

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

Keri Keri Wind Farm (EPBC 2022/9176)

Introduction

1. On 2 May 2022, a delegate of the Federal Minister for the Department of Agriculture, Water and the Environment (formerly Department of Environment and Energy) determined Keri Keri 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)
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 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 *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) 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 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; and
 - 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'. In applying the BAM, residual impacts on EPBC Act listed threatened ecological communities must be offset with Plant Community Type(s)

(PCT) that are ascribed to the specific EPBC listed ecological community. PCTs from a different vegetation class will not generally be acceptable as offsets for EPBC listed communities.

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

Attachment A

Protected matters relevant to the Keri Keri Wind Farm (EPBC 2022/9176) project

Specific Risks

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

- Potential direct and indirect impacts to threatened species and ecological communities from vegetation clearing and construction and operation. This includes potential impacts associated with the perceived changes relating to wind turbine collisions.
- The referral states that further assessment of potential impacts would be prepared as part of an Environmental Impact Statement. This should clearly identify the extent and condition of any matters of national environmental significance in, or adjacent to the project area, as well as all potential impacts.
- Road upgrades may be required as part of the proposed action. Consideration of matters of national environmental significance should be undertaken in any road upgrade assessment.

Threatened species and communities

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:

- Natural Grasslands of the Murray Valley Plains – Critically Endangered
- Plains-wanderer (*Pedionomus torquatus*) – Critically Endangered
- Winged Pepper-cress (*Lepidium monoplacoides*) – Endangered
- Chariot Wheels (*Maireana cheelii*) – Vulnerable
- Mossiel Daisy (*Brachyscome papillosa*) – Vulnerable

Additionally, there is some risk that there may be significant impacts on the following matters and further assessment to determine if the communities and species listed below are present in the proposed action area and, if so, the extent to which they may be impacted by the proposed action, is required:

- Plains mallee box woodlands of the Murray Darling Depression, Riverina and Naracoorte Coastal Plain Bioregions – Critically Endangered
- Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions – Endangered
- Weeping Myall woodlands – Endangered
- Grey Box (*Eucalyptus microcarpa*) Grassy Woodlands and Derived Native Grasslands of Southeastern Australia – Endangered
- Flathead Galaxias (*Galaxias rostratus*) – Critically Endangered
- Australian Painted Snipe (*Rostratula australis*) – Endangered
- Australasian Bittern (*Botaurus poiciloptilus*) – Endangered
- Corben's Long-eared Bat (*Nyctophilus corbeni*) – Vulnerable
- Growling Grass Frog (*Litoria raniformis*) – Vulnerable
- Grey Falcon (*Falco hypoleucos*) – Vulnerable
- Malleefowl (*Leipoa ocellata*) – Vulnerable
- Painted Honeyeater (*Grantiella picta*) – Vulnerable
- *Austrostipa metatoris* – Vulnerable
- Slender Darling-pea (*Swainsona murrayana*) – Vulnerable

Further assessment to determine if the communities and species listed above are present in the proposed action area, and if so, the extent to which they may be impacted by the proposed action is required.

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.