

Commonwealth Department of Agriculture, Water and the Environment assessment requirements

Guidelines for preparing assessment documentation relevant to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for proposals being assessed under the Amended Bilateral Agreement

Valley of the Winds Wind Farm (EPBC 2020/8668, SSD 10461)

Introduction

1. On 13 July 2020, a delegate of the Federal Minister for the Department of Agriculture, Water and the Environment (formerly Department of Environment and Energy) determined that the Valley of the Winds Wind Farm Project was a controlled action under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act controlling provisions for the proposed actions are:
 - i. listed threatened species and communities (sections 18 and 18A); and
 - ii. listed migratory species (sections 20 and 20A).
2. The proposed action will be assessed in accordance with the bilateral assessment agreement *Amending Agreement No. 1*, and as such, is required to be assessed in the manner specified in Schedule 1 to that Agreement, including, addressing the matters outlined in Schedule 4 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations).
3. The proponent must undertake an assessment of all protected matters that may be impacted by the development under the controlling provision identified in paragraph 1. The Commonwealth Department of Agriculture, Water and the Environment considers that the proposed action is likely to have a significant impact on threatened species and communities and migratory species listed in **Appendix A**.
4. The proponent 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 proponent 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

5. The Environmental Impact Statement (EIS) must address all matters outlined in Schedule 4 of the EPBC Regulations and all the matters outlined below in relation to the controlling provisions.

Project Description

6. The title of the action, background to the action and the current status.
7. 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).
8. How the action relates to any other actions that have been, or are being taken in the region affected by the action.
9. 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

10. The EIS must include an assessment of the relevant impacts 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

11. For each of the relevant matters protected that are likely to be significantly impacted by the action, the EIS 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;
 - 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.

12. Where a significant residual adverse impact to a relevant protected matter is considered likely, the EIS must provide information on the proposed offset strategy, including discussion of the conservation benefit associated with the proposed offset strategy.
13. For each of the relevant matters likely to be impacted by the action the EIS 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 the species;
 - 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 the Department of Agriculture, Water and the Environment Species Profile and Threats Database.

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

Key Issues

Biodiversity (threatened species and communities and migratory species)

Assessment Requirements

14. The EIS must identify each EPBC Act listed threatened species and community and migratory species likely to be impacted by the action. For any species and communities that are likely to be impacted, the proponent must provide a description of the nature, quantum and consequences of the impacts. For species and communities potentially located in the project area or in the vicinity that are not likely to be impacted, provide evidence why they are not likely to be impacted.
15. For each of the EPBC Act listed threatened species and communities and migratory species likely to be impacted by the action the EIS must provide a separate:
- a. description of the habitat (including identification and mapping of 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 advice, conservation advice and recovery plans;
 - b. details of the scope, timing and methodology for studies or surveys used and how they are consistent with (or justification for divergence from) published Australian Government guidelines and policy statements;
 - c. description of the relevant impacts of the action having regard to the full national extent of the species or community's range; and
 - d. description of the specific proposed avoidance and mitigation measures to deal with relevant impacts of the action;
 - e. identification of significant residual adverse impacts likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account;
 - f. description of any offsets proposed to address residual adverse significant impacts and how these offsets will be established.
 - g. details of how the current published NSW Biodiversity Assessment Methodology has been applied in accordance with the objects of the EPBC Act to offset significant residual adverse impacts; and
 - h. details of the offset package to compensate for significant residual impacts including details of the credit profiles required to offset the action in accordance with the NSW Biodiversity Assessment Methodology and/or mapping and descriptions of the extent and condition of the relevant habitat and/or threatened communities occurring on proposed offset sites;

Note: For the purposes of approval under the EPBC Act, it is a requirement that offsets directly contribute to the ongoing viability of the specific protected matter impacted by a proposed action and deliver an overall conservation outcome that improves or maintains the viability of the MNES 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.

16. Any significant residual impacts not addressed by the NSW Biodiversity Assessment Methodology may need to be addressed in accordance with the Environment Protection and Biodiversity Conservation Act 1999 Environmental Offset Policy.

<http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>

Other approvals and conditions

17. Information in relation to any other approvals of conditions required must include the information prescribed in Schedule 4 Clause 5 (a) (b) (c) and (d) of the EPBC Regulations 2000.

Environmental Record of person proposing to take the action

18. Information in relation to the environmental record of a person proposing to take action must include details as prescribed in Schedule 4 Clause 6 of the EPBC Regulations 2000.

Information Sources

19. For information given in the EIS, the EIS must state the source of the information, how recent the information is, how the reliability of the information was tested, and what uncertainties (if any) are in the information.

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*
- Amending Agreement No.1 (2020) - Item 18.1, Item 18.5, 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

Appendix A

Proposed site

Based on the information in the referral documentation, the location of the action, species records and likely habitat present in the area, there are likely to be significant impacts to:

- Grey Box (*Eucalyptus microcarpa*) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia listed as **endangered**.
- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland listed as **critically endangered**.
- Regent Honeyeater (*Anthochaera phrygia*) listed as **critically endangered**.
- Painted Honeyeater (*Grantiella picta*) listed as **vulnerable**.
- Swift Parrot (*Lathamus discolor*) listed as **critically endangered**.
- Superb Parrot (*Polytelis swainsonii*) listed as **vulnerable**.
- Large-eared Pied Bat (*Chalinolobus dwyeri*) listed as **vulnerable**.
- Corben's Long-eared Bat (*Nyctophilus corbeni*) listed as **vulnerable**.
- Koala (*Phascolarctos cinerus*) (combined populations of Queensland, New South Wales and the Australian Capital Territory) listed as **vulnerable**.

Additionally, the proposed action may have a significant impact on the following migratory species:

- White-throated Needletail (*Hirundapus caudacutus*) (CAMBA, JAMBA ROKAMBA) listed as **vulnerable**.

Additionally, there is some risk that there may be significant impacts on the following matters and levels of impact should be further investigated:

- *Androcalva procumbens* listed as **vulnerable**.
- Austral Toadflax (*Thesium australe*) listed as **vulnerable**.
- Bent Pomaderris (*Pomaderris sericea*) listed as **vulnerable**.
- Bluegrass (*Dichanthium setosum*) listed as **vulnerable**.
- Greater Glider (*Petauroides Volans*) listed as **vulnerable**.
- Grey-headed Flying-fox (*Pteropus poliocephalus*) listed as **vulnerable**.
- Hoary Sunray (*Leucochrysum albicans* subsp. *tricolor*) listed as **endangered**.
- *Homoranthus darwinioides* listed as **vulnerable**.
- *Indigofera efoliata* listed as **endangered**.
- *Kennedia retrorsa* listed as **vulnerable**.
- *Lasiopetalum longistamineum* listed as **vulnerable**.

- Malleefowl (*Leipoa ocellata*) listed as **vulnerable**.
- Mount Vincent Mintbush (*Prostanthera stricta*) listed as **vulnerable**.
- *Ozothamnus tessellatus* listed as **vulnerable**.
- Sandy Hollow Commersonia (*Androcalva rosea*) listed as **endangered**.
- Small Purple-pea (*Swainsona recta*) listed as **endangered**.
- Smooth Bush-pea (*Pultenaea glabra*) listed as **vulnerable**.
- Spotted-tail Quoll (*Dasyurus maculatus maculatus*) (SE mainland population) listed as **endangered**.
- *Tylophora linearis* listed as **endangered**.
- Wollemi Mint-bush (*Prostanthera cryptandroides* subsp. *cryptandroides*) listed as **vulnerable**.

Additionally, the proposed action also has the potential to have a significant on the following listed migratory species and further detailed assessment of potential impacts is required:

- Fork-tailed Swift (*Apus pacificus*) (Bonn, CAMBA, ROKAMBA)

Note: uncertainty around the extent and number of protected matters that may be impacted will need to be resolved through the assessment process once final alignment and construction plans have been completed.

Note: this may not be a complete list and it is the responsibility of the proponent to ensure any protected matters under these controlling provisions are assessed for the Commonwealth decision-maker's consideration.