

## ATTACHMENT A

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

#### ***Guidelines for preparing assessment documentation relevant to the EPBC Act for proposals being assessed under the assessment bilateral agreement with NSW***

#### ***Rix's Creek North Continuation of Open Cut Coal Mining Project (EPBC 2025/10132) (SSD-60774228)***

#### ***Introduction***

1. On 16 October, a delegate of the Federal Minister for the Department of Climate Change, Energy, the Environment and Water (DCCEEW) determined that the Rix's Creek North Continuation of Open Cut Coal Mining Project was a controlled action under section 75 of the *Environmental 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); and
  - ii. unconventional gas or large coal mining development with impact on water resources (section 24D and 24E).
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:
  - i. 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;
  - ii. enough information about the proposal and its relevant impacts to allow the Federal Minister to make an informed decision on whether or not to approve; and
  - iii. information addressing the matters outlined in Schedule 4 of the *Environmental 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 provisions identified in paragraph 1. DCCEEW considers that there is likely to be a significant impact on the following:
  - i. Central Hunter Valley Eucalypt Forest and Woodland – critically endangered;
  - ii. Hunter Valley Delma (*Delma vescolineata*) – endangered;
  - iii. Regent Honeyeater (*Anthochaera phyrgia*) – critically endangered;
  - iv. Swift Parrot (*Lathamus discolor*) – critically endangered;
  - v. Large-eared Pied Bat (*Chalinolobus dwyeri*) – endangered; and
  - vi. Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable.

4. Based on DCCEEW's Reporting Tool and information provided by the Species Profiles and Threats Database (SPRAT), DCCEEW also considers that the proposed action may result in significant impacts to the following species:
  - i. River-flat Eucalypt Forest on Coastal Floodplains of Southern New South Wales and Eastern Victoria ecological community – critically endangered;
  - ii. Coastal Swamp Oak (*Casuarina glauca*) Forest of New South Wales and South East Queensland ecological community ecological community – endangered;
  - iii. South-eastern Glossy Black-cockatoo (*Calyptorhynchus lathami lathami*) – vulnerable; and
  - iv. Green and Golden Bell Frog (*Litoria aurea*) – vulnerable.

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

5. The Applicant must consider each of the protected matters under the triggered controlling provisions 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*

6. 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*

7. The title of the action, background of the action and current status.
8. 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).
9. How the action relates to any other actions that have been, or are being taken in the region affected by the action.
10. 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*

11. The EIS must include an assessment of the relevant impacts<sup>1</sup> 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*

12. 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.
13. 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.
14. 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 a process that threatens 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 DCCEEW's Species Profiles and Threats Database. <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>]

## **Key risks**

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

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

- i. likely and potential direct and indirect impacts to EPBC listed threatened species and ecological communities resulting from the clearing; and
- ii. impacts on water resources, including surface and groundwater hydrology, surface water and groundwater quality, and groundwater dependent ecosystems (GDEs).

## **Assessment Requirements**

### Biodiversity (threatened species and communities and migratory species)

16. For each of the EPBC Act listed species predicted to occur in the project site, and each of the EPBC Act listed ecological communities likely to be significantly impacted, 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 species and communities listing advice, conservation advice, recovery plans and 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 communities and provide individual maps for each species or community.
- iv. A 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. 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'.
  - a) 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:
  - b) the information on the potential impacts to water resources;
  - c) impact assessment data from mining to date;
  - d) predictions of ground water impacts from the proposed action.

#### **Other approvals and conditions**

19. 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**

20. 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**

21. 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.

#### **Relevant References 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:
  - o Convention on Biological Diversity
  - o The Convention on Conservation of Nature in the South Pacific (Apia Convention)
  - o 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 DPE in considering and evaluating the significance of residual impacts on the action's controlling provisions. These documents may be found in the DCCEEW's Species Profile and Threats Database: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

### **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
- *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
- *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)