

APPENDIX M: COMMONWEALTH MATTERS

In accordance with the bilateral agreement between the Commonwealth and NSW Governments, the Department 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).

The Department's assessment has been prepared based on the assessment contained in Sections 4.7, 4.8 and 4.9 and Appendices C, D, E and F of the Wilpinjong Extension Project Environmental Impact Statement (EIS), WCPL's Response to Submissions (RTS) and supplementary information provided during the assessment process, public submissions, and advice provided by the NSW Office of Environment and Heritage (OEH), Environment Protection Authority (EPA), the Commonwealth Department of the Environment and Energy (DoEE) and the Commonwealth's Independent Expert Scientific Committee on Coal Seam Gas and Large Mining Development (IESC).

This Appendix is supplementary to, and should be read in conjunction with the assessment included in Section 5.3 and 5.4 of this assessment report which includes the Department's consideration of impacts to listed threatened species and communities, impacts to water resources and avoidance, mitigation and offsetting measures for threatened species, including for Matters of National Environmental Significance (MNES).

M.1 Impacts on EPBC Listed Species and Communities

As outlined in Section 5.3, the Department considers that without mitigation measures or offsetting of residual impacts, the project would have a significant impact on 3 threatened species or ecological communities listed under the EPBC Act, namely Box Gum Woodland, Regent Honeyeater and *Ozothamnus tessellatus*. Further consideration of the impact on these 3 species is provided below.

The Department has also considered the impacts on the four EPBC listed species identified in the referral advice including Swift Parrot, Spotted-tail Quoll, Large-eared Pied Bat and the South-eastern Long-eared Bat (Corben's Long-eared Bat). In addition to these species, Hunter Eco concluded that there was potential habitat for the Koala and Brush-tailed Rock Wallaby in the development footprint.

Corben's Long-eared Bat and the Large-eared Pied Bat were recorded in the development footprint, with the Koala also recorded in the near vicinity of the development.

Hunter Eco undertook an assessment of significance of the impacts on these 6 species (refer Appendix E - Attachment A Threatened Species Assessment of Significance and Attachment B - Matters of National Environmental Significance of the EIS). In particular, Hunter Eco considered the action against the 9 impact criteria defined in the *Matters of National Environmental Significance Impact Guidelines 1.1, 2013*.

In regards the Swift Parrot, the Department has carefully considered the impacts associated with the removal of 354 ha of foraging and roosting habitat as a result of the action. Hunter Eco concluded in its assessment that the project is unlikely to significantly impact the Swift Parrot due to the availability of habitat for the species in the locality, including up to 30,000 ha of forest/woodland of suitable habitat within the region, compared to the local and fragmented area within the development footprint. Following consideration of impacts on the Swift Parrot in Table B7 of Attachment B - Appendix E of the EIS, the Department accepts that impacts to this species would be negligible and would not require further mitigation or offsetting.

In regards, Corben's Long-eared Bat and the Large-eared Pied Bat, both listed as vulnerable, both species have been identified within the project area in surveys undertaken by WCPL. The closest known population of the Large-eared Pied Bat is located in Munghorn Gap Nature Reserve, directly to the south of the action. Given the fragmented and disturbed nature of the action area the site is unlikely to contain an important population of either species. It is also unlikely to impact upon habitat critical to the survival of the species. Following consideration of the impacts on Corben's Long-eared Bat and the Large-eared Pied Bat in Tables B11 and B12 of Attachment B - Appendix E of the EIS, the Department

accepts that impacts to this species would be negligible and would not require further mitigation or offsetting.

In regards Koala, there has only been one sighting in the vicinity of the development in 2013 and none recorded in surveys completed from 2005 to 2015. Further, there is no evidence of Koala breeding within the locality. In addition to the significance assessment completed by Hunter Eco, the Department has also considered SEPP 44 (refer Appendix L) and is satisfied that the project would not significantly impact koala populations and would eventually lead to improved long term habitat outcomes through the establishment and enhancement of local offsets that would link with existing areas of vegetation. Following consideration of the impacts on the Koala in Table B8 of Attachment B - Appendix E of the EIS, the Department accepts that impacts to this species would be negligible and would not require further mitigation or offsetting.

In regards the Spotted-tail Quoll and the Brush-tailed Rock Wallaby, the Department notes that while there is potential habitat, there have been no recording of these species within the development area or the immediate surrounds. Hunter Eco concluded that the project is unlikely to disrupt the lifecycle such that a local viable population of these species would be placed at risk of extinction – given lack of records for these species and the greater extent of habitat available near the development. Following consideration of the impacts on the Brush-tailed Rock Wallaby and Spotted-tail Quoll in Tables B9 and B10 of Attachment B - Appendix E of the EIS, the Department accepts that impacts to this species would be negligible and would not require further mitigation or offsetting.

The Department also notes that while there is unlikely to be a significant impact on these EPBC listed species, under the FBA the Swift Parrot, Spotted-tail Quoll, Corben's Long-eared Bat, Large-eared Pied Bat are ecosystem credit species and the proposed offsets would provide sufficient credits to offset the impact on these species. As also identified in Section 5.3 of this report, the offsets would provide excess offset credits (4,598 credits) for the clearing of 190 ha of Koala habitat (4,290 credits).

M.2 Requirements for decisions about threatened species and endangered ecological communities

In accordance with Section 139 of the EPBC Act, in deciding whether or not to approve, for the purposes of a subsection of Section 18 or Section 18A of the Act, the taking of an action and what conditions to attach to such an approval, the Commonwealth Minister must not act inconsistently with certain international environmental obligations, Recovery Plans, or Threat Abatement Plans. The Commonwealth Minister must also have regard to relevant approved conservation advices.

Australia's international obligations

Australia's obligations under the *Convention on Biological Diversity* (Biodiversity Convention) include the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

The recommendations of this assessment report are not inconsistent with the Biodiversity Convention, which promotes environmental impact assessment (such as this process) to avoid and minimise adverse impacts on biological diversity. Accordingly, the recommended development consent requires avoidance, mitigation and management measures for listed threatened species and communities and all information related to the proposed action is required to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Australia's obligations under the *Convention on Conservation of Nature in the South Pacific* (Apia Convention) include encouraging the creation of protected areas which together with existing protected areas would safeguard representative samples of the natural ecosystems occurring therein (particular attention being given to endangered species), as well as superlative scenery, striking geological formations and regions. Additional obligations include using their best endeavours to protect such fauna and flora (special attention being given to migratory species) so as to safeguard them from unwise

exploitation and other threats that may lead to their extinction. The Apia Convention was suspended on 13 September 2006.

Recovery plans and approved conservation advice

Approved conservation advice under the EPBC Act for threatened species that are likely to be impacted is available for the Regent Honeyeater and *Ozothamnus tessellatus*.

Approved recovery plans under the EPBC Act for threatened species that are likely to be impacted is available for Box Gum Woodland and the Regent Honeyeater.

Hunter Eco considered relevant recovery plans and approved conservation advice in its assessment of significance. The Department has considered this advice in its assessment.

- **Box Gum Woodland**

While the Box Gum Woodland is fragmented, it is a **critically** endangered ecological community and any incremental clearing of the moderate to good condition woodland would decrease the extent and adversely affect habitat. The recovery plan for Box Gum Woodland aims to achieve no net loss in extent and condition. Therefore, the Department considers that a significant impact is likely, and that further mitigation and offsetting of this impact needs to be considered.

The Department notes that there is no approved conservation advice for Box Gum Woodland CEEC that requires consideration under the EPBC Act.

However, the National Recovery Plan for Box Gum Woodland identifies a range of objectives including achieving no net loss in extent and condition of Box Gum Woodland.

While the project would clear 9.5 ha of the Box Gum Woodland EEC, substantive offsets are proposed (see Section 5.3 of the assessment report), such that the action would not be inconsistent with the Recovery Plan.

In particular, the additional offset areas include 46.5 ha of Box Gum Woodland EEC with the FBA ecosystem impact credits of 377 credits being satisfied, with 384 credits available in the offset areas. The Biodiversity Management Plan requirements would also require detailed performance and completion criteria to be developed for evaluating management actions to improve the condition of the Box Gum Woodland within these offset areas.

- **Regent Honeyeater**

The Department considers that the loss of 190 ha of Regent Honeyeater habitat is likely to be a significant impact as it would reduce the potential area of occupancy of primary and secondary foraging habitat. Since the referral decision by DoEE that the action is a controlled action, the listing status of the Regent Honeyeater has been changed from endangered to critically endangered, in recognition of this species decline and the continuing loss of habitat for this species.

The Department has considered the approved conservation advice and National Recovery Plan under the EPBC Act in assessing the impacts of the project on the Regent Honeyeater and notes that the main threats and causes for decline in population are clearing, fragmentation and degradation of its habitat.

The National Recovery Plan includes a number of objectives, recommendations and actions relevant to the project including maintaining and enhancing the value of Regent Honeyeater habitat and monitoring trends in Regent Honeyeater population size and dispersion.

While the project would clear 190 ha of habitat for the Regent Honeyeater, a combination of direct land based offsets and rehabilitation of mined land to return foraging habitat is proposed by WCPL. The recommended conditions include requirements for performance and completion criteria to track offset

and rehabilitation performance over time. In particular, the rehabilitation offset credits require that the performance and completion criteria be developed in consultation with the Department, OEH and DoEE for the specific vegetation community types and habitat values for Regent Honeyeater. The recommended conditions also provide alternative offsetting arrangements if mine-site rehabilitation does not meet performance and completion criteria. The use of the FBA calculator and application of the NSW Offsets Policy accounts for time lag and constraints in rehabilitation in providing lower (50 %) percentage credits compared to standard offset sites. In addition, the Department and OEH have accepted that existing rehabilitation areas approved to woodland can accrue 25% rehabilitation credits towards Regent Honeyeater. This provides WCPL with an incentive to specifically target and improve the rehabilitation in these areas for Regent Honeyeater vegetation communities and enhancement of specific habitat features, such as nectar quality. It is important to note that this is a small component (11%) of the total offset package for the Regent Honeyeater.

The Department also recommends the additional supplementary measure of funding \$660,000 towards Regent Honeyeater capture-release recovery programs being developed by OEH in conjunction with Dubbo Zoo.

The Department considers that with the proposed site mitigation and offset measures (see Section 5.3 of the assessment report), the action would not be inconsistent with the objectives of the Recovery Plan. The Department has recommended conditions to formalise these measures (refer to Schedule 3 Conditions 32-44 of Appendix N). Key actions of the Recovery Plan including monitoring would also be implemented as part of the Biodiversity Management Plan for the site and offset areas.

- **Ozothamnus tessellatus**

Hunter Eco in its field surveys completed for the project identified significant additional populations of *Ozothamnus tessellatus* within proposed offset areas, located approximately 8 kilometres from the impact site. A total of 3,908 individuals were counted in the survey and extrapolated to 6,458 individuals. A more extensive population exceeding 10,000 plants is likely, based on the results of random meander surveys. Along with other known populations in the vicinity, Hunter Eco concludes that there would be no significant impact as the impacted population is part of a substantial meta-population in the area.

However, the Department considers that the *Ozothamnus tessellatus* population is an important population as defined in the MNES Significant Impact Guidelines. The population is at the western limit of the species range and in the order of 50% of the local population would be directly impacted by the mine extension and therefore there is likely to be a significant impact without mitigation and offsetting actions.

The Department has considered the approved conservation advice for *Ozothamnus tessellatus* which identifies the main threat as being degradation of habitat and localised extinction from stochastic events due to restricted distribution and a low number of known sites.

Research priorities and action plans identified in the conservation advice includes undertaking additional survey work to locate further populations, monitoring of populations, protecting populations through conservation agreements, undertaking seed collection and storage and investigating options for establishing additional populations, through propagation and translocation.

WCPL has identified two key mitigation measures – clear delineation of areas to avoid accidental clearance of the identified populations and undertaking germination trials to assess potential for planting, potentially as part of mine rehabilitation.

The Department has recommended conditions to implement these mitigation measures as a component of the Biodiversity Management Plan (refer recommended conditions – Schedule 3 Condition 42).

The Department is satisfied that, with the implementation of these mitigation measures, in addition to the substantial populations to be managed within the proposed offset areas (discussed in Section 5.3 of the assessment report), the action would not be inconsistent with the Conservation Advice for *Ozothamnus tessellatus*.

Threat abatement plans (TAPs)

The threat abatement plans relevant to this action are discussed below and are available at <http://www.environment.gov.au/biodiversity/threatened/threat-abatement-plans/approved>.

- **Threat abatement plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (relevant to Box Gum Woodland)**

Phytophthora cinnamomi (*P. cinnamomi*) is a microscopic soil-borne organism that has the ability to cause plant disease and plant death by interfering with the movement of water and nutrients to plants. It can be spread in water, soil or plant material that contains the pathogen and dispersal is favoured by moist or wet conditions. It can be carried in both overland and subsurface water flow and by water moving infested soil or organic material. Native and feral animals have been implicated in spreading *P. cinnamomi*, particularly where there are digging behaviours. Humans, however, have the capacity to disturb and transport more soil than any other vector.

The Box Gum Woodland is identified as an ecological community that may be affected by *P. cinnamomi*.

The Department notes that, construction related activities have the potential to introduce or spread the pathogen through the movement of vehicles; the use of construction equipment/tools for breaking ground; footwear; or the introduction of infested soil or building materials to currently un-infested areas. The threat abatement plan for managing the impacts of *P. cinnamomi* identifies actions to minimise its spread to un-infested sites and mitigate impacts at infested sites.

The Department has recommended that actions to avoid and mitigate the spread of this plant disease are implemented as part of a Biodiversity Management Plan. Subject to this recommended condition, the Department considers approval of the proposed action would not be inconsistent with the threat abatement plan for disease in natural ecosystems caused by *P. cinnamomi*.

- **Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs (relevant to Box Gum Woodland)**

Feral pigs impact on native ecosystems and flora and fauna due to their presence, movement, rooting, wallowing, trampling, tuskling or rubbing trees and consumption of water, animals, plants and soil organisms. Direct impacts from feral pigs include predation, habitat loss and degradation, competition and disease transmission, which can impact on native flora and fauna.

- **Threat abatement plan for competition and land degradation by rabbits (relevant to Box Gum Woodland and Regent Honeyeater)**

Rabbits have direct impacts on native flora and fauna, for example, by grazing on native vegetation and thus preventing regeneration and by competing with native fauna for habitat and food. Rabbits also have indirect and secondary effects, such as supporting populations of introduced predators and denuding vegetation, thereby exposing fauna species to increased predation. Their ecology, including digging and browsing also leads to a loss of vegetation cover and consequent slope instability and soil erosion, which further degrades fauna habitat.

- **Threat abatement plan for competition and land degradation by unmanaged goats (relevant to Box Gum Woodland)**

Goats affect native flora by grazing on native vegetation and can result in overgrazing. Grazing by goats can prevent regeneration of native flora; cause erosion through overgrazing; foul waterholes and introduce weeds, through ingestion of seeds, which they then deposit in their dung. Goats also compete with native animals for food and shelter.

- **Threat abatement plan for predation by feral cats (relevant to Regent Honeyeater)**

Feral cats are significant predators in Australia that interact with native fauna in various ways, including predation, competition for resources and transmission of disease.

The Department notes that WCPL in its existing approved Biodiversity Management Plan implement feral animal controls.

Measures to control feral animals are recommended in the development consent conditions which would be implemented as part of a Biodiversity Management Plan for the site and offset areas.

Therefore, the Department considers the approval of the action would not be inconsistent with the threat abatement plan for competition and land degradation by unmanaged goats; rabbits; and feral cats; predation, habitat degradation, competition and disease transmission by feral pigs.

- **Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads (relevant to Box Gum Woodland)**

While cane toads have the potential to colonise new habitats created by the construction of sediment and detention basins, this species is not known to occur in the region and it is therefore unlikely that disturbance as a result of the proposed action would lead to the presence of cane toads.

M.3 Requirements for decisions about world heritage properties

The Commonwealth determined that the action is not a controlled action for the controlling provision of World Heritage (Section 12 and Section 15A of the EPBC Act) and therefore further consideration is not required.

M.4 Requirements for decisions about national heritage places

The Commonwealth determined that the action is not a controlled action for the controlling provision of National Heritage (Section 15B and Section 15C of the EPBC Act) and therefore further consideration is not required.

M.5 Additional EPBC Act considerations

Table 1 contains the additional mandatory considerations, factors to be taken into account and factors to have regard under the EPBC Act additional to those already discussed.

Table 1 – Additional considerations for the Commonwealth Minister under the EPBC Act

| EPBC Act section | Considerations | Conclusion |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mandatory considerations | | |
| 136(1)(b) | Social and economic matters are discussed in Sections 5.2 and 5.7 of the assessment report. | <p>The Department considers that the proposed development would result in a range of benefits for the local and regional economy and provides is of public benefit.</p> <p>Negative social impacts, particularly on the local community residing in the area have been considered in the assessment of the development.</p> <p>A range of mitigation measures have been proposed by the Applicant, including provision of a Voluntary Planning Agreement with Mid- Western Regional Council.</p> |
| Factors to be taken into account | | |
| 3A, 391(2) | <p>Principles of ecologically sustainable development (ESD), including the precautionary principle, have been taking into account, in particular:</p> <ul style="list-style-type: none"> • the long term and short term economic, environmental, social and equitable considerations that are relevant to this decision; | The Department considers that the project, if undertaken in accordance with the recommended conditions of consent, would be consistent with the principles of ESD. |

| EPBC Act section | Considerations | Conclusion |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> conditions that restrict environmental impacts and impose monitoring and adaptive management, reduce any lack of certainty related to the potential impacts of the Wilpinjong Extension project; conditions requiring the project to be delivered and operated in a sustainable way to protect the environment for future generations and conserving the relevant matters of national environmental significance; advice provided within this report reflects the importance of conserving biological diversity, ecological and cultural integrity in relation to all of the controlling provisions for this project; and mitigation measures to be implemented which reflect improved valuation, pricing and incentive mechanisms are promoted by placing a financial cost on the proponent to mitigate the environmental impacts of the Wilpinjong proposal. | |
| 136(2)(e) | Other information on the relevant impacts of the action – the Department is not aware of any relevant information not addressed in this assessment report. | The Department considers that all information relevant to the impacts of the project has been taken into account in this recommendation. |
| 136(2)(fa) | Advice was sought from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). | <p>The Department has reviewed the advice and recommendations of the IESC, and considered WCPL's response to these matters in Section 5.4.</p> <p>The Department has recommended conditions that the Water Management Plan considers the key recommendations of the IESC, particularly in regard monitoring and ongoing groundwater model validation.</p> |
| Factors to have regard to | | |
| 176(5) | Bioregional plans | There is no approved bioregional plan related to the activity. |
| Considerations on deciding on conditions | | |
| 134(4) | <p>Must consider:</p> <ul style="list-style-type: none"> information provided by the person proposing to take the action or by the designated proponent of the action; and the desirability of ensuring as far as practicable that the condition is a cost effective means for the Commonwealth and the person taking the action to achieve the object of the condition. | <p>All project related documentation is available from the Department's website www.majorprojects.planning.nsw.gov.au.</p> <p>The Department considers that the conditions at Appendix N are a cost effective means of achieving their purpose. The conditions are based on the material provided by WCPL that was prepared in consultation with the Department, DoEE, DPI Water, EPA and OEH.</p> |

M.6 Conclusions on controlling provisions

Threatened species and communities (Sections 18 and 18A of the Act)

For the reasons set out in Section 5.3 and this Appendix, the Department recommends that the impacts of the action would be acceptable, subject to avoidance, mitigation measures described in WCPL's EIS, RTS, supplementary advice provided to the Department and the recommended conditions of consent in Appendix N.

A water resource, in relation to coal seam gas development and large coal mining development (Sections 24D and 24E of the Act)

For the reasons set out in Section 5.4 and this Appendix, the Department recommends that the impacts of the action on a water resource, in relation to coal seam gas development and large coal mining development would be acceptable, subject to the avoidance, mitigation measures described in WCPL's

EIS, RTS and response to the IESC review, and the requirements of the recommended conditions of consent in Appendix N.

M.7 Other protected matters

The Commonwealth Department of the Environment and Energy determined that other matters under the EPBC Act are not controlling provisions with respect to the proposed action. These include listed World Heritage, National Heritage, migratory species, Ramsar wetlands, Commonwealth marine environment, Commonwealth land, Commonwealth action, nuclear action, and Great Barrier Reef Marine Park and Commonwealth Heritage places overseas.