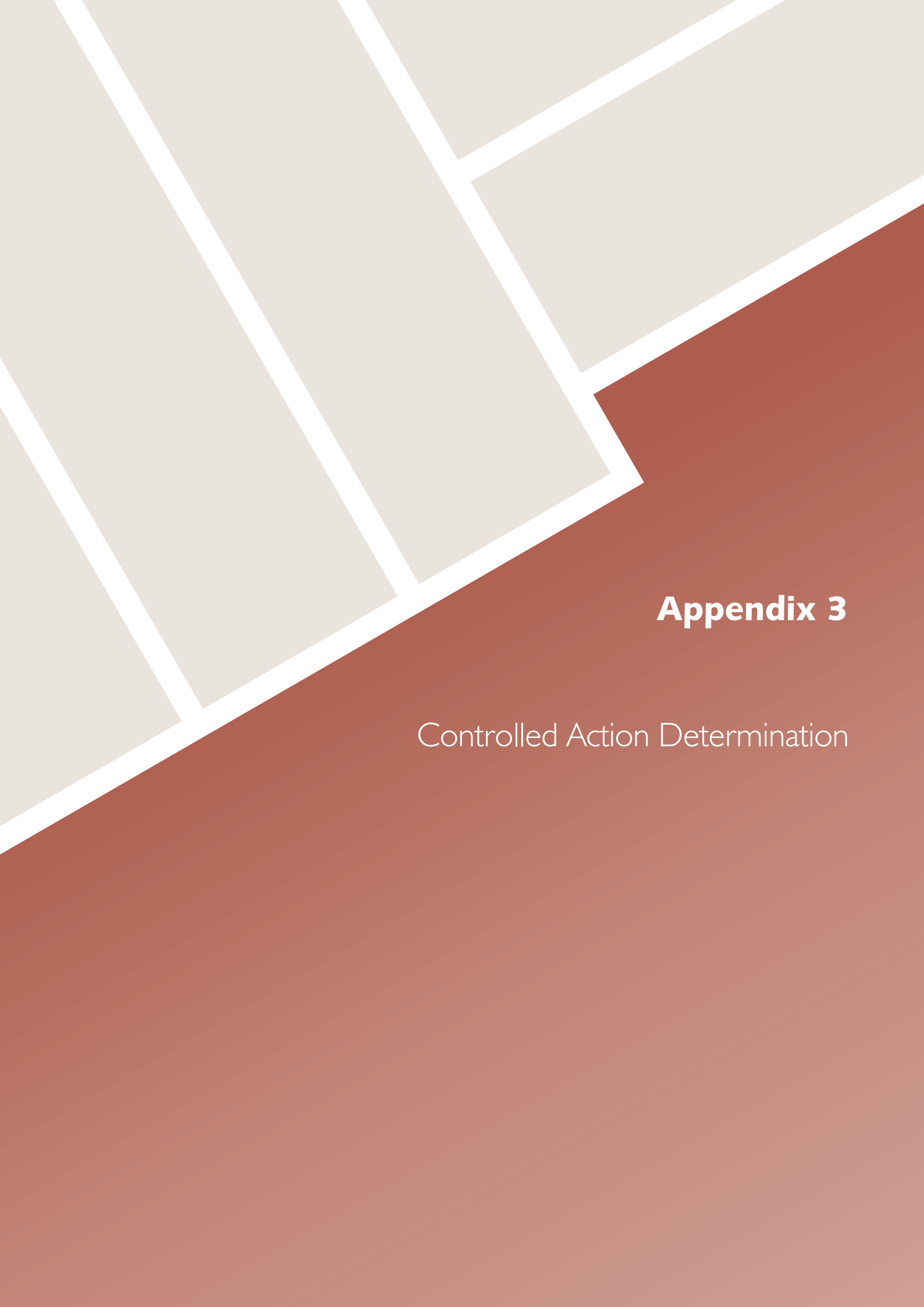




Appendix 3

Controlled Action Determination



Mr Gary Wills
Project Manager – United Complex
United Collieries Pty Ltd
Private Mailbag 13
SINGLETON NSW 2300

Dear Mr Wills

Decision on referral

United and Wambo Open Cut Coal Mine Project, Singleton, NSW

Thank you for submitting a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This is to advise you of my decision about the referral of the proposed action, to develop a single open cut coal mining operation that combines existing open cut operations at Wambo with a proposed new open cut coal mine on leases owned by United Collieries.

As a delegate of the Minister for the Environment, I have decided under section 75 of the EPBC Act that the proposed action is a controlled action and, as such, it requires assessment and a decision about whether approval for it should be given under the EPBC Act.

Please note that this decision only relates to the potential for significant impacts on matters protected by the Australian Government under Chapter 2 of the EPBC Act. I have also written to the nominated representative of the New South Wales Minister for Planning to advise them of this decision.

Details of decision

The information that I have considered indicates that the proposed action is likely to have a significant impact on the following matters protected by the EPBC Act:

- listed threatened species and communities (sections 18 & 18A)
- a water resource, in relation to coal seam gas development and large coal mining development (section 24D & 24E).

Based on the information available in the referral, I have determined that the proposed action is likely to have a significant impact on matters of national environmental significance, including, but not necessarily limited to, the following:

- ***Central Hunter Valley Eucalypt Forest and Woodland*** (CHVEFW) ecological community. The proposed action will result in the removal of 212 ha of this listed critically endangered ecological community.

- **Regent Honeyeater (*Anthochaera phrygia*)** - critically endangered. The proposed action involves clearing of 212 ha of CHVEFW that potentially provides high quality foraging habitat for this species.
- **Swift Parrot (*Lathamus discolor*)** – endangered. The proposed action involves clearing of 212 ha of CHVEFW that potentially provides high quality foraging habitat for this species.
- **Spotted-tailed quoll (*Dasyurus maculatus maculatus*)** - **endangered**. The proposed action involves clearing of 462 ha of habitat that is considered critical to the survival of the species.
- **Water resource:** The construction and operation of the proposed open cut is likely to have a significant impact on surface and groundwater in the vicinity of the site.

A copy of the document recording these decisions is enclosed.

Bilateral assessment

The NSW Government has advised the Department that the proposed action will be assessed in accordance with the *Bilateral agreement made (between New South Wales and the Commonwealth) under section 45 of the EPBC Act relating to environmental assessment*, specifically as a state significant development under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW).

The NSW Department of Planning and Environment (DPE) has been advised of this decision and from now on will manage the assessment of the action for the purposes of the EPBC Act.

Following the New South Wales assessment process, the Minister will make a separate decision whether or not to approve the action under the EPBC Act. In accordance with the working draft *EPBC Act Condition-setting Policy* (October 2015), following the NSW assessment process, the Minister will review any conditions imposed by the NSW Government and consider their consistency with the requirements of the EPBC Act and related policies or guidelines. The Minister will rely on those conditions to the greatest extent possible when considering what conditions (if any) to attach to a proposed approval under the EPBC Act. Only where the conditions imposed by the NSW Government do not appropriately manage the impacts on the relevant matters protected under the EPBC Act will the Minister attach additional conditions.

In any cases where additional conditions are recommended, the Department will have regard to the working draft *Outcomes-based Conditions Policy 2015* in their formulation.

Cost recovery

Please note, under subsection 520(4A) of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations, 2000* your assessment is subject to cost recovery. Please find attached a copy of the fee schedule for your proposal. Applicable fees are payable prior to each stage of the assessment process commencing. Please note that for an assessment under a bilateral agreement, the Minister may determine that fees are not applicable for stages where the

Commonwealth does not undertake any assessment. In this case, assessment Stage 1 will be managed by DPE, so you will not be charged or invoiced for this stage.

Further details on cost recovery are available on the Department's website at: www.environment.gov.au/epbc/cost-recovery. If you disagree with the fee schedule provided, you may apply under section 514Y of the EPBC Act for reconsideration of the method used to work out the fee. The application for reconsideration must be made within 30 business days of the date of the fee schedule and can only be made once in respect of a fee. Further details regarding the reconsideration process and an application form for reconsideration can be found on the Department's website at: www.environment.gov.au/protection/assessments/approval-process/refer-action/form.

You may elect under section 132B of the EPBC Act to submit a management plan to be considered during the assessment at any time before an approval decision is made. If a management plan is submitted or revised after approval it may incur additional fees under cost recovery.

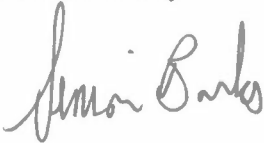
Other matters

Please also note that once a proposal to take an action has been referred under the EPBC Act, it is an offence under section 74AA to take the action while the decision making process is ongoing (unless that action is specifically excluded from the referral or other exemptions apply). Persons convicted of an offence under this provision of the EPBC Act may be liable for a penalty of up to 500 penalty units.

The Department has recently published an *Environmental Impact Assessment Client Service Charter* (the Charter) which outlines the Department's commitments when undertaking environmental impact assessments under the EPBC Act. A copy of the Charter can be found at: www.environment.gov.au/epbc/publications/index.html.

If you have any questions about the referral process or this decision, please contact the project manager, Mr Mark Jenkins, by email to mark.jenkins@environment.gov.au, or telephone 02 6274 1558 and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely



Dr Simon Banks
Assistant Secretary
Assessments and Fuel Branch

7 December 2015

Enclosed:

- Referral decision notice
- Fee schedule

Cc: Mr John Merrell, Umwelt (Australia)



Notification of
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled action

United and Wambo Open Cut Coal Mine Project, Singleton, NSW (EPBC 2015/7600)

This decision is made under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

proposed action	A joint venture between United Collieries Pty Ltd and Wambo Coal Pty Ltd to extract a total of 176 million tonnes of run-of-mine coal at a rate of up to 10 million tonnes per annum over 21 years from a single open cut mine that combines existing operations at Wambo with a new mine on leases owned by United Collieries, located 16 kilometres west of Singleton, NSW [See EPBC Act referral 2015/7600].
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decision on proposed action	The proposed action is a controlled action. The project will require assessment and approval under the EPBC Act before it can proceed.
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relevant controlling provisions	• Listed threatened species and communities (sections 18 & 18A) • A water resource, in relation to coal seam gas development and large coal mining development (section 24D & 24E)
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designated proponent	United Collieries Pty Ltd ACN: 001 990 209
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assessment approach	To be assessed under the assessment bilateral agreement with NSW.
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Decision-maker

Name and position	Dr Simon Banks Assistant Secretary Assessments and Fuel Branch
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Signature

date of decision	7 December 2015
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