

Attachment 1- Analysis of Statutory Requirements

Statutory instrument	Section	Consideration
<p><i>Environmental Planning and Assessment Act 1979</i> No 203</p>	<p>Section 1.3: Objects of Act The objects of the Act are as follows—</p> <p><i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,</i></p> <p><i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i></p> <p><i>(c) to promote the orderly and economic use and development of land,</i></p> <p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p> <p><i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p> <p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p> <p><i>(g) to promote good design and amenity of the built environment,</i></p> <p><i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i></p> <p><i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i></p> <p><i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i></p>	<p>The proposed Modification is consistent with the relevant objects of the Act as outlined below. The 22.48 ha proposed alternative offset area provides increased biodiversity outcomes, promoting benefits to the environment and community, consistent with local, state and Commonwealth environmental planning objectives.</p> <p>The proposed Modification is consistent with the objective of ecologically sustainable development and will ensure UC MPL continues to promote the economic use of land and social and economic welfare of the community, through benefits provided to the community and economy as a result of continued mining operations at the Ulan Coal Complex.</p> <p>Based on review by EcoLogical Australia Pty Ltd (ELA, May 2021), protection of ecological features above that protected by Brokenback Conservation Area (BCA)– Area 2 within the proposed alternative offset area is achieved through:</p> <ul style="list-style-type: none"> • Provision for protection of an area of native vegetation above that required by Project Approval (PA) 08_0184; • Provision of equivalent Plant Community Types (PCTs) and a greater range of PCTs compared to BCA – Area 2; • Vegetation condition comparable to the BCA – Area 2; • Provision for protection of cliffline areas above that required by PA 08_0184; • Protection and enhancement of fauna habitat through the protection and management of cave habitat above that required by PA 08_0184; • Protection of at least 14 microbat species, previously recorded within the alternative offset area, including the Vulnerable listed Large-eared Pied Bat, Yellow-bellied sheath-tailed Bat and Large Bent-wing Bat (listed under

		<p>the NSW <i>Biodiversity Conservation Act 2016</i> and Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i>);</p> <ul style="list-style-type: none"> • Protection of a number of other threatened species previously recorded in the area, including the Grey-crowned Babbler and Glossy Black-cockatoo; • Protection of a known maternity roost for the Large-eared Pied Bat; • The proposed alternative offset area also contains a range of heritage features, which will be protected via creation of a conservation area. <p>In addition to providing an improved environmental outcomes compared to the 10 hectare privately owned portion of BCA – Area 2 that is currently required by PA 08_0184, the alternative offset area will complement existing biodiversity offset areas located within the Ulan Mine Complex and in close proximity to the proposed alternative offset area, whilst promoting the amenity of these areas.</p> <p>Further details of the biodiversity inclusions are available in the ELA Report <i>Alternative Offset Assessment – suitability of proposed alternative offset area as a suitable replacement for the privately owned portion of Brokenback Conservation Area- Area 2</i> (ELA, 2021), a copy of which is attached.</p> <p>Relevant State and Federal Agencies have been and will continue to be consulted as part of the proposed modification and establishment of a Biodiversity Stewardship Agreement, ensuring involvement at both the State and Federal levels.</p> <p>UCMPL wrote to Registered Aboriginal Parties (RAP’s) on 16 June 2021 making them aware of the proposed modification and of UCMPL’s intention to ensure protection measures afforded to the four Heritage Rock Shelters and artefact site within BCA- Area 2 will remain in place. The proposed modification was also discussed with RAP’s during a meeting held on 23 June 2021, ensuring relevant community members have had an opportunity to discuss the proposed modification.</p>
	<p>Section 4.15: Evaluation <i>4.15(1) Relevant matters for consideration:</i></p>	<p>The proposed alternative offset site is located within the Mid-Western Regional Council (MWRC) Local Government Area; relevant environmental</p>

	<p>(a) the provisions of</p> <p>(i) Any environmental planning instrument; and</p> <p>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</p> <p>(iii) Any development control plan</p> <p>(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</p> <p>(iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,</p> <p>(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</p> <p>(c) The suitability of the site for the development,</p> <p>(d) any submissions made in accordance with this Act or the regulations,</p> <p>(e) The public interest</p> <p>Sections 4.15(2) to (6) are not applicable to the proposed modification and are not considered further.</p>	<p>planning instruments include the MWRC <i>Local Environmental Plan (LEP), 2012</i> and <i>Development Control Plan (DCP), 2013</i>, which are addressed separately below.</p> <p>UCMPL have an existing Voluntary Planning Agreement with MWRC. The proposed modification will not affect the terms of the existing agreement.</p> <p>UCMPL have considered the likely impacts of the development, the suitability of the site for development and the public interest when determining the best alternative offset site for conservation. The alternative offset site provides higher biodiversity value than the offset site it is intended to replace, and will have no negative social or economic impact. The site has been assessed as being suitable for use as a conservation area. Further details of the biodiversity inclusions and site suitability are available in ELA 2021.</p> <p>The information provided demonstrates the proposed modification is consistent with section 4.15 of the Act.</p>
<p><i>Mid-Western Regional Council LEP (2012)</i></p>	<p><i>Part 2 Permitted or prohibited development</i> <i>Section 2.3 Zone objectives and Land Use Table</i> <i>Section 5.10 Heritage Conservation</i> <i>Section 6.5 Terrestrial biodiversity</i></p>	<p>The proposed area is located within Lot 15 DP 750735, which is zoned as E3 (Environmental Management). The proposed use of the land as a conservation area is consistent with the objectives of the E3 zone, including to protect, manage and/or restore areas to specific ecological values. The proposed site is not suitable for primary production and will have no negative impact on surrounding primary production lands (Zoned RU1).</p>

		<p>There are no listed Environmental heritage items within the proposed location however, the proposed alternative offset area contains a range of Aboriginal heritage features, which will be protected via creation of a conservation area and protection measures afforded to the four Heritage Rock Shelters and artefact site within BCA- Area 2 will remain in place.</p> <p>The proposed modification is consistent with the objectives of section 6.5 as the proposed alternative offset area will protect native flora and fauna, ecological processes and assist with the conservation and recovery of native flora and fauna and their habitats.</p> <p>The proposed modification is considered consistent with the MWRC LEP (2012).</p>
<p><i>Mid-Western Regional Council DCP (2013)</i></p>	<p><i>Sections 1.1 and 1.2 Purpose and aim of the plan</i> <i>Section 5.4 Environmental Controls</i></p>	<p>The proposed modification will allow for the protection and conservation of a range of Aboriginal heritage features, will not increase risks of bushfire and will provide protection for native flora and fauna and a range of threatened species, consistent with section 5.4 of the DCP.</p> <p>The proposed modification is considered consistent with the purpose, aim and other requirements of the MWRC DCP (2013).</p>