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Ms Tatsiana Bandaruk  
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Dear Ms Bandaruk

**Pipers Flat Rail Unloader Modification 1 (06\_0271)**

Thank you for your email of 4 September 2018 to the Office of Environment and Heritage (OEH) seeking comments on the environmental assessment for the Pipers Flat Rail Unloader modification.

OEH note that the modification involves realignment and contouring of the rail loop, an optional rail spur and additional bridges, culverts and crossing structures. There is no change to the approved coal conveyor alignment. The site is predominantly cleared with a long history of cattle grazing.

While the modification does not affect the conveyor alignment, the biodiversity impact assessments (2007 and 2018) for all aspects of the project requires quantification of the areas (hectares) of plant community types that will be impacted. This information is required to fulfil condition 2.38 of the current consent, which requires a compensatory habitat package consisting of no fewer than two hectares for each hectare of vegetation removed as part of the project.

Detailed comments and recommendations regarding biodiversity and Aboriginal cultural heritage are provided in Attachment A.

If you have any queries, please contact Liz Mazzer, Conservation Planning Officer on 6883 5325 or [liz.mazzer@environment.nsw.gov.au](mailto:liz.mazzer@environment.nsw.gov.au).

Yours sincerely

**PETER CHRISTIE**  
**Director, North West**  
**Conservation and Regional Delivery**

21 September 2018

Contact officer: LIZ MAZZER  
68835325

## OEH Review

### Pipers Flat Unloader modification 1

#### Biodiversity assessment

The Office of Environment and Heritage (OEH) understands that the project was originally approved on 27 June 2009 under Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act), and that section 75W of the EPA Act applies. DPE confirmed in a phone conversation with Liz Mazzer on 14 September 2018 that no SEARs were issued for the proposed modification.

OEH notes that the biodiversity assessment has not been conducted in accordance with either the Biodiversity Conservation Act or the former Framework for Biodiversity Assessment. This may result in inadequate information regarding impacts on biodiversity.

#### 1 Native vegetation to be cleared

The modification will disturb approximately 1.6 hectares of Broad-leaved Peppermint – Ribbon Gum grassy open forest in the north east of the South Eastern Highlands Bioregion (PCT 732). This may form part of the Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland endangered ecological community.

OEH has been unable to ascertain how the quantum of native vegetation to be cleared for the modification differs from the amount covered in the original consent for the project (06\_0271), although a letter to OEH from Lycopodium on 22 April 2018 indicates that the rail loop component is likely to disturb an area equal to or less than the approved design.

We note that condition 2.38 of consent 06\_0271 requires a compensatory habitat package consisting of no fewer than two hectares for each hectare of vegetation removed as part of the project or as otherwise agreed to by DECC (now OEH).

There is no quantification in either the original environmental assessment (SKM 2007), or in the ecological report for the modification (AEP 2018), of how much native vegetation, and which communities, will be cleared for the rail loop and conveyor belt. The area (hectares) of each plant community type (PCTs) to be cleared is required to enable an appropriate compensatory package to be developed for the entire project.

In addition, OEH notes that condition 2.38 does not include a time by which the compensatory habitat package must be prepared. A date for completion of the compensatory habitat package should be considered to ensure that this condition is fulfilled.

#### Recommendations

- 1.1 The area (hectares) of each PCT to be cleared for the entire project (ie rail loop, conveyor and associated infrastructure) be quantified prior to construction commencing, and an appropriate compensatory habitat package developed consistent with condition 2.38 of consent 06\_0271.
- 1.2 A completion date for the compensatory habitat package is included in the modified conditions of consent.

#### 2 Threatened flora species

SKM (2007) found the threatened species, Capertee Stringybark (*Eucalyptus cannonii*), along the conveyor alignment. This report also states that other threatened flora species could potentially be present within the study area but were undetectable during the survey period (February 2007) due to their cryptic nature when not in flower.

AEP (2018) conducted their flora survey in May 2018, also during a period when some threatened flora species (such as the orchid *Diuris aequalis*) with the potential to occur on-site are undetectable. They concluded that no threatened flora species occur within the modification footprint.

OEH considers that targeted surveys should be conducted in the rail loop realignment and the conveyor belt corridor for threatened flora species with the potential to occur on site. These surveys should be done during appropriate survey periods as identified in BioNet to maximise the detectability of species. Any threatened flora to be impacted should be quantified, and an appropriate offset provided as part of the compensatory habitat package required by condition 2.38.

Surveys should include calculation of the number of Capertee Stringybark trees that will be impacted by the conveyor belt or other infrastructure.

#### Recommendations

- 2.1 Targeted surveys should be conducted in the rail loop realignment and the conveyor belt corridor for threatened flora species with the potential to occur on site during appropriate survey periods as identified in BioNet.
- 2.2 Any threatened flora to be impacted should be quantified, and an appropriate offset provided as part of the compensatory habitat package required by condition 2.38.

## Aboriginal cultural heritage

### 3 Aboriginal consultation

OEH recognise that Aboriginal consultation was undertaken in 2006/7 prior to the 2010 legislated changes to the *National Parks & Wildlife Act* which now broadens the scope of consultation.

The Aboriginal cultural heritage (ACH) assessment report (Navin Officer 2018) recommends that *“consultation should continue with the relevant Aboriginal community and should include the conduct of the OEH Aboriginal cultural heritage consultation requirements for proponents 2010”*.

It is not clear to OEH if the proponent intends to use the consultation requirements to only continue consultation with the Bathurst Local Aboriginal Land Council who were the sole party engaged in 2006/2007 or use the consultation guidelines to invite other potential interested Aboriginal parties.

It is OEH preference that a wider invitation is pursued as it will be mandatory for using the Code of Archaeological Practice for undertaking test excavations and would be equally relevant when drafting the Heritage Management Plan as it also carries consultation requirements. OEH recognise the previous involvement of the Bathurst LALC and their report of assessment findings dated 18 August 2006, which is attached to the ACH assessment report.

#### Recommendation

- 3.1 Undertake additional Aboriginal consultation as per the Aboriginal cultural heritage consultation requirements for proponents (OEH 2010).

### 4 Additional site evaluation of Potential Archaeological Deposits (PADs) 3 to 6

The description of PAD 7 (as described on page 13) does not indicate a site of potential scientific significance and the Aboriginal Cultural Heritage (ACH) assessment report concludes that test excavation is not warranted. OEH support this recommendation.

The report descriptions of registered AHIMS sites in the local area also show limited scientific research potential. The ACH assessment report concludes that several PADs that intersect the development footprint (PADS 3 to 6) have potential for moderate to high importance. OEH is unable make a judgement of this finding based on the information presented in the report but accept, in principle, the report’s recommendation for further investigation of the PADs by means of test excavation to determine if artefacts exist below the surface and to salvage any prior to construction of the rail loop.

OEH is aware that at the time of the field survey undertaken in 2006 dense paddock grasses hampered the survey team’s capacity to confirm presence of Aboriginal objects. This is confirmed in the Bathurst LALC report (dated 18 August 2006) and the archaeological evaluation which record low

estimates of effective survey coverage (Table 7.2). The identification of the PADs was primarily based on modelled Aboriginal site and landform relationships.

OEH see merit in reevaluating the sensitivity potential of PADS 3 to 6 because of current drought conditions and to use the visit to re-engage with the Aboriginal community including, other interested parties that may have cultural knowledge of the project area. The visit would also be an opportunity determine the scope and scale of any proposed test excavation works relevant to the proposed development footprint.

#### Recommendation

4.1 Undertake a re-evaluation of Potential Archaeological Deposits (PADs) 3,4,5,6.

## 5 Test excavations of PADs

There is limited information in the report about the method of proposed test excavation. Details about the scale of proposed excavation activities must be adequately described. If the archaeological evaluation confirms that the PADs are likely to yield significant information, then it is OEH preference that the method of testing use the methods as prescribed in the Code of Archaeological Practice (OEH 2010).

If the test excavation program confirms low significance finds or finds consistent with the local archaeological record (as reported in the ACH assessment report) then an efficient salvage and monitor program, proportionate to the significance of excavation finds, will be developed to conclude the operation

The method of salvage should be proportionate to the results of the test excavations. It is preferable in instances where there is only an average or low likelihood of significance to design a salvage program that maximises, by efficient means, opportunities for the RAPs to collect Aboriginal objects they consider important for protection.

#### Recommendations

5.1 Develop and undertake a suitable test excavation method based on the results of the re-evaluation.

5.2 Develop appropriate salvage actions for the Heritage Management Plan.

#### **References**

AEP (2018) *Ecological assessment report for proposed modification to approved Western Rail Coal Unloader at Pipers Flat NSW*. Prepared for Lycopodium Infrastructure Pty Ltd on behalf of Energy Australia. Revision 1 August 2018

Navin Officer (2018). *Western Coal Unloader Pipers Flat, NSW – Cultural Heritage Assessment*. Navin Officer heritage consultants August 2018

SKM (2007) *Western Rail Coal Unloader Environmental Assessment*. Sinclair Knight Merz April 2007