact recording form must be submitted to the AHIMS Registrar to reflect the test excavation results at site 52-2-4487 (Charlies Point Road OCS-1) as soon as possible. This is required to comply with section 89A of the *National Parks and Wildlife Act 1974*.

Please note: the above comments relate only to Aboriginal cultural heritage regulation matters. You may wish to seek separate advice from Heritage NSW in relation to the State Heritage Register listed sites and matters under the *Heritage Act 1977*.

If you have any questions regarding these comments, please contact Rose O'Sullivan, Archaeologist, at Heritage NSW, on 4224 4177 or rose.osullivan@environment.nsw.gov.au.

Yours sincerely



18 August 2020

Jackie Taylor
Senior Team Leader
Aboriginal Heritage Regulation Branch - South
Heritage NSW

Encl: Attachment A: Detailed Aboriginal Cultural Heritage Regulation Comments – SSD 8445
Attachment B: Matters to be addressed in the Aboriginal Heritage Management Plan – SSD 8445

ATTACHMENT A: DETAILED ABORIGINAL CULTURAL HERITAGE REGULATION COMMENTS – SSD 8445

The table below sets out Aboriginal cultural heritage regulation comments in response to the Response to Submissions (Second Amendment Report). The table addresses the key issues that were identified in previous Aboriginal cultural heritage regulation advice provided through the Biodiversity and Conservation Division (BCD) in DPIE and which had not previously been satisfactorily addressed. This table should be read in conjunction with previous Aboriginal cultural heritage advice:

- EIS comments DOC19/196650, dated 14 March 2019
- RTS comments DOC20/236184, 25 March 2020.

Issue No.	Timing:	DPIE BCD RTS comment:	Applicant's Second Amendment Report response:	Heritage NSW Comment:	Response satisfactory:
1	Response to Submissions	A low level of risk of subsidence remains to the Dog Trap Creek site complex. We continue to recommend the further reduction in the length of Longwalls 101 and 103B to reduce the risk of harm to Aboriginal cultural heritage sites on Dog Trap Creek.	<ul style="list-style-type: none"> • No changes to LW101B and 103B in the vicinity of Dog Trap Creek are proposed. • There is an acknowledged low risk of harm to sites directly above LWs 101B-103B (MSEC 2020, p.174). • If monitoring detects early movement at the Aboriginal cultural heritage sites then the commencing position of LW 103B could be shortened. 	<p>Further reduction in length of longwalls 101 (labelled LW 101B in the Second Amendment Report) and 103B would provide stronger protection to the Dog Trap Creek site complex.</p> <p>We support the requirement to shorten the commencing position of LW103B as per MSEC (2020, p.174) if monitoring detects movement at or in the immediate vicinity of Aboriginal objects. This must be set out in the HMP. However, we advise this is the minimum required response; it would be preferable to reduce the longwall lengths and</p>	<p>No</p> <p>Decision maker must be aware of remaining risk of harm to Aboriginal cultural heritage values at Dog Trap Creek.</p>

Issue No.	Timing:	DPIE BCD RTS comment:	Applicant's Second Amendment Report response:	Heritage NSW Comment:	Response satisfactory:
				remove the risk of any harm occurring.	
2	Before ground disturbance starts	The impact of changed hydrological patterns in Dog Trap Creek on Aboriginal cultural heritage values should be considered in the HMP.	<ul style="list-style-type: none"> • Removing LW107B and 108B will avoid some impacts on some overlying streams. • No changes to LW101B and 103B in the vicinity of Dog Trap Creek are proposed. • Recommendations for the HMP to address this issue are noted. 	<p>We recommend the applicant be required to address this matter in the HMP. The issue has not been adequately addressed in the Second Amendment Report (p.73).</p> <p>The impact of changed hydrological patterns in Dog Trap Creek on intangible Aboriginal cultural heritage values has not been assessed.</p>	<p>No</p> <p>Must be addressed in HMP.</p> <p>Decision maker must be aware of remaining risk of harm to Aboriginal cultural heritage values at Dog Trap Creek.</p>
3	Response to Submissions	The applicant has not addressed the impact of landscape and hydrological changes on the Dreaming site.	<p>The Dreaming site (52-2-1599) will not be impacted because it has no fixed location (Second Amendment Report, p.74). Site card 52-2-1599 (dated 1991) provided in support of this statement.</p> <p>No further information about this site was reported during the consultation process.</p>	<p>The applicant has not addressed the impact of landscape and hydrological changes on the Dreaming site. The intangible nature of the site means that by definition it does not have a physical location; the response from the applicant is therefore inadequate.</p> <p>Additional consultation with the Registered Aboriginal Parties on this matter does not appear to have occurred.</p>	<p>No</p> <p>Risk remains that this project will harm the Dreaming site.</p> <p>We recommend the HMP determine how impact to the cultural landscape of the Dreaming site will be avoided.</p>

Issue No.	Timing:	DPIE BCD RTS comment:	Applicant's Second Amendment Report response:	Heritage NSW Comment:	Response satisfactory:
4	Response to Submissions	<p>Results of test excavations at site 52-2-4487 (Charlies Point Road OCS-1) must be provided to the AHIMS Registrar as a site impact recording form.</p> <p>This is required to comply with section 89A of the <i>National Parks and Wildlife Act 1974</i> and Requirement 16a(13) of the Code of Practice for Archaeological Investigation in NSW.</p>	No artefacts were recovered therefore a site impact recording form is not required (Second Project Amendment Report, p.74).	<p>The absence of sub-surface archaeological deposits is relevant to our understanding of the archaeological record in this area.</p> <p>We require EMM to submit a site impact recording form for site 52-2-4487 (Charlies Point Road OCS-1). This will inform future assessments in the region.</p>	<p>No</p> <p>A site impact recording form for site 52-2-4487 must be submitted to the AHIMS Registrar.</p>
5	Before any ground disturbance works occur	<p>Prepare a finalised Heritage Management Plan (HMP) in consultation with the Registered Aboriginal Parties and Heritage NSW.</p> <p>The HMP must address the matters listed in Attachment B.</p>	Noted (Second Amendment Report, p.75)	Heritage NSW requests the opportunity to review the Heritage Management Plan before it is finalised.	Yes

ATTACHMENT B: MATTERS TO BE ADDRESSED IN THE ABORIGINAL HERITAGE MANAGEMENT PLAN – SSD 8445

The applicant must prepare a finalised Heritage Management Plan (HMP) in consultation with the Registered Aboriginal Parties and Heritage NSW. The HMP must be prepared before the start of any ground disturbance works.

The HMP must address the following matters:

- Risk of impact to all Aboriginal cultural heritage site types recorded in the project area from subsidence, changes to hydrology, mining operations and future remediation works.
- Detailed process to manage detection of early movement at the Aboriginal cultural heritage sites. This must include (but may not be limited to) the provision to shorten the commencing position of Longwall 103B to reduce and avoid harm to Aboriginal cultural heritage values (as per MSEC 2020, p.174).
- Aboriginal cultural heritage survey is required if future ground disturbance is proposed in areas outside the current assessment area.
- Impact assessment of changed hydrological patterns in Dog Trap Creek on Aboriginal cultural heritage values.
- Impact on the cultural landscape of the Dreaming site (52-2-1599) and how any impacts will be avoided.
- Whether there are specific management actions required to address the information provided by Historical Indigenous Research regarding 'men's business sites' (Niche 2018, p.71).