Aboriginal Heritage Management Plan

For the Invincible Open Cut Coal Mine Extension

June 2009

Coalpac Pty Ltd
Invincible Colliery
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Cullen Bullen NSW 2790

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Aboriginal Heritage Management Plan
Invincible Open Cut Coal Mine Extension

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1 PROJECT DESCRIPTION

The Invincible Open Cut Coal Mine Extension is located approximately 20km northwest of Lithgow and 3km southeast of the township Cullen Bullen on the Castlereagh Highway (Figure 1). The Project is owned and managed by Coalpac Pty Ltd with Big Rim Pty Ltd being the mining operator.

The Invincible Open Cut Coal Mine Extension will employ open cut and highwall mining methods and progressively increase production from 500 000 tonnes per annum to an annualised rate of 1.2 million tonnes per annum or 100 000 tonnes per month.

Coalpac Pty Ltd (Coalpac) has secured contracts from Delta Electricity to supply coal to the Mt Piper Power Station and domestic locations other than power stations A Project Application was subsequently submitted to the Department of Planning (DoP) for approval of the extension of open cut operations at Invincible Colliery. Project Approval 07_0127 for the extension was granted on the 4 December 2008 by the Minister for Planning, subject to a number of conditions.

This Aboriginal Heritage Management Plan (AHMP) has been prepared in accordance with condition 40 of schedule 3 provided in PA 07_0127. This AHMP also sets out the strategies and operational procedures to be implemented on site to ensure all legislative requirements with respect to Aboriginal heritage are met.

2 CONSULTATION REGARDING THE DEVELOPMENT OF THIS ABORIGINAL HERITAGE MANAGEMENT PLAN

Condition 40 of schedule 3 requires Coalpac to prepare the AHMP in consultation with DECC and the Aboriginal community. In accordance with the required condition, this management plan has been developed in consultation with both relevant parties.

3 LEGISLATIVE BACKGROUND

3.1 Legislation Relevant to the Development of this AHMP

The project is classified as a major project under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act), due to its compliance with clause 5 of schedule 1 of State Environmental Planning Policy (Major Projects) 2005, as it is for the purpose of coal mining. As a result, the Minister for Planning was the consent authority for project approval.

After assessing the project application, it's supporting environmental assessments and submissions on the project, the Minister for Planning issued project approval for the extension of the Invincible Open Cut Coal Mine on 4 December 2008. This approval covers part of the Ben Bullen State Forest as delineated in red (Figure 2).
Condition 40 of schedule 3 of the Project Approval No. 07_0127 requires the following.

“The Proponent shall prepare and implement an Aboriginal Heritage Management Plan for the project to the satisfaction of the Director-General. The Plan must:

(a) be prepared in consultation with DECC and the Aboriginal community;
(b) be submitted to the Director-General for approval prior to carrying out any open cut mining operations under this approval; and
(c) include a:

(i) program for the recording, salvage and surface collection of any Aboriginal objects/sites that may be encountered within the project site;
(ii) description of the measures that would be implemented if any Aboriginal skeletal remains are discovered during the project; and
(iii) protocol for the ongoing consultation and involvement of the Aboriginal community in the conservation and management of the Aboriginal heritage of the objects/sites.”
Figure 1: Locality Map
Figure 2: Plan Showing Area of Disturbance in PA 07_0127
3.2 Legislation Relevant to the Protection of Indigenous Heritage

Baseline principles for the conservation of heritage places and relics can be found in the Burra Charter\(^1\), which recognises that there are places worth keeping because they can enrich our lives on many levels. The significance of such places may be embodied in fabric (physical material), environmental setting, contents, use or its meaning to people, and should be assessed through methodical data collection. Since its adoption in 1979, The Burra Charter has become the standard of best practice in the conservation of heritage places in Australia, and heritage organisations and local government authorities have incorporated the inherent principles and logic into guidelines and other conservation planning documents. The Burra Charter generally advocates a cautious approach to changing places of heritage significance. This conservative notion embodies the basic premise behind legislation designed to protect our heritage, which operates primarily at a State level.

A number of Acts of parliament provide for the protection of Aboriginal heritage at various levels of government\(^2\). The three most important statutes in New South Wales are:

(a) The Environmental Planning and Assessment Act (EP&A Act) 1979;
(b) The National Parks and Wildlife Act 1974; and
(c) The Heritage Act 1977.

The EP&A Act 1979 requires that environmental impacts, including cultural heritage, are considered at a land use planning and decision making level. Under this Act, Aboriginal heritage is protected in four different ways.

1. Through planning instruments such as Regional Environmental Plans (REP’s) and Local Environmental Plans (LEP’s). Such plans outline permissible land use as well as identifying potential constraints. S111 of the EP&A Act 1979 delineates that determining authorities must examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

2. S228 of the EP&A Regulation 2000 lists impacts to the environmental resource, including cultural heritage, which must be considered before development approval is granted.

3. All State Government agencies acting as determining authorities on environmental issues must consider a range of community and cultural factors, including Aboriginal heritage, in their decision-making process. The factors to be considered in such assessments are set out in the EP&A Regulation 2000, Part VII.

4. Under the State Environmental Planning Policy (Major Projects) 2005, projects assessed to be of State significance (such as the current Invincible Open Cut Coal Mine extension project) are assessed under Part 3A of the EP&A Act 1979 and approval is given by the Minister for Planning.

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\(^1\) The Burra Charter defines the basic principles and procedures to be followed in the conservation of all kinds of places such as monuments, buildings, Aboriginal sites, roads, archaeological sites, whole districts or even regions. It was first adopted in 1979, based on the Australian ICOMOS (International Council on Monuments and Sites) review (1977) of the 1966 Venice Charter (Australian ICOMOS Inc. 1998).

\(^2\) NSW Heritage Office 1998: Living with Aboriginal Culture, p. 3
The National Parks and Wildlife Act 1974 (as amended; particularly sections 83-91A) provides statutory protection for all Aboriginal relics and places, regardless of significance, land tenure or whether they have been previously recorded in the DECC Aboriginal Sites Register. Areas may be gazetted as Aboriginal ‘places’ when the Minister is satisfied that sufficient evidence exists to demonstrate that the area is or was of special significance to Aboriginal people.

Under this Act, it is an offence to knowingly damage, deface or cause or permit the destruction of an Aboriginal relic or place without the prior written consent of the Director-General of the NSW DECC. Prosecution for such offences may include the imposition of financial penalties and/or imprisonment. Reporting the discovery of previously unknown Aboriginal sites to the DECC within a reasonable time of discovery is also obligatory.

It is noteworthy here that once a project is deemed to be assessed under Part 3A of the EP&A Act 1979, the requirement for DECC permits is replaced by a requirement to meet cultural heritage obligations through a Statement of Commitments.

The Heritage Act 1977 (as amended) protects the State’s natural and cultural heritage and contains measures to protect archaeological remains. Generally, Aboriginal sites are protected by the NP&W Act, but if certain sites are deemed as having great significance, they can be further protected by a heritage order, issued by the Minister, on the advice of the Heritage Council.

4 ABORIGINAL COMMUNITY CONSULTATION

The Invincible Open Cut Coal Mine extension falls within the boundaries of the Bathurst Local Aboriginal Council (BLALC). Representatives of the BLALC were involved in the assessment stage of the proposed coal mine extension in June 2007 (OzArk EHM, 2008).

On this occasion, no sites were recorded within the boundaries of the approved extension area.

In terms of this AHMP, consultation has been made by phone, with the BLALC. The Bathurst LALC indicates that they agree with the conditions of PA 07_0127 and those detailed within this Plan in terms of its provisions for site material should any such material be found during the course of the project.

5 ABORIGINAL HERITAGE ASSESSMENT

5.1 Previous Studies

Two cultural heritage assessment studies have been undertaken over the last ten years which include all or part of the study area relating to the project. It is considered important to review the results of these within the context of this AHMP. The following section briefly introduces these projects and documents their results as relevant to the Invincible Open Cut Coal Mine Extension.
Silcox (1997) undertook archaeological survey within the current mining lease area for the original Invincible ML 68 Open Cut Coal Mine and haulage road. During this study, no Aboriginal sites were detected within that study area. A representative of the Bathurst LALC accompanied the consultant during this survey.

In February 2006, a survey was undertaken of the proposed ML 68 extension area. Again, no sites were recorded as a result of this study (OzArk EHM 2006: 15-16). Reference was made to the fact that the majority of the study area comprised moderate to steep, wooded slopes – a landform with low potential for the presence of occupation sites. It is noteworthy that the Bathurst LALC representative that accompanied the OzArk team on the June 2007 survey indicated that he had surveyed the extension area previously in 2006 and also recorded no sites.

5.2 Known Aboriginal Heritage Sites

A known Aboriginal heritage site has been identified west of the internal haul road, just outside of the study area which consisted of a large and complex open site and was recorded as “Invincible OS1” (Figure 3).

Invincible OS1 is extensive (100mx50m) and contained an impressive array of cultural material. The site stretches for 100 metres in roughly an east-west direction along the southern side of the existing farm dams and spillway. Artefacts recorded included reduced cores, blades and small debitage, a ground-edge hand axe and a broken, but complete, grinding stone with signs of wear on both faces. This assemblage indicates that Invincible OS1 is an occupation camp rather than a more temporary hunting or transit camp. Site Invincible OS1 is at least 50m south of the southern extent of Study Area North (Figure 4).
Figure 3: Invincible OS1 Aboriginal Complex Open Site
(Source: OzArk EHM, 2008)
6 MANAGEMENT STRATEGY

As noted above, no Aboriginal sites or areas of Indigenous cultural significance have been recorded within the study area for the Invincible Open Cut Coal Mine Extension. Consequently, the management strategy comprises general mitigative measures against inadvertent impacts and the preservation of site Invincible OS1, which will be fenced and adequately sign posted (i.e. Warning and Notice signs).

6.1 General Heritage Conservation Measures

Despite the fact that there have been several cultural heritage assessments over the land proposed for the extension to Invincible Open Cut Coal Mine, there is still potential that previously unrecorded sites may be identified during ground surface disturbance. Coalpac will undertake the following measures to ensure the potential for such inadvertent impacts are minimised.
6.1.1 Inductions

Ensure that all staff and contractors undertake inductions that include an Aboriginal heritage awareness component. As noted above this should include some site specific information with relation to site Invincible OS1, but may also briefly cover more general topics such as rudimentary site identification (e.g. some photos of stone tools, flakes, scarred trees and grinding grooves etc.) and an introduction to cultural values.

6.1.2 Procedure for previously undiscovered Aboriginal objects

If in the course of vegetation clearing and/or ground surface disturbance works a suspected Aboriginal object is discovered, the following procedures will be adopted.

(a) The staff member / contractor will notify the Open Cut Examiner (OCE), who in turn will notify machinery operators in the immediate vicinity of the actual and/or potential Aboriginal object(s) that work should be temporarily halted.

(b) The nature and extent of the Aboriginal object(s) will then be determined by the site Environmental Officer or an appropriately experienced site officer (from the BLALC) or archaeologist. Contact details for these individuals are provided in Appendix 1.

(c) Information relating to the actual and/or potential discovery of an Aboriginal object(s) will be recorded as follows:

   (i) Date and time;
   (ii) Approximate location i.e. GPS and/or mining block/area number(s);
   (iii) Weather conditions at time of discovery;
   (iv) Name of person who initially discovered the actual and/or potential object(s);
   (v) Mitigation measures employed post discovery i.e. barriers, signs, site personnel/contractor announcement;
   (vi) Actions taken i.e. contacted the BLALC, archaeologist etc.; and
   (vii) Proposed measures and estimated time frame(s) to insure the short-term integrity of the site and/or object(s).

(d) If the object(s) is determined to be of Aboriginal origin, then the extent of the assessed site area should be cordoned off. The Indigenous group (the BLALC) should be informed of the discovery, as should the DECC.

(e) A decision must be made by Coalpac as to whether the area can then be avoided by the works or whether an application for the appropriate destruction of the site (which may include a provision for further archaeological assessment) should be prepared by a suitably qualified archaeologist. Reference should be made to the DECCs Due Diligence Guidelines for Protection of Aboriginal Objects in NSW.

(f) A detailed salvage and surface collection protocol will be development in consultation with the BLALC and/or archaeologist once an application to the DECC has been approved for the removal, relocation, destruction and/or return of any Aboriginal object(s) found within the Project Site.
6.1.3 Procedure for Dealing with Skeletal Material

If during mining operations, skeletal material is discovered, the mine will follow the procedures outlined in the flow chart in Appendix 3. The intention of this procedure is to avoid the unnecessary removal or disturbance of skeletal material and to provide for the involvement of Aboriginal community groups if the skeletal material should prove to be those of an Aboriginal person.

6.1.4 Protocol for the Consultation of the Aboriginal Community

In the event that actual and/or potential Aboriginal objects(s) or skeletal material be discovered within the Project Site or during mining operations the following consultation protocol will be followed as to ensure complete and adequate involvement of interested Aboriginal community groups and/or the BLALC.

6.1.4.1 Discovery of an actual and/or potential aboriginal object

Should an actual and/or potential Aboriginal object(s) be discovered within the Project Site or during mining operations, Coalpac will implement the procedures detailed in Section 5.1.2 of this Plan.

6.1.4.2 Discovery of Skeletal Material

During mining operations or within the Project Site Coalpac will implement the procedure detailed in Section 5.1.3 upon the discovery of skeletal material. Should the skeletal material be determined to be those of Aboriginal heritage Coalpac will assist with interested Aboriginal community groups and/or the BLALC, where possible, the safe and respectful relocation, removal or return of any skeletal material and if requested will conduct additional archaeological assessments in the immediate vicinity of the remains.

6.1.4.3 Requests from Aboriginal Community Groups and/or BLALC

Should an interested Aboriginal community group and/or the BLALC request a site visit, tour or access to the Invincible OS1 site Coalpac will endeavour to arrange and make possible the request. Coalpac would acknowledge a request via a signed official letter from an interested Aboriginal community group and/or the BLALC. Upon the approval of a request all interested persons would be required to complete Coalpac’s Site Induction and any other associated legislative and/or legal requirements to the satisfaction of the General Manager and Compliance Manager.

6.1.4.4 Reporting of Aboriginal Heritage

As a requirement of condition 4 of schedule 5 Coalpac is required to submit an Annual Environmental Management Report (AEMR) to the Director-General and to all relevant agencies by 30 November of each year.

Coalpac will report the successfullness of this Management Plan within each AEMR, including a description of the works carried out to the site Invincible OS1 during the reporting period and what works are to be carried out in the subsequent reporting period.
In addition to the AEMR, Coalpac is required under condition 8 of schedule 5 to maintain a Community Consultative Committee (CCC) to the satisfaction of the Director-General. Should a member or representative of an interested Aboriginal community group and/or the BLALC wish to become a member of the CCC a signed letter will need to be received by Coalpac in advance of the CCC meeting. The member request(s) will be forwarded to the Director-General for approval, with Coalpac advising each approved member of upcoming CCC meetings.

7 REFERENCES

Australian ICOMOS Inc. 1998. Understanding the Burra Charter: A guide to the principles of heritage conservation in Australia. Brochure produced for Australia ICOMOS.


OzArk EHM 2008. Ecological / Heritage Assessment of the Proposed Extension to the Invincible Colliery Open Cut Coal Mine and Production Increase, Cullen Bullen, NSW. Report to Craven, Elliston and Hayes on behalf of Coalpac Pty Ltd.
8 APPENDIX 1 - CONTACT LIST

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<tr>
<th>Organisation</th>
<th>Contact Name</th>
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<th>Address</th>
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<tr>
<td>Aboriginal Community Groups</td>
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<tr>
<td>Bathurst Local Aboriginal Land Council</td>
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<td>(02) 6332 6835</td>
<td>149 Russell Street, PO Box 1500, Bathurst, NSW 2795</td>
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<tr>
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9 APPENDIX 2 – CORRESPONDENCE FROM THE BATHURST LALC

BATHURST
LOCAL ABORIGINAL LAND COUNCIL
149 Russell Street PO Box 1500 Bathurst NSW 2795 Bathurst NSW 2795 Phone: 02 6332 6835 Fax: 02 6332 3623

INVINCIBLE COLLIERY
PROPOSED OPEN CUT

A survey was conducted over two days Thursday 7th and Friday 8th June 2007 for Invincible Colliery situated 21 kilometre north west of Lithgow NSW, on the Castlereagh Highway. This survey was conducted for the proposed Open Cut Mine.

Eastern Zone Survey: A majority of this area had been disturbed previously due to mine works, tree lopping and bush clearing.

Northern Zone Survey – Ben Bullen State Forest: The terrain in this area consisted of steep hills and has also had been disturbed due to previous mine works, thus creating extensive erosion of the area.

No evidence of Aboriginal activity, artefacts, shelters or scared trees was recorded or discovered during the Eastern Zone and Northern Zone surveys.

However approximately 150 metres outside of the Northern Zone Survey area a 100 x 50 metres Open Camp site with scattered artefacts was located. This Camp site needs to be persevered and should not be impacted upon. If this site is to be impacted upon or disturbed for any reason (eg. Bull dozing, future mine work), then further investigation of this site such as an archaeological dig will be required before any work commences.

This Open Camp was recorded and photographed by the Archaeologist involved in this survey and can be located on the maps provided by Ozark Environmental & Heritage Management P/L.

Bathurst Local Aboriginal Land Council has no objections to Invincible Colliery commencing the proposed project work within the boundaries of the Eastern Zone and Northern Zone survey areas.

Present at this survey were:

Phillip Cameron Ecologist Ozark Environmental & Heritage Management
Ben Churcher Archaeologist Ozark Environmental & Heritage Management
Wendy Lewis Warrabunga Aboriginal representative
Richard Peters Sites Officer Bathurst Local Aboriginal Land Council

RICHARD J PETERS
SITES OFFICER
17 June 2007
10 APPENDIX 3 – FLOWCHART ON PROCEDURES IN RELATION TO SKELETAL MATERIAL

Human Remains Found

STOP
NOTIFY
OCE &
MINE
OFFICIAL

Contact
Police

If the remains are reasonably likely to be of Aboriginal Heritage, contact DECC.

Contact
machinery
operator(s) to
cease work.
Make the area an
exclusion zone.
Notify Mine
Official.

Police establish
Crime Scene and
will contact all
interested
parties.

Full Police inspection of the scene
required. DECC and Police scientific
officers will collect appropriate data on
ethnicity, antiquity and evidence or
otherwise of criminal activity for
submission to Police Investigation.

Second opinion obtained from
forensic oto-dentists/pathologists.

Identified as Aboriginal or Torres
Strait Islander remains.

The Coroner stops investigating and
orders the release of the remains to
the Minister of DECC.

Non-Aboriginal or Torres Strait
Islander or suspected
criminal act or
doubt exists.

Material removed
in a controlled
method and with
appropriate dignity.

DECC to contact Aboriginal or Torres
Strait Islander community for
immediate involvement.

Laboratory analysis
undertaken.

Traditional custodians decide
arrangements with DECC.

Determined to be a
result of a crime.

Police action ensues.