

ATTACHMENT 3
Department of Environment Requirements

Department of the Environment

Section 78A (8A) of the NSW *Environmental Planning and Assessment Act 1979*

1. On 7 December 2015 it was determined that the United and Wambo Coal Project will impact upon the following matters of national environmental significance (MNES) protected under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*:
 - threatened species and communities
 - a water resource, in relation to coal seam gas development and large coal mining development
2. The project will be assessed in accordance with the NSW Assessment Bilateral Agreement (2015) 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* (Cth). These assessment requirements do not stand alone but are a supplement to the Secretary's Environmental Assessment Requirements issued on 27 July 2015 and must be addressed in conjunction with those requirements. The assessment requirements are intended to ensure there is sufficient information in the assessment report relevant to MNES such that the Commonwealth decision-maker may make a determination on whether or not to approve the action.
3. The proponent must undertake an assessment of all the protected matters that may be impacted by the development under the controlling provisions identified in paragraph 1. A list of protected matters that the Department of the Environment considered likely to be significantly impacted is provided at Attachment A to these requirements. 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, likely to be significantly impacted, are assessed for the Commonwealth decision-maker's consideration.

General Requirements

The EIS must address the following issues:

4. 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);
5. 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;
6. an assessment of the relevant impacts of the action on (i) threatened species and communities and (ii) water resources; including:
 - 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;
 - a statement whether any relevant impacts are likely to be known, unpredictable or irreversible; analysis of the significance of the relevant impacts;
 - any technical data and other information used or needed to make a detailed assessment of the relevant impacts; and
 - a comparative description of the impacts of alternatives, if any, on the threatened species and communities.

7. Information on proposed avoidance and mitigation measures to manage the relevant impacts of the action including:
- a description of the proposed avoidance and mitigation measures to deal with the relevant impacts of the action;
 - assessment of the expected or predicted effectiveness of the mitigation measures;
 - the cost of the mitigation measures;
 - a description of the outcomes that the avoidance and mitigation measures will achieve; and
 - a description of the offsets proposed to address the residual adverse significant impacts and how these offsets will be established.

Key Issues – Biodiversity

8. The EIS must address the following issues in relation to Biodiversity including separate:
- identification of each EPBC Act listed threatened species and community likely to be significantly impacted by the development. Provide evidence why other EPBC Act listed threatened species and communities likely to be located in the project area or in the vicinity will not be significantly impacted in accordance with the Matters of National Environmental Significance - Significant Impact Guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999 (Significant Impact Guidelines).
9. For each of the relevant EPBC Act listed threatened species and communities likely to be significantly impacted by the development the EIS must provide a separate:
- description of the habitat and habits (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, threat abatement plans and wildlife conservation plans;
 - 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; and
 - description of the impacts of the action having regard to the full national extent of the species or community's range.

[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>]

10. For each of the relevant EPBC Act listed threatened species and communities likely to be significantly impacted by the development the EIS must provide:
- details of how the current published NSW Framework for Biodiversity Assessment (FBA) has been applied in accordance with the objects of the EPBC Act to offset significant residual adverse impacts;
 - identification of significant residual adverse impacts likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account; and
 - details of the offset package to compensate for significant residual impacts including details of the credit profiles required to offset the development in accordance with the FBA 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 i.e. 'like for like'. In applying the FBA, 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.]

11. Any significant residual impacts not addressed by the FBA may need to be addressed in accordance with the Environment Protection and Biodiversity Conservation Act 1999 Environmental Offset Policy. <http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>. [Note if the EPBC Act Environmental Offset Policy is used to calculate proposed offsets for a threatened species or community you may wish to seek further advice from the Department of Planning and Environment.]

Key Issues – water resources

12. The EIS should provide a description of the location, extent and ecological characteristics and values of the identified water resources potentially affected by the project.
13. The assessment of impacts should include information on:
 - any substantial and measurable changes to the hydrological regime of the water resource, for example a substantial change to the volume, timing, duration or frequency of ground and surface water flows;
 - the habitat or lifecycle of native species, including invertebrate fauna and fish species, dependent upon the water resource being seriously affected; and
 - substantial and measurable change in the water quality and quantity of the water resource—for example, a substantial change in the level of salinity, pollutants, or nutrients in the wetland; or water temperature that may adversely impact on biodiversity, ecological integrity, social amenity or human health.
14. The EIS must provide adequate information to allow the project to be reviewed by the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, as outlined in the *Information Guidelines for Independent Expert Scientific Committee advice on coal seam gas and large coal mining development proposals (2015)*.

Environmental Record of person proposing to take the action

15. The information provided must include details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against the person proposing to take the action; and for an action for which a person has applied for a permit, the person making the application.
16. If the person proposing to take the action is a corporation, details of the corporation's environmental policy and planning framework must also be included.

REFERENCES

1. *Environment Protect and Biodiversity Conservation Act 1999* - section 51-55, section 96A(3)(a)(b), 101A(3)(a)(b), section 136, section 527E
2. *NSW Assessment Bilateral Agreement (2015)* - Item 18.1, Item 18.5, Schedule 1
3. *Matters of National Environmental Significance - Significant impact guidelines 1.1* (2013) EPBC Act
4. *Environment Protect and Biodiversity Conservation Act 1999* Environmental Offsets Policy (October 2012)
5. *Information Guidelines for Independent Expert Scientific Committee advice on coal seam gas and large coal mining development proposals* (IESC, October 2015)

Attachment A

The Department of the Environment's Environment Reporting Tool (ERT) identifies that 32 threatened species and communities may occur within 5 km of the proposed action. Based on the information in the referral documentation, the location of the action, species records and likely habitat present in the area, the Department of the Environment considers that there are likely to be significant impacts to:

- Central Hunter Valley Eucalypt Forest and Woodland Ecological Community – critically endangered
- Regent Honeyeater (*Anthochaera phrygia*) – critically endangered
- Swift Parrot (*Lathamus discolor*) – endangered
- Spotted-tailed Quoll (*Dasyurus maculatus* subsp. *maculatus*) – endangered