



APPENDIX 3

Controlled Action
Determination and *EPBC Act*
Assessment Requirements



Notification of referral decision and designated proponent – controlled action

Ulan Coal Modification 6 Underground Mining Extension, Ulan, NSW (EPBC 2022/09292)

This decision is made under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action

designated proponent	Ulan Coal Mines Pty Limited ACN: 000 189 248
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proposed action	To expand underground longwall mining operations and associated infrastructure at the Ulan Coal Complex to access additional coal resources, Ulan, NSW (See EPBC Act referral 2022/09292)
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Referral decision: controlled action

status of proposed action	The proposed action is a controlled action. The project will require assessment and approval under the EPBC Act before it can proceed.
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relevant controlling provisions	<ul style="list-style-type: none">Listed threatened species and communities (sections 18 & 18A)A water resource, in relation to coal seam gas development and large coal mining development (sections 24D & 24E)
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Assessment approach

assessment approach	The project will be assessed under the Bilateral Agreement made under section 45 of the EPBC Act between the Commonwealth of Australia and the State of New South Wales.
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Person authorised to make decision

name and position	Andrew McNee Assistant Secretary Environment Assessments Queensland and Sea Dumping Branch
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signature	
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date of decision	12 September 2022
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Our ref: MP08_0184-Mod-6

Mr Bradley Tanswell
Environment and Community Coordinator
ULAN COAL MINES LIMITED
4505 Ulan Road
ULAN New South Wales 2850

27 September 2022

Subject: Ulan Coal Mine Expansion (MP08_0184) – Modification 6 Secretary's Environmental Assessment Requirements for EPBC Controlled Action

Dear Mr Tanswell

I refer to the scoping letter from Mr Charlie Allan to the Department dated 3 November 2020, and the Department's response dated 12 November 2020 regarding the assessment requirements for the proposed modification to the Ulan Coal Mine – Expansion (MOD 6).

Since issuing that letter, the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) has determined that the modification is a controlled action under the *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act) (EPBC 2022/09292).

I can advise that the action will be assessed by the NSW Government under the assessment bilateral agreement between the Commonwealth Government and the NSW Government.

In accordance with that agreement, the Department must issue Secretary's Assessment Requirements (SEARs) for the modification to ensure that the Commonwealth matters are appropriately addressed in the Modification Report. Please also note that when the Modification Report is submitted the Department is required to exhibit the application for a minimum of 28 days and also refer a joint (Commonwealth/ NSW) application to the Independent Expert Scientific Committee (IESC) for advice.

The Commonwealth has provided its assessment requirements for the Matter of National Environmental Significance relevant to the project (listed threatened species and communities under sections 18 and 18A and a water resource, in relation to coal seam gas development and large coal mining development under sections 24D and 24E). Those requirements are detailed in **Attachment 1**.

In addition to the matters outlined in the previous correspondence referred to above, the Modification Report must also address the matters detailed in Attachment 1 of this letter.

If you have any questions, please contact Jack Turner on 02 9995 5387 or via email at Jack.Turner@planning.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be "SO", written over a light blue horizontal line.

Stephen O'Donoghue
Director
Resource Assessments

as delegate for the Planning Secretary

Enc: Attachment 1 – Commonwealth Assessment Requirements

ATTACHMENT 1

Assessment Requirements Relevant to the *Environmental Protection and Biodiversity Conservation Act 1999*

Ulan Coal – Expansion Modification (MP08_0184-Mod-6) (EPBC 2022/09292)

Introduction

1. On 12 September 2022, a delegate of the Federal Minister for the Department of Climate Change, Energy, the Environment and Water (DCCEEW) determined that the Ulan Coal - Expansion Modification 6 was a controlled action under section 75 of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act controlling provisions for the proposed action are:
 - i. Listed threatened species and communities (sections 18 and 18A); and
 - ii. A water resource, in relation to coal seam gas development and large coal mining development (sections 24D & 24E)
2. The proposed action will be assessed using an accredited process for the purposes of the EPBC Act. The assessment documentation must include:
 - i. an assessment of all impacts that the action is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;
 - ii. enough information about the proposal and its relevant impacts to allow the Commonwealth Minister to make an informed decision on whether or not to approve; and
 - iii. information addressing the matters outlined in Schedule 4 of the *Environmental Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations).
3. The Applicant must undertake an assessment of all protected matters that may be impacted by the development under the controlling provisions identified in paragraph 1. The DCCEEW considers that there is likely to be a significant impact on the following:
 - i. *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* –critically endangered ;
 - ii. Large-eared Pied Bat (*Chalinolobus dwyeri*) – Vulnerable; and
 - iii. Groundwater and surface water resources within the project area and surrounding area
4. DECCW also considers that the proposed action may result in significant impacts to the following species:
 - i. Regent Honeyeater (*Anthochaera phrygia*) – Critically endangered
 - ii. Swift Parrot (*Lathamus discolor*) – Critically endangered
 - iii. Superb Parrot (*Polytelis swainsonii*) – Vulnerable
 - iv. Spot-tailed Quoll (*Dasyurus maculatus maculatus*) – Endangered
 - v. Corben's Long-eared Bat (*Nyctophilus corbeni*) – Vulnerable
 - vi. Brush-tailed Rock-wallaby (*Petrogale penicillata*) – Vulnerable
 - vii. Koala (QLD, NSW, ACT) (*Phascolarctos cinereus*) – Endangered
 - viii. Greater Glider (*Petauroides volans*) – Endangered.

These species require further assessment, surveys and analysis to determine whether they are likely to be significantly impacted. Note that this may not be a complete list and it is the responsibility of

the Applicant to ensure any protected matters under this controlling provision are assessed for the Commonwealth decision-makers consideration.

5. The Applicant must consider each of the protected matters under the triggered controlling provisions that may be impacted by the action. Note that this may not be a complete list and it is the responsibility of the Applicant to undertake an analysis of the significance of the relevant impacts and ensure that all protected matters that are likely to be significantly impacted are assessed for the Commonwealth Minister's consideration.

General Requirements

Relevant Regulations

6. The Modification Report must address the matters outlined in Schedule 4 of the EPBC Regulations and the matters outlined below in relation to the controlling provisions.

Project Description

7. The title of the action, background of the action and current status.
8. The precise location and description of all works to be undertaken (including associated offsite works and infrastructure), structures to be built or elements of the action that may have impacts on Matters of National Environmental Significance (MNES).
9. How the action relates to any other actions that have been, or are being taken in the region affected by the action.
10. How the works are to be undertaken and design parameters for those aspects of the structures or elements of the action that may have relevant impacts on MNES.

Impacts

11. The Modification Report must include an assessment of the relevant impacts¹ of the action on the matters protected by the controlling provisions, including:
 - i. a description and detailed assessment of the nature and extent of the likely direct, indirect and consequential impacts, including short term and long-term relevant impacts;
 - ii. a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
 - iii. analysis of the significance of the relevant impacts; and
 - iv. any technical data and other information used or needed to make a detailed assessment of the relevant impacts.

Avoidance, mitigation and offsetting

12. For each of the relevant matters protected that are likely to be significantly impacted by the action, the Modification Report must provide information on proposed avoidance and mitigation measures to manage the relevant impacts of the action including:
 - i. a description, and an assessment of the expected or predicted effectiveness of the mitigation measures,
 - ii. any statutory policy basis for the mitigation measures;
 - iii. the cost of the mitigation measures;

¹ Relevant impacts are those impacts likely to significantly impact on any matter protected under the EPBC Act

- iv. an outline of an environmental management plan that sets out the framework for continuing management, mitigation and monitoring programs for the relevant impacts of the action, including any provisions for independent environmental auditing;
 - v. the name of the agency responsible for endorsing or approving each mitigation measure or monitoring program.
13. Where a significant residual adverse impact to a relevant protected matter is considered likely, the Modification Report must provide information on the proposed offset strategy, including discussion of the conservation benefit associated with the proposed offset strategy.
14. For each of the relevant matters likely to be impacted by the action the Modification Report must provide reference to, and consideration of, relevant Commonwealth guidelines and policy statements including any:
- i. conservation advice or recovery plan for the species or community;
 - ii. relevant threat abatement plan for a process that threatens the species or community;
 - iii. wildlife conservation plan for the species; and
 - iv. any strategic assessment.

[Note: the relevant guidelines and policy statements for each species and community are available from DCCEEW's Species Profiles and Threats Database available at <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>]

Key Issues

Biodiversity (threatened species and communities and migratory species)

Comments

15. Key risks associated with the proposed action from the Commonwealth perspective include:
- i. Potential impacts from vegetation clearance associated with the placement of surface infrastructure.
 - ii. Potential impacts on threatened species and ecological communities associated with the underground mining component of the project, including subsidence and groundwater drawdown events, which may have implications for species and threatened ecological communities within and surrounding the proposed action area.

Assessment Requirements

16. For each of the EPBC Act listed species predicted to occur in the project site, and each of the EPBC Act listed ecological communities likely to be significantly impacted, the EIS must provide:
- Survey results, including details of the scope, timing and methodology for studies or surveys used and how they are consistent with (or justification for divergence from) published Commonwealth guidelines and policy statements and/or the relevant NSW offsetting method.
 - A description and quantification of habitat in the study area (including suitable breeding habitat, suitable foraging habitat, important populations and habitat critical for survival), with consideration of, and reference to, any relevant Commonwealth guidelines and policy statements including listing advices, conservation advices, recovery plans, and threat abatement plans.
 - Maps displaying the above information (specific to each EPBC protected matter) overlaid with the proposed action. It is acceptable, where possible, to use the mapping and assessment of Plant Community Types (PCTs) and the species surveys prescribed by the BAM as the basis for identifying EPBC Act-listed species and communities. The Modification Report must clearly identify which

PCTs are considered to align with habitat for the relevant EPBC Act listed species or community, and provide individual maps for each species or community.

- Information on proposed avoidance and mitigation measures to deal with the impacts of the action, and a description of the predicted effectiveness and outcomes that the avoidance and mitigation measures will achieve.
- Quantification of the offset liability for each species and community significantly impacted, and information on the proposed offset strategy, including discussion of the conservation benefit for each species and community, how offsets will be secured, and the timing of protection. It is a requirement that offsets directly contribute to the ongoing viability of the specific protected matter impacted by a proposed action i.e. 'like-for-like'.
- Like-for-like includes protection of native vegetation that is the same ecological community or habitat being impacted (preferably in the same region where the impact occurs), or funding to provide a direct benefit to the matter being impacted e.g. threat abatement, breeding and propagation programs or other relevant conservation measures.

A water resource, in relation to coal seam gas development and large coal mining development

Comments

17. Key risks associated with the proposed action from the Commonwealth perspective include potential impacts to groundwater and surface water resources within the project area and surrounding area, including:
 - i. Groundwater drawdown and depressurisation of aquifers
 - ii. Additional or altered connectivity between surface water and groundwater features
 - iii. Additional or altered connectivity between aquifers
 - iv. Impacts related to subsidence events and their associated impact on water resources within the vicinity of the project site
 - v. Reduction in water quality
 - vi. Changes to surface flow volumes, inflows and flow paths
 - vii. Impacts related to the function of the paleochannel and dependent ecosystems.
18. The Modification Report must include a detailed water assessment. The water assessment must be undertaken in accordance with the IESC Information Guidelines (<https://iesc.environment.gov.au/information-guidelines>) and provide the information outlined in these guidelines.
19. To adequately assess the impact of the proposed action on water resources, the Modification Report requires:
 - i. site specific information based on scientific evidence or modelled data.
 - ii. a cumulative impact assessment for surface and groundwater resources.
 - iii. Information regarding the potential for significant impacts to surface water resources to support or independently assess the impact of the proposed action that include:
 - a) the information on the potential impacts to water resources;
 - b) impact assessment data from mining to date; and
 - c) predictions of ground water impacts from the proposed action.
 - iv. Key Matters Requiring Further Assessments in the Modification Report:
 - a) documentation on the predicted nature and extent of subsidence related impacts for locations in and around the project area;

- b) geophysical information regarding faults and other features identified in the project area with a view to how these may enhance impacts, including incorporation into the groundwater model;
- c) simulations of mining related impacts on The Drip should be reconsidered, as current predictions may not be accurate due to the conceptualised isolation of the feature from other Triassic formations;
- d) a comparison of fracturing height estimates using the Ditton-Merrick method and Tammetta method;
- e) inclusion of accurate climate projections in the modelling;
- f) a reconsideration of boundary conditions and a reassessment of potential impacts from groundwater drawdown following that reconsideration (if required);
- g) documents outlining the conceptual layout of surface infrastructure;
- h) clarification on the intended storage and treatment of mine-affected water within the proposed action area;
- i) a detailed assessment of potential impacts to flow regimes and water quality within the wider catchment from the proposed modification; and
- j) stygofauna assessment within the alluvium and colluvium of Mona Creek and Talbragar River.

Other approvals and conditions

20. Information in relation to any other approvals or conditions required must include the information prescribed in Schedule 4 Clause 5 (a) (b) (c) and (d) of the EPBC Regulations.

Relevant References and Guidelines

International Conventions, Management Plans and Principles

The international conventions, management plans and principles that must be considered in relation to this proposal include:

- Listed threatened species and communities
 - Australia's obligations under the:
 - o Convention on Biological Diversity
 - o The Convention on Conservation of Nature in the South Pacific (Apia Convention)
 - o The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
 - Any relevant recovery plans or threat abatement plans.

Policies and Plans

The policies and plans that must be considered in relation to this proposal include:

- Relevant conservation advice/s: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

Commonwealth Listing Advice, Survey Guidelines and Referral Guidelines contain information on threatened species and ecological communities which may provide further support to proponents and NSW DPE in considering and evaluating the significance of residual impacts on the action's controlling provisions. These documents may be found in the DCCEEW's Species Profile and Threats Database: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

Other references

- *Environment Protection and Biodiversity Conservation Act 1999* - section 51-55, section 96A(3)(a)(b), 101A(3)(a)(b), section 136, section 527E
- *Environment Protection and Biodiversity Conservation Regulations 2000 Schedule 4*
- Commonwealth and NSW Governments Bilateral Agreement (*Amending Agreement No.1, 2020*) - Item 2 (a)(i) of Schedule 1
- *Matters of National Environmental Significance - Significant impact guidelines 1.1* (2013) EPBC Act
- *Environment Protect and Biodiversity Conservation Act 1999* Environmental Offsets Policy October 2012
- *Information Guidelines for Independent Expert Scientific Committee advice on coal seam gas and large coal mining development proposals* (2014)