

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

Barneys Reef Wind Farm (EPBC 2022/09358)

Introduction

1. On 20 December 2022, a delegate of the Federal Minister for the Environment determined Barneys Reef Wind Farm 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)
 - 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 Climate Change, Energy, the Environment and Water (DCCEEW) 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 relevant impacts and ensure all protected matters that are likely to be 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 matters outlined below in relation to the controlling provisions.

Project Description

6. The title of the action, background to the action and 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 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 the Department of the Environment Species Profiles and Threats Database.

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

14. In addition to the general requirements described above, specific information is required with respect to each of the determined controlling provisions. These requirements are outlined in paragraphs 15-18.

Key Issues

Biodiversity (threatened species and communities and migratory species)

Assessment Requirements

15. 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.
16. 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:
 - i. 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;
 - ii. 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;
 - iii. description of the relevant impacts of the action having regard to the full national extent of the species or community's range;
 - iv. description of the specific proposed avoidance and mitigation measures to deal with relevant impacts of the action;
 - v. identification of significant residual adverse impacts likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account;
 - vi. a description of any offsets proposed to address residual adverse significant impacts and how these offsets will be established.
 - vii. details of how the current published NSW Biodiversity Assessment Method (BAM) has been applied in accordance with the objects of the EPBC Act to offset significant residual adverse impacts; and
 - viii. 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 BAM 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.

17. Any significant residual impacts not addressed by the BAM may need to be addressed in accordance with the EPBC Act 1999 Environmental Offset Policy.
<http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>.

Other approvals and conditions

18. 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.

Environmental Record of person proposing to take the action

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

Information Sources

20. For information given in an 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 Protection and Biodiversity Conservation Act 1999* Environmental Offsets Policy October 2012

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:
 - Convention on Biological Diversity
 - Convention on Conservation of Nature in the South Pacific (Apia Convention)
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
 - Any relevant recovery plans or threat abatement plans.
- Listed migratory species
 - Australia's obligations under the:
 - Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
 - the China-Australia Migratory Bird Agreement (CAMBA)
 - the Japan-Australia Migratory Bird Agreement (JAMBA)
 - the Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA)
 - Any other international agreement approved under section 209(4) of the EPBC Act.
- Relevant conservation advice/s: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>
- Relevant strategic assessment reports

Appendix A

Protected matters relevant to the Barneys Reef Wind Farm (EPBC 2022/09358) project

Specific risks

Key risks associated with the proposed action from the Commonwealth perspective include:

- Likely and potential significant impacts to EPBC listed threatened species and ecological communities resulting from the clearing of native vegetation in the project footprint. DCCEEW believes the proposed action will clear suitable foraging habitat that is critical for the survival of the threatened species above-mentioned and reduce the extent of the ecological community present on the proposed action area.
- Potential significant impacts to EPBC listed migratory species resulting from the potential for individual mortality due to wind turbine strike.

Further information is required during the assessment stage to address these risks and determine the listed threatened species and ecological communities that will be directly and indirectly impacted by the proposed action.

Threatened species and communities

Based on the information in the referral documentation, the proposed action is likely to have significant impacts on the following matters of national environmental significance:

- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland – Critically Endangered
- Regent Honeyeater (*Anthochaera phrygia*) – Critically Endangered
- Painted Honeyeater (*Grantiella picta*) – Vulnerable
- White-throated Needletail (*Hirundapus caudacutus*) – Vulnerable

Listed migratory species

Based on the information available in the referral, the proposed action is likely to have a significant impact on the following matters of national environmental significance, including but not limited to:

- Fork-tailed Swift (*Apus pacificus*) – Marine; Migratory (CAMBA, JAMBA, ROKAMBA)
- Latham's Snipe (*Gallinago harwickii*) – Marine; Migratory (Bonn, JAMBA, ROKAMBA)
- Rufous Fantail (*Rhipudra rufifrons*) – Marine; Migratory (Bonn)
- Satin Flycatcher (*Myiagra cyanoleuca*) – Marine; Migratory (Bonn)
- Sharp-tailed Sandpiper (*Calidris acuminata*) – Marine; Migratory (Bonn, CAMBA, JAMBA, ROKAMBA)
- White-throated Needletail (*Hirundapus caudacutus*) – Vulnerable; Migratory (CAMBA, JAMBA, ROKAMBA)

Based on DCCEEW's Protected Matters Search Tool and information provided by DCCEEW's Species Profiles and Threat Database (SPRAT), the following matters protected under Part 3 are possibly at risk of being impacted:

- Corben's Long-eared Bat (*Nyctophilus corbeni*) – vulnerable
- Gang-gang Cockatoo (*Callocephalon fimbriatum*) – endangered
- Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable
- Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) – endangered
- Large-eared Pied Bat (*Chalinolobus dwyeri*) – vulnerable
- Spotted-tailed Quoll (*Dasyurus maculatus maculatus*) (SE mainland population) – endangered
- Superb Parrot (*Polytelis swainsonii*) – vulnerable
- Swift Parrot (*Lathamus discolor*) – critically endangered

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 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 decision-maker's consideration.