

## Appendix A

### **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**

#### **Denman BESS (EPBC 2024/10085)**

##### Introduction

1. On 14 April 2025, a delegate of the Federal Minister for the Environment and Water (formerly Department of Agriculture, Water and the Environment) determined the Denman Battery Energy Storage System 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).
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 Federal 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 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

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;
  - 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 Database.  
<http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

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

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.

## **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:
- 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;
  - 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;
  - description of the relevant impacts of the action having regard to the full national extent of the species or community's range;
  - description of the specific proposed avoidance and mitigation measures to deal with relevant impacts of the action;
  - identification of significant residual adverse impacts likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account;
  - a description of any offsets proposed to address residual adverse significant impacts and how these offsets will be established;
  - 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
  - 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),
    - Convention on Conservation of Nature in the South Pacific (Apia Convention),
    - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
  - a relevant recovery plan or threat abatement plan.
- Relevant conservation advice and other relevant policies available on the department's SPRAT Database
- Bioregional plans
- Relevant strategic assessment reports.

## Appendix A

### ***Protected matters relevant to the Denman BESS (EPBC 2024/10085) project***

#### **Specific risks**

Key risks associated with the proposed action from the Commonwealth perspective include potential impacts to EPBC listed threatened species and ecological communities resulting from the clearing of native vegetation in the project footprint, and potential for indirect impacts as a result of habitat clearing and project activities.

#### **Listed threatened species and communities**

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:

- Hunter Valley Delma (*Delma vescolineata*) – Endangered
- Spotted-tailed Quoll, south eastern mainland (*Dasyurus maculatus maculatus*) – vulnerable

Additionally, based on the department's Environment Reporting Tool and information provided by the department's SPRAT, the department considers that a number of other matters protected under Part 3 are possibly at risk of being significantly impacted, including but not limited to:

- Austral Toadflax (*Thesium australe*) – Vulnerable
- Central Hunter Valley Eucalypt Forest and Woodland – Critically Endangered
- Pink-tailed Worm-lizard (*Aprasia parapulchella*) – vulnerable

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 are assessed for the Commonwealth decision maker's consideration.

Further analysis of the impacts of the fires on those species and communities identified above should be undertaken during the assessment.

**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.