

ATTACHMENT 3

Commonwealth Department of Agriculture, Water and the Environment assessment requirements

Moolarben Coal Complex OC3 Extension Project, NSW (EPBC 2022/9162) (SSD 33083358)

Introduction

1. On 2 May 2022, a delegate of the Minister for the Environment, determined that the Moolarben Coal Complex OC3 Extension Project (the proposed action) is 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 action are:
 - i. listed threatened species and communities (sections 18 and 18A);
 - ii. a water resource, in relation to coal seam gas development and large coal mining development (section 24D & 24E).
2. The delegate confirmed that the proposed action will be assessed under the accredited bilateral agreement with New South Wales (*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 designated proponent must undertake an assessment of all protected matters that may be impacted by the proposed action under the controlling provisions identified in paragraph 1. The Commonwealth Department of Agriculture, Water and the Environment (DAWE) considers that the proposed action is likely to have a significant impact on the protected matters listed in **Appendix A**.
4. 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 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 the matters outlined in Schedule 4 of the EPBC Regulations and the 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;
 - 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

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

- i. Impacts on species and ecological communities:
 - The removal of native vegetation, particularly 645 ha of the critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and habitat for Cotoneaster Pomaderris (*Pomaderris cotoneaster*), Regent Honeyeater (*Anthochaera phrygia*), Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) and Large-eared Pied Bat (*Chalinolobus dwyeri*). These impacts must be appropriately offset for EPBC Act purposes. The Department considers there are other listed species possibly at risk of being impacted as listed in **Appendix A**.
- ii. Impacts on water resources:
 - Water resources through groundwater drawdown and depressurisation, potential impacts to surface and groundwater quality, and cumulative impacts with existing coal mine developments.

Assessment Requirements

Biodiversity (threatened species and ecological communities)

15. The EIS must address the matters outlined in Schedule 4 of the Environment Protection and Biodiversity Conservation Regulations 2000 and the matters outlined below in relation to the controlling provisions.

16. For each of the EPBC Act controlling provisions impacted by the proposed action, the EIS must provide:

- i. 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. For ecological communities, this includes any condition thresholds provided in the listing advice or approved conservation advice.
- ii. 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 and recovery plans, threat abatement plans.
- iii. Maps displaying the above information (specific to EPBC matters) 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 EIS 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.
- iv. Description of the nature, geographic extent, magnitude, timing and duration of any likely direct, indirect and consequential impacts on any relevant EPBC Act-listed species and communities. It must clearly identify the location and quantify the extent of all impact areas to each relevant EPBC Act-listed species or community.
- v. 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.

- vi. 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'.
- vii. 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 (section 24D & 24E)

17. The EIS 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.
18. To adequately assess the impact of the proposed action on water resources, the EIS requires:
 - i. site specific information based on scientific evidence or modelled data.
 - ii. the cumulative impact assessment for surface and groundwater resources including the current approvals and all foreseeable actions or future developments associated with current operations around the project area, including (but not limited to) modifications, approval variations and potential expansions.
 - 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;
 - c) predictions of ground water impacts from the proposed action.
 - iv. Key Matters Requiring Further Assessments in EIS:
 - a) detailed description and characterisation of current groundwater conditions, particularly considering the extensive mining activities occurring within and around the project area;
 - b) the influence of climatic factors such as flooding events and an increase in consecutive low- and zero-flow days on groundwater behaviour; and
 - c) a detailed assessment of the aquifer(s) that might be impacted by potential groundwater level fluctuations resulting from the project. This should also consider the potential interaction and/or dependency of the groundwater dependent feature "The Drip", which is also recognised as having a significant Aboriginal cultural heritage.

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.

Anticipated Engagement

21. The Applicant should consult with DAWE again after detailed survey work is undertaken and before the EIS is finalised to ensure that all relevant species have been considered and the above assessment requirements have been met.

Relevant Reference 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:
 - Convention on Biological Diversity
 - The Convention on Conservation of Nature in the South Pacific (Apia Convention)
 - 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 DPIE in considering and evaluating the significance of residual impacts on the action's controlling provisions. These documents may be found in the Department of Agriculture, Water and the Environment's Species Profile and Threats Database:

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

Other References

- [Amending Agreement No. 1](#) (2020) - Item 18.1, Item 18.5, Schedule 1
- *Environment Protection and Biodiversity Conservation Act 1999* - section 51-55, section 101A, section 136, section 527E
- [Environment Protect and Biodiversity Conservation Act 1999 Environmental Offsets Policy](#) (Department of Sustainability, Environment, Water, Population and Communities, 2012)
- *Environment Protection and Biodiversity Conservation Regulations 2000 Schedule 4*
- [Information Guidelines for Independent Expert Scientific Committee advice on coal seam gas and large coal mining development proposals](#) (IESC, 2014)

- [Significant impact guidelines 1.1: Matters of National Environmental Significance](#) (Department of the Environment, 2013)
- [Significant Impact Guidelines 1.3: Coal Seam Gas and Large Coal Mining Developments – impacts on water resources](#) (Department of the Environment, 2013)

Appendix A

Matters of National Environmental Significance

There are likely to be significant impacts on the following controlling provisions:

- Listed threatened species and communities (sections 18 and 18A)
- A water resource, in relation to coal seam gas development and large coal mining development (section 24D and 24E).

All matters of national environmental significance (MNES) protected under the triggered controlling provisions are potentially relevant, however the Department of Agriculture, Water and the Environment considers that there is likely to be a significant impact on the following:

Listed threatened species and communities (s18 & s18A)

- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland – Critically Endangered
- Cotoneaster Pomaderris (*Pomaderris cotoneaster*) – Endangered
- Regent Honeyeater (*Anthochaera phrygia*) – Critically Endangered
- Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) – Endangered
- Large-eared Pied Bat (*Chalinolobus dwyeri*) – Vulnerable.

Based on the Department's Environment Reporting Tool and information provided by the Department's Species Profiles and Threats Database (SPRAT) (located at <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>), the Department considers that the following matters protected under Part 3 are possibly at risk of being impacted.

- Broad-headed Snake (*Hoplocephalus bungaroides*) – Vulnerable
- Brush-tailed Rock-wallaby (*Petrogale penicillata*) – Vulnerable
- Central Hunter Valley eucalypt forest and woodland – Critically Endangered
- Corben's Long-eared Bat (*Nyctophilus corbeni*) – Vulnerable
- Painted Honeyeater (*Grantiella picta*) – Vulnerable
- Pink-tailed Legless Lizard (*Aprasia parapulchella*) – Vulnerable
- Spot-tailed Quoll (*Dasyurus maculatus maculatus*) (SE mainland population) – Endangered
- Superb Parrot (*Polytelis swainsonii*) – Vulnerable
- Swift Parrot (*Lathamus discolor*) – Critically Endangered
- Gang-gang Cockatoo (*Callocephalon fimbriatum*) – Endangered
- Greater Glider (*Petauroides volans*) – Vulnerable
- Grey-headed Flying-Fox (*Pteropus poliocephalus*) – Vulnerable
- Grey Falcon (*Falco hypoleucos*) – Vulnerable
- New Holland Mouse (*Pseudomys novaehollandiae*) – Vulnerable;
- Pilotbird (*Pycnoptilus floccosus*) – Vulnerable
- Smooth Bush-pea (*Pultenaea glabra*) – Vulnerable.

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

A water resource, in relation to coal seam gas development and large coal mining development (s24D and s24E)

The proposed action is likely to have significant impacts on water resources through groundwater drawdown and depressurisation, potential impacts to surface and groundwater quality, and cumulative impacts with existing coal mine developments.