

Consideration of Matters of National Environmental Significance

Assessment of EPBC Act-listed threatened species and communities for projects

In accordance with the Bilateral Agreement between the Commonwealth and NSW Governments, the Biodiversity Conservation Division (BCD) of the NSW Department of Planning, Industry and Environment provides the following additional information, required by the Commonwealth Minister in deciding whether or not to approve a proposal under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Issued SEARS for BIODIVERSITY:

The SEARs for the Project EnergyConnect (NSW – Western Section) SSI 10040 issued on 31 July 2020 required the proponent to address the following matters in relation to biodiversity:

- an assessment of the biodiversity impacts of the project in accordance with the NSW *Biodiversity Conservation Act 2016*, the Biodiversity Assessment Method (BAM) and documented in a Biodiversity Development Assessment Report (BDAR);
- document the application of the avoid, minimise and offset framework in the BDAR including assessing all direct, indirect and prescribed impacts in accordance with the BAM.

In addition, *Appendix A* of the SEARS includes *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. Project EnergyConnect (NSW – Western Section) (EPBC 2020/8673)*. This includes EPBC Act-listed threatened species and communities that are documented in the Notification of Referral Decision and Designated Proponent (Referral Decision) as likely to be impacted by the project.

1. Identifying MNES

(a) **Confirm** whether all the EPBC Act-listed threatened species and communities that occur on the project site, or in the vicinity are identified in the EIS. Note which species and/or communities have not been identified.

BCD is satisfied that the EIS identifies all of the relevant EPBC Act-listed threatened species and communities.

The following threatened species and communities listed in the Referral Decision (EPBC 2020/8673) are identified and considered in the EIS.

Species for which a significant impact is considered likely:

Black-eared miner (*Manorina melanotis*) – endangered

Species and ecological communities that may occur in the study area and which require further survey, assessment and quantification of impacts:

- Australasian bittern (*Botaurus poiciloptilus*) - endangered
- Austrostipa metatoris* - vulnerable
- Atriplex frequens* - vulnerable
- Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions (*Allocasuarina luehmannii*) - endangered
- Coolibah Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions – endangered
- Corben's long-eared bat (*Nyctophilus corbeni*) – vulnerable, recorded in traps in the study area
- Curlew sandpiper (*Calidris ferruginea*) – critically endangered
- Malleefowl (*Leipoa ocellata*) - vulnerable
- Mallee emu-wren (*Stipiturus mallee*) - endangered

- j. Menindee nightshade (*Solanum karsense*) - vulnerable
- k. Mossgiel daisy (*Brachyscome papillosa*) - vulnerable
- l. Northern Siberian bar-tailed godwit (*Limosa lapponica menzbieri*) – critically endangered
- m. Plains wanderer (*Pedionomus torquatus*) – critically endangered
- n. Red-lored whistler (*Pachycephala rufogularis*) - vulnerable
- o. Regent parrot (Eastern) (*Polytelis anthopeplus monarchoides*) - vulnerable
- p. Southern bell frog (*Litoria raniformis*) - vulnerable
- q. Swift parrot (*Lathamus discolor*) - critically endangered
- r. Winged pepper-creep (*Lepidium monoplacoides*) - endangered
- s. Yellow Swainson-pea (*Swainsona pyrophila*) – vulnerable.

The SEARs notes that this may not be a complete list and that it is the responsibility of the proponent to ensure any protected matters under the controlling provisions are assessed for the Commonwealth decision-maker's consideration.

No other species or communities under the controlling provisions were considered to occur in the project area and none were excluded from the Referral Decision list.

(b) **Comment** on whether the BAM has been applied to all EPBC Act-listed threatened species and communities that occur on the project site or in the vicinity.

BCD is satisfied that the BAM has been applied in an appropriate manner to the project area to characterise vegetation and to determine which species are likely candidate species (those with a moderate or high likelihood of occurrence) that would be potentially impacted by the project.

Section 3 of the BDAR describes the BAM survey methods used to characterise vegetation (NSW Plant Community Types) in the disturbance area as well as the threatened flora and fauna survey methods. The proponent used a modified approach to flora survey that was considered appropriate, although this was presented in the EIS rather than after consultation with BCD.

Section 3 of the BDAR also describes the approach to determining likelihood of occurrence of threatened species. BCD considers that likelihood of occurrence should be based primarily on whether a project is within a species range and if habitat is present, rather than survey records. The absence of records is not evidence that the species does not occur in the area unless the survey effort is considered appropriate for the location.

Section 6 of the BDAR lists the flora and fauna species that are automatically generated by the BAM calculator based on the Plant Community Types that occur in the project area (ecosystem credit species) and based on species' ecology (species credit species). Species can be included and excluded from this list if the proponent provides appropriate justification. The reasons for including or excluding species in this project were based on database searches, likelihood of occurrence assessments (see Section 3.4.1 of the BDAR) and, in the case of flora, expert review.

The proponent included 4 species, none of which are under the controlling provisions. No species were excluded from assessment.

Appendix E of the BDAR also includes an assessment of the following EPBC Act-listed species that were identified in database searches and the BAM-C report:

- Red knot (*Calidris canutus*) - identified in BioNet search
- Grey falcon (*Falco hypoleucos*) – predicted ecosystem credit species in the BAM-C
- Painted honeyeater (*Grantiella picta*) – identified in Protected Matters Search Tool, BioNet and BAM-C
- White-throated needletail (*Hirundapus caudacutus*) - identified in BioNet search
- Bar-tailed godwit (baueri) – (*Limosa lapponica baueri*) - identified in Protected Matters Search Tool
- Australian painted snipe (*Rostratula australis*) - identified in Protected Matters Search Tool, BioNet and BAM-C

(c) In the circumstance where there are EPBC Act-listed species that are not addressed by the BAM (i.e. migratory species) **comment** on whether these species have been assessed in accordance with the SEARs and provide references to where the assessment information is detailed in the EIS.

All species and communities listed in the Referral Decision (EPBC 2020/8673) have been addressed in the BAM.

(d) **Verify** that the proponent has expressed a statement about the potential impact i.e. likely significant, low risk of impact, not occurring, for each listed threatened species and community protected by the EPBC Act referred to in 1(a). Note which species and/or communities have not been addressed in this manner.

The BDAR contains statements about the potential impact of the project on threatened ecological communities and threatened species referred to in 1(a).

Threatened ecological communities

Section 7.1.1 states that neither of the threatened ecological communities listed in the Referral Decision were found during detailed vegetation mapping and no PCTs were found in the project area that correspond to EPBC Act TECs.

The project will not have a significant impact on threatened ecological communities.

Threatened flora

Six flora species are listed in the Referral Decision as species needing further investigation:

Section 6.2.1.4 Table 6.6 and Section 7.1.2 Table 7.1 provide summary assessments of flora species for the EIS including results from surveys. Appendix D-1 provides a likelihood of occurrence assessment for all species. Appendix E-1.2 contains assessments of significance according to the *Matters of National Environmental Significance Significant Impact Guidelines 1.1* EPBC Act (Significant Impact Guidelines).

Atriplex infrequens was the only species recorded during surveys and considered to be impacted by the project. A population of the species was found during surveys and the project will impact 0.32ha of the habitat identified in the surveys. However, the proponent states that the population is unlikely to be restricted to the project study area because of available habitat in the area so the total impact is likely to be small, and the ground layer vegetation will remain within the easement. In the Significance Assessment for this species (Appendix E-1.2.1) the proponent concludes that the predicted impact of the project on the species would not be important, notable, or of consequence because the impact is small.

The Mossgiel daisy was excluded from assessment because there are no records within 100km of the project area. While habitat for the other species listed in the Referral Decision was potentially present in the PCTs in the project area, no individuals were found during surveys. Individuals were found of species in the same genera as the referral decision listed species.

Based on assessments of significance, BCD considers that the project is unlikely to have a significant impact on threatened flora species.

Threatened fauna

Twelve fauna species are listed in the Referral Decision as species needing consideration in the EIS. Section 7.1.3 Table 7.2 provides a summary assessment of fauna species for the EIS including results from surveys. Appendix D-2 provides a likelihood of occurrence assessment for all species. Appendix E-1.2 contains assessments of significance according to the Significant Impact Guidelines. Section 9.9.3 Table 9.20 of the BDAR provides summary statements about the significance of project impacts on MNES.

The Regent parrot (*Polytelis anthopeplus monarchoides*) and Corben's long-eared bat (*Nyctophilis corbeni*) were the only species listed in the Referral Decision that were recorded during surveys and considered to be impacted by the project.

The proponent concludes that the project is unlikely to significantly impact the Regent parrot because the impacts on breeding habitat in the area are small compared to the area of available habitat. The Regent parrot was recorded east of Gol Gol. The species is not as common in this area as it is further east towards Euston/Robinvale (National Recovery Plan for the Regent Parrot (eastern subspecies) *Polytelis anthopeplus monarchoides* (DSE 2011). The species is associated with PCT 11 (Red gum) and PCTs 13 and 15 (Black box) in the Robinvale Plains IBRA subregion. The project will directly impact 0.1ha of PCT 11 which is the main breeding habitat for the species.

The proponent concludes that the project is unlikely to have a significant impact on Corben's long-eared bat. The species was recorded in chenopod mallee woodlands (PCT 170) in the west of the project area. In the Significance Assessment for this species (Appendix E-1.2.15) the proponent concludes that while the project will impact on foraging and breeding habitat of the species, the project is unlikely to have a significant impact for the following reasons:

- the population is unlikely to decline because of the availability of surrounding habitat and the dispersive nature of the species
- mallee woodland is not a habitat that is essential to the survival of the species in the area.

The EIS provides robust reasons for the conclusion that the Black-eared miner (*Manorina melanotis*) is unlikely to be found in the mallee habitats of the far west of the project area. BCD supports this conclusion based on expert knowledge (local DPIE threatened species officer). The rationale for this conclusion is that the species was not observed during surveys. All miners observed were Yellow-throated Miners, distinguished by white rumps. Mallee habitats along the proposed alignment (i.e. PCT 170 and PCT 171) have habitat attributes that favour the Yellow-throated miner and are sub-optimal for the Black-eared miner (e.g. low incidence of old-growth vegetation and presence of permanent dams).

The Mallee emu-wren and Plains wanderer were excluded from further assessment because habitat was not present along the alignment or was degraded. Neither species was recorded during surveys. Potential habitat for the Swift parrot was present in PCT 11 in the far east of the project area but the species was not found during surveys. Section 6.2.3.1 provides an assessment of the mallee bird species with conclusions about the likely presence of species in the project area. The local DPIE threatened species officer concurs with the proponent that it is unlikely that the Red-lored whistler and Mallee emu-wren occur in the area. The Red-lored whistler has not been recorded in southwest NSW despite records of the species in northern Victoria and eastern South Australia.

The alignment does not cross wetland habitats and will have a negligible effect on riparian areas where it crosses the Darling and Murray Rivers. Impacts on the Southern bell frog are likely to be negligible. The Northern Siberian bar-tailed godwit and Curlew sandpiper were excluded from assessment as there is no impact on wetlands and there are no mapped important habitats along the alignment.

The proponent concludes that the residual impacts on the Regent parrot and Corben's long-eared bat are unlikely to be significant. Offsets for these species will be incorporated into the biodiversity offset strategy under NSW requirements.

(e) Identify where further information from the proponent is critical to the assessment of MNES particularly in relation to mapping Table 1 (A), analysis of impacts Table 1 (F) and Table 2 (F), avoidance, mitigation and offsetting, and 6

BCD is satisfied that the information provided in the EIS is sufficient to decide on the impact of the project on EPBC Act-listed threatened species and communities.

Is further information from the proponent critical to the assessment of MNES required? **No**

2. Assessment of the relevant impacts

All EPBC Act-listed species and/or communities that the Commonwealth consider would be significantly impacted (as noted in the referral documentation) should be assessed and offset.

(a) the nature and extent of all the relevant impacts has been described

BCD is satisfied that the nature and extent of all relevant impacts have been described.

Appendix E-1 provides significance assessments in accordance with the *Matters of National Environmental Significance Significant Impact Guidelines 1.1* EPBC Act.

(b) **Note** if information in relation to any of these boxes has not been provided for any relevant EPBC Act-listed species and communities.

All relevant information has been provided.

(c) There may be listed threatened species and communities for which the proponent will consider that the impact will be **not** significant in accordance with the *EPBC Act Significant Impact Guidelines*. Identify those cases where BCD disagrees with this finding.

BCD is satisfied that the assessment of impacts on controlling provisions is satisfactory.

BCD concurs with the proponent's conclusion about the residual impacts of the project on controlling provisions.

(d) Provide references to where specific lists or tables are detailed in the EIS i.e. *List of EPBC Act-listed EECs Appendix J Table 4 pg 65*

Section 7 (page 167) of the BDAR is a specific MNES assessment that refers to the list of species and communities in the Referral Decision. Detailed significance assessments are provided in BDAR Appendix E.

3. Avoidance and Mitigation

Comment on whether or not the EIS identifies measures to avoid and minimise impacts on the relevant EPBC Act-listed threatened species and communities. Identify gaps in the discussion on measures to avoid and minimise impacts on Commonwealth matters. Provide references to sections and page numbers in the EIS.

BCD is satisfied that the proponent has avoided and mitigated impacts on MNES given the constraints of the project.

Consultation between BCD and the proponent after the EIS was submitted led to a significant change to the vegetation clearing for the project. The proponent has committed to minimising full clearing by the following measures stated in Section 8 of the BDAR:

- Reducing the partial clearing area under the powerlines from a maximum 2m across the 60 m inner easement to 4m in the inner 60m and up to 10m in the outer 20m of the easement
- Retaining 20m wide full canopy corridors at strategic locations along the alignment
- Locating infrastructure as much as possible on Category 1 land (Exempt land under the *Local Land Services Act 2013*)
- Using already disturbed areas such as existing roads and tracks, utility easements and fencelines in the construction and operation phases
- Aligning the project corridor to avoid known threatened species and ecosystems (plant communities particular).

Table 8.1 (page 180) and Table 8.2 (page 182) of the BDAR list measures to avoid and minimise impacts during the location and design stages of the project.

The revised clearing practices will improve connectivity between northern and southern blocks of vegetation that will be interrupted by the transmission easement and will reduce impacts on EPBC Act-listed threatened species.

Comment on the adequacy and feasibility of measures to avoid and minimise impacts. Identify inadequacies where further efforts could be made to avoid and minimise impacts on Commonwealth matters. Provide references to sections and page numbers in the EIS that discuss avoidance and mitigation measures relevant to EPBC Act-listed species and communities.

The proponent has made significant changes to the clearing practices for the project which will reduce the impacts of the project on EPBC Act species listed in the Referral Decision. Table 8.1 (page 180) and Table 8.2 (page 182) of the revised BDAR describe the measures to avoid and minimise vegetation clearing impacts during the location and design stages of the development.

Discussion between the proponent and BCD after the EIS was submitted involved ways to address the impacts of bird collision with powerlines and exposure of birds to electromagnetic fields. While this may lead to more appropriate mitigation measures for general impacts on biodiversity, these issues do not apply to the EPBC Act controlling provisions.

Note that any future change to the development footprint, outside the approved construction envelope, would require application to modify the project approval.

4. Offsetting

The EIS concluded that there will be residual impacts on three species listed in the referral decision:

- *Atriplex infrequens*
- Regent parrot (*Polytelis anthopeplus monarchoides*)
- Corben's long-eared bat (*Nyctophilus corbeni*).

The EIS states that the impact of the project on these EPBC Act listed species **will not be significant**. As per sections 1(d) and 2(c) above, BCD agrees with this assessment. Offsets for the residual impacts detailed in the BDAR will be provided in accordance with the NSW Biodiversity Offset Scheme.

A summary of offset requirements for the species credit species (*Atriplex infrequens* and the Regent parrot (*Polytelis anthopeplus monarchoides*)) is provided in Table 3. Corben's long-eared bat is an ecosystem credit species under the NSW BAM and the offsets for this species are captured in the overall offset obligation for the PCTs with which the species is associated.

The proponent has identified two contiguous properties near the South Australian border to evaluate as potential biodiversity stewardship areas. Both these properties, Tareena and Big Bend, have large areas of mallee habitats similar to the chenopod mallee habitat where Corben's long-eared bat was captured during project surveys. Tareena Station also has large areas of PCT 58 Black oak - Western rosewood woodland with which the species is associated.

Table 3 Summary of Offset Requirements (species credit species)

| Threatened species listed under the EPBC Act | Credits required as calculated by the BAM | Credits generated from offsets in remnant vegetation | Credits generated from offsets proposed by other means | Comment on the proposed offsets | Relevant page numbers in the EIS and Appendices |
|---|---|--|--|--|---|
| <i>Atriplex infrequens</i> (A saltbush) | 13 | 0 | 0 | To be outlined in Biodiversity Offset Strategy | BDAR s 12.6.2 (Table 12.11, p 289) Appendix G Biodiversity Credit Report |
| <i>Polytelis anthopeplus monarchoides</i> (Regent Parrot, eastern subspecies) | 485 | 0 | 0 | To be outlined in Biodiversity Offset Strategy | BDAR s 12.6.2 (Table 12.11, p 289) Appendix G Biodiversity Credit Report |

5. **Comment** on whether the information and data relied upon for the assessment have been appropriately referenced in the EIS. Comment on the validity of the sources of information and robustness of the **evidence**.

BCD is satisfied that the information and data relied upon for assessment are adequately referenced in the EIS.

Section 3.1 of the BDAR lists the personnel involved in the preparation of the BDAR. In addition to WSP consultants, an experienced local botanist carried out threatened flora surveys.

Section 3.3 and 3.4 list the sources of information and databases used to collect background information about threatened species and communities in the project area.

If a project area is in the known range of a threatened species, no records in database searches or field surveys is not evidence that the species does not occur in the area. This information must be combined with reasonable assessments of the presence and condition of suitable habitat in order to decide if a species may occur on site and if the project would therefore potentially have an impact on the species. In the absence of verified records of threatened species and communities in the project area during field surveys, impact assessments rely on reasonable and justified decisions about the likelihood of occurrence of MNES in the project area.

Decisions about the occurrence of species and communities in the project area were based on database searches, habitat assessments and field surveys.

The survey methods and effort to determine the presence of these ecosystem components were appropriate and met requirements of the BAM. Survey results presented in the BDAR are robust and have improved knowledge about threatened species distribution within the study area.

Relevant past studies and species experts were consulted and referenced in the BDAR.