

ATTACHMENT 3

Commonwealth Department of Agriculture, Water and the Environment assessment requirements

Guidelines for preparing assessment documentation relevant to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for proposals being assessed under the Amended Bilateral Agreement

Maroota Friable Sandstone Extraction Project (EPBC 2021/8913) (SSD-10410)

Introduction

1. On 18 May 2021, a delegate of the Federal Minister for the Department of Agriculture, Water and the Environment (formerly the Department of Environment and Energy), determined that the Maroota Friable Sandstone Extraction Project is 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 action are:
 - i. listed threatened species and communities (sections 18 and 18A).
2. The delegate also confirmed that 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).

Matters of National Environmental Significance

3. The Applicant must undertake an assessment of all Matters of National Environmental Significance (MNES) that may be impacted by the development under the controlling provisions identified in paragraph 1. The Commonwealth Department of Agriculture, Water and the Environment (DAWE) considers that the proposed action is likely to have a significant impact on the following listed threatened species and ecological communities:
 - i. listed threatened species and communities (sections 18 and 18A):
 - a) Shale Sandstone Transitional Forest in the Sydney Basin Bioregion – listed as **Critically Endangered** under the EPBC Act; and
 - b) Dural Land Snail (*Pommerhelix duralensis*) – listed as **Endangered** under the EPBC Act.
4. The Applicant must consider 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 Applicant 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 the matters outlined in Schedule 4 of the EPBC Regulations and the 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 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;
- 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 Agriculture, Water and the Environment Species Profile and Threats Database.

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

Key Issues

Biodiversity (threatened species and communities and migratory species)

Assessment Requirements

14. For each of the EPBC Act listed species predicted to occur in the project site, and each of the EPBC Act listed ecological communities likely to be significantly impacted, the EIS/Biodiversity Development Assessment Report (BDAR) must provide:

- a) survey results, including details of the scope, timing and methodology for studies or surveys used and how they are consistent with (or justification for divergence from) published Commonwealth guidelines and policy statements and/or the NSW Biodiversity Assessment Method (BAM);
- b) a description and quantification of habitat in the study area (including 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; and
- c) maps displaying the above information (specific to each EPBC protected matter) overlaid with the proposed action.

Note: it is acceptable, where possible, to use the mapping and assessment of Plant Community Types (PCTs) and the species surveys prescribed by the BAM as the basis for identifying EPBC Act-listed species and communities. The EIS/BDAR must clearly identify which PCTs are considered to align with habitat for the relevant EPBC Act listed species or community, and provide individual maps for each species or community.

15. The EIS/BDAR must describe the nature, geographic extent, magnitude, timing and duration of any likely direct, indirect and consequential impacts on any relevant EPBC Act listed species and communities. It must clearly identify the location and quantify the extent of all impact areas to each relevant EPBC Act listed species or community.

16. For each of the EPBC Act listed species and communities likely to be impacted by the development, the EIS/BDAR must provide information on proposed avoidance and mitigation measures to deal with the impacts of the action, and a description of the predicted effectiveness and outcomes that the avoidance and mitigation measures will achieve.

17. The EIS/BDAR must identify each EPBC Act listed species and community likely to be significantly impacted by the proposed action. Where a significant impact is likely, the EIS must provide information on the proposed offset strategy, including discussion of the conservation benefit, how offsets will be secured, and timing of protection.

Note: not all of the offset options under the NSW *Biodiversity Conservation Act 2016* are endorsed under the EPBC Act for approval purposes. 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'. Like-for-like includes protection of native vegetation that is the same EEC or habitat being impacted, or funding to provide a direct benefit to the matter being impacted i.e. threat abatement, breeding and propagation programs or other relevant conservation measures.

Aboriginal Heritage and Consultation

18. The Deerubbin Local Aboriginal Land Council (DLALC) has legislative responsibilities under the Aboriginal Land Rights Act 1983 (NSW) and as such should continue to engage with the relevant Registered Aboriginal Parties.
19. DLALC should ensure protocols are developed for managing and protecting Aboriginal heritage values identified through the Aboriginal Archaeology Assessment being prepared.
20. DLALC may wish to seek legal advice as to whether it needs to seek a determination that native title does not exist before commencing the project.
21. The engagement of Indigenous employees and businesses is encouraged.

Other approvals and conditions

22. 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 2000.

Environmental Record of person proposing to take the action

23. 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 2000.

Information Sources

24. 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.

Anticipated Engagement

25. The Applicant should consult with DAWE again after detailed survey work is undertaken and before the EIS is finalised to ensure that all relevant species have been considered and the above assessment requirements have been met.

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*
- NSW Assessment Bilateral Agreement (2015) - 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