

ATTACHMENT A

Assessment Requirements Relevant to the *Environment Protection and Biodiversity Conservation Act 1999*

Northern Coal Services – Modification 4 (SSD-5145-Mod4) (EPBC 2024/09938)

Introduction

1. On 11 September 2024, a delegate of the Commonwealth Minister for the Environment and Water (Commonwealth Minister) determined that the Northern Coal Services – Modification 4 project (SSD-5145-Mod4) was a controlled action under section 75 and section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act controlling provision for the proposed action is:
 - a) listed threatened species and communities (sections 18 and 18A).
2. The proposed action will be assessed in accordance with the bilateral assessment agreement between the Australian and NSW governments (Amending Agreement No.1, 2020). The assessment documentation must include:
 - a) an assessment of all impacts that the action is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;
 - b) enough information about the proposal and its relevant impacts to allow the Commonwealth Minister to make an informed decision on whether or not to approve; and
 - c) information addressing the matters outlined in Schedule 4 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations).
3. The Applicant must undertake an assessment of all protected matters that may be impacted by the development under the controlling provision identified in paragraph 1. The Australian Government Department of Climate Change, Energy, the Environment and Water (DCCEEW) considers that there is likely to be a significant impact on the following:
 - a) Black-eyed Susan (*Tetratheca juncea*) – Vulnerable;
 - b) Small-flower Grevillea (*Grevillea parviflora subsp. parviflora*) – Vulnerable;
 - c) Wyong Midge Orchid 1 (*Corunastylis insignis*) – Critically Endangered;
 - d) *Genoplesium branwhiteorum* – Critically Endangered;
 - e) Wyong Sun Orchid (*Thelymitra adorata*) – Critically Endangered;
 - f) Eastern Underground Orchid (*Rhizanthella slateri*) – Endangered;
 - g) Swift Parrot (*Lathamus discolor*) – Critically Endangered;
 - h) Koala (*Phascolarctos cinereus*) (combined populations of Queensland, New South Wales and the Australian Capital Territory) – Endangered;
 - i) South-eastern Glossy Black-Cockatoo (*Calyptorhynchus lathami lathami*) – Vulnerable;

- j) Yellow-bellied Glider (south-eastern) (*Petaurus australis australis*) – Vulnerable; and
- k) Grey-headed Flying-fox (*Pteropus poliocephalus*) – Vulnerable.

These species require further assessment, surveys and analysis to determine whether they are likely to be significantly impacted.

- 4. The Applicant must consider each of the protected matters under the triggered controlling provision that may be impacted by the action. Note that the above may not be a complete list and it is the responsibility of the Applicant 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 Modification Report must address the matters outlined in Schedule 4 of the EPBC Regulations and the matters outlined below in relation to the controlling provisions.

Modification Description

- 6. The title of the action, the background of 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 environment 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 Modification Report must include an assessment of the relevant impacts¹ of the action on the matters protected by the controlling provisions, including:
 - a) 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;
 - b) a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
 - c) analysis of the significance of the relevant impacts; and
 - d) any technical data and other information used or needed to make a detailed assessment of the relevant impacts.

¹ Relevant impacts are those impacts likely to significantly impact on any matter protected under the EPBC Act

Avoidance, mitigation and offsetting

11. For each of the relevant protected matters that are likely to be significantly impacted by the action, the Modification Report must provide information on proposed avoidance and mitigation measures to manage the relevant impacts of the action including:
 - a) a description, and an assessment of the expected or predicted effectiveness of the mitigation measures;
 - b) any statutory policy basis for the mitigation measures;
 - c) the cost of the mitigation measures;
 - d) 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; and
 - e) 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 Modification Report 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 Modification Report must provide reference to, and consideration of, relevant Commonwealth guidelines and policy statements including any:
 - a) conservation advice or recovery plan for the species or community;
 - b) relevant threat abatement plan for a process that threatens the species or community;
 - c) wildlife conservation plan for the species; and
 - d) any strategic assessment.

[Note: the relevant guidelines and policy statements for each species and community are available from the Commonwealth DCCEEW Species Profiles and Threats Database: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>]

Specific risks

14. The key risk associated with the proposed action from the Commonwealth perspective includes likely and potential direct and indirect impacts to EPBC listed threatened species and ecological communities resulting from the clearing of vegetation, and indirect impacts from the construction and operation of the proposed action.

Assessment Requirements

15. For each of the EPBC Act listed species predicted to occur in the modification area, and each of the EPBC Act listed ecological communities likely to be significantly impacted, the Modification Report must provide:
 - a) 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 and/or the relevant NSW offsetting method;

- b) 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, recovery plans, and threat abatement plans;
- c) Maps displaying the above information (specific to each EPBC protected matter) 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 Modification Report 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;
- d) 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;
- e) 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'; and
- f) 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.

Other approvals and conditions

16. 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

17. 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

18. For information given in an Modification Report, the Modification Report 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.

Relevant References and guidelines

19. The international conventions, management plans and principles that must be considered in relation to this proposal include:

- a) Listed threatened species or ecological community:
 - i. Australia's obligations under the:
 - Convention on Biological Diversity (Biodiversity Convention);
 - 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); or
 - ii. a recovery plan or threat abatement plan.

20. The policies and plans that must be considered in relation to this proposal include:

- a) [Significant Impact Guidelines 1.1: Matters of National Environmental Significance \(2012\)](#)
- b) Relevant conservation advices and other relevant policies available on DCCEE's [Species Profile and Threats \(SPRAT\) Database](#) and [EPBC Act publications and resources - DCCEE](#) webpage;
- c) [Offsets Mitigation Hierarchy](#);
- d) [EPBC Act Environmental Offsets Policy \(2012\)](#);
- e) All relevant guidance documents for determining, avoiding, mitigating and managing likely impacts on the MNES identified above;
- f) bioregional plans; and
- g) relevant strategic assessment reports.

21. Commonwealth listing advice, survey guidelines and referral guidelines contain information on threatened species and ecological communities which may provide further information for evaluating the significance of residual impacts on the action's controlling provisions. These documents may be found on the DCCEE SPRAT Database.

22. Guidance on the biodiversity offset scheme for a major project where there are predicted to be impacts on matters on MNES can be found via the NSW Department of Planning, Housing and Infrastructure website below.

Key Guidance – Biodiversity:

- <https://www.planningportal.nsw.gov.au/major-projects/assessment/policies-and-guidelines/key-guidance/biodiversity>

Guidelines for matters of environmental significance:

- https://www.planningportal.nsw.gov.au/sites/default/files/documents/2024/Guidance%20for%20Accredited%20Assessors%20-%20MNES%20form%20_0.pdf

23. Other 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*
- *Commonwealth and NSW Governments Bilateral Agreement (Amending Agreement No.1, 2020) - Item 2 (a)(i) of Schedule 1*