

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

Kerrs Creek Wind Farm (EPBC 2024/09780)

Introduction

1. On 5 June 2024, a delegate of the Commonwealth Minister for the Environment and Water determined that Kerrs Creek 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); and
 - ii. listed migratory species (sections 20 & 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 Minister for the Environment and Water considers that the proposed action is likely to have a significant impact on threatened species and communities 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 impacts¹ 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; and
 - 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 Climate Change, Energy, the Environment and Water Species Profiles and Threats (SPRAT) 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 15-17.

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

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.
<https://www.dcceew.gov.au/environment/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 (Biodiversity Convention);
 - 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); and
 - Any relevant recovery plans or threat abatement plans.
- Listed migratory species
 - Australia's obligation 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); and
 - 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 and other relevant policies available on the department's SPRAT Database: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>.
- Relevant strategic assessment reports.

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 DPHI considering and evaluating the significance of residual impacts on the action's controlling provisions. These documents may be found on the Department's SPRAT Database: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>.

Appendix A

Protected matters relevant to the Kerrs Creek Wind Farm (EPBC 2024/09780) project

Specific risks

Key risks associated with the proposed action include:

- Likely and potential direct and indirect impacts to EPBC listed threatened species and ecological communities resulting from the clearing of native vegetation in the proposed action area; and
- Likely and potential direct and indirect impacts to EPBC listed threatened species and ecological communities resulting from the construction, operation, maintenance and decommission phases.

Listed threatened species and communities and migratory species

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:

- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland threatened ecological community – critically endangered
- Koala (*Phascolarctos cinereus*) combined populations of Qld, NSW and the ACT – endangered
- Large-eared Pied Bat (*Chalinolobus dwyeri*) – endangered
- White-throated Needletail (*Hirundapus caudacutus*) – vulnerable and migratory.

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:

- Regent Honeyeater (*Anthochaera phrygia*) - critically endangered
- Swift Parrot (*Lathamus discolor*) - critically endangered
- South-eastern Hooded Robin (*Melanodryas cucullata cucullata*) – endangered
- Australian Painted Snipe (*Rostratula australis*) – endangered
- White-throated Needletail (*Hirundapus caudacutus*) – vulnerable
- Superb Parrot (*Polytelis swainsonii*) – vulnerable
- South-eastern Glossy Black-Cockatoo (*Calyptrorhynchus lathami lathami*) – vulnerable
- Diamond Firetail (*Stagonopleura guttata*) – vulnerable
- Painted Honeyeater (*Grantiella picta*) - vulnerable
- Brown Treecreeper (south-eastern) (*Climacteris picumnus victoriae*) – vulnerable
- Grey Falcon (*Falco hypoleucos*) – vulnerable
- Satin Flycatcher (*Myiagra cyanoleuca*) – migratory
- Fork-tailed Swift (*Apus pacificus*) – migratory
- Rufous Fantail (*Rhipidura rufifrons*) – migratory
- Greater Glider (southern and central) (*Petauroides volans*) – endangered
- Spotted-tailed Quoll (*Dasyurus maculatus maculatus*) SE mainland population – endangered
- Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable
- a leek-orchid (*Prasophyllum* sp. Wybong) – critically endangered

- Small Purple-pea (*Swainsona recta*) – endangered
- *Acacia meiantha* – endangered
- Tarengo Leek Orchid (*Prasophyllum petilum*) – endangered
- Yass Daisy (*Ammobium craspedioides*) – vulnerable
- Robertson's Peppermint (*Eucalyptus robertsonii* subsp. *hemisphaerica*) – vulnerable
- Pink-tailed Legless Lizard (*Aprasia parapulchella*) – vulnerable

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.