

APPENDIX F – MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

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).

F.1 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 section 18 or section 18A of the EPBC 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 the Department's 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. The recommended approval requires avoidance, mitigation and management measures, and offsetting for the 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 will 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 with effect from 13 September 2006. While this Convention has been suspended, Australia's obligations under the Convention have been taken into consideration. The recommendations are not inconsistent with the Convention which has the general aims of conservation of biodiversity.

The *Convention on International Trade in Endangered Species of Wild Flora and Fauna* (CITES) is an international agreement between governments which seeks to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The recommendations are not inconsistent with CITES as the proposed action does not involve international trade in specimens of wild animals and plants.

Recovery Plans and Approved Conservation Advices

The applicable recovery plans and approved conservation advices are discussed below.

- National Recovery Plan for the Regent Honeyeater (*Anthochaera Phrygia*) and Approved Conservation Advice for the Regent Honeyeater (*Anthochaera Phrygia*)

The National Recovery Plan considers the conservation requirements of the Regent Honeyeater across its known range and identifies actions to ensure its long-term viability. The Recovery Plan provides information on habitat requirements, ecology, distribution, conservation status, key threats, management issues, research and monitoring, captive breeding and translocation, and community education. The Hunter Valley is identified in the recovery plan as known breeding area for the Regent Honeyeater, where the species is regularly recorded.

The Conservation Advice for the Regent Honeyeater was approved by the Commonwealth Minister on 25 June 2015 and identifies the main threats as destruction/degradation/fragmentation of its

habitat. The Conservation Advice identifies local and regional priority actions that could be implemented to support the recovery of the species.

The objectives of both documents are to:

- *Reverse the long-term population trend of decline and increase the numbers of regent honeyeaters to a level where there is a viable, wild breeding population, even in poor breeding years; and*
- *Maintain key regent honeyeater habitat in a condition that maximises survival and reproductive success, and provides refugia during periods of extreme environmental fluctuation.*

Although the Proponent proposes to clear 0.9 ha of *Central Hunter Valley Eucalypt Forest Woodland* which is a community considered to be important foraging habitat for this species, the proposed addition of 41.6 ha to the Wambo Mine's Remnant Woodland Enhancement Program (RWEPP) would contain more than six times the proposed clearing of this community (see **Section 5.3**). The proposed offset would increase the extent of Regent Honeyeater habitat within the RWEPP, and would provide quality habitat for the species that would be protected under a conservation agreement. As such, the proposed modification aligns with the Regent Honeyeater Recovery Plan and Approved Conservation Advice objectives by improving the extent and quality of Regent Honeyeater habitat.

- Approved Conservation Advice (including listing advice) for the *Central Hunter Valley Eucalypt Forest and Woodland*

In April 2015, the Commonwealth Minister approved the Conservation Advice for the *Central Hunter Valley Eucalypt Forest and Woodland*. The Conservation Advice identifies vegetation clearance and landscape fragmentation as a key threat affecting the ecological community. Other key threats include invasive flora species, pests, infrastructure development and removal of fallen timber and trees. The Conservation Advice identifies and prioritises conservation actions that could be implemented to assist the recovery of the ecological community. A recovery plan for the community is not recommended.

The modification would remove 0.9 ha of *Central Hunter Valley Eucalypt Forest Woodland* for the extended surface infrastructure area. WCPL has proposed an offset containing six times the amount of *Central Hunter Valley Eucalypt Forest Woodland* than is proposed to be cleared. WCPL would also undertake surveys of proposed gas management infrastructure locations so that threatened species and habitat can be avoided where possible, and would also manage the site in accordance with an established Flora and Fauna Management Plan.

The Department considers WCPL's proposed actions to be in accordance with the Conservation Advice, particularly in regards to the priority to regenerate, revegetate and rehabilitate the ecological community with an appropriate mix of species.

Threat Abatement Plans

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 competition and land degradation by rabbits

Rabbits (along with foxes and cats) are considered to be Australia's most serious vertebrate pests. They are significant predators of native fauna in Australia, and severely affect native flora and fauna, vegetation communities, landforms, geomorphic processes and sensitive sites. Due to the widely established population, the Threat Abatement Plan for this species aims to minimise its impacts on biodiversity.

The proposed action could impact increase the competition for regent honey eater habitat through the clearance and modification of habitat. However, given the small nature of the proposed surface disturbance area, the risk of this impact is considered to be low.

The Proponent has proposed that feral animal management and control would be continued using the site's Flora and Fauna Management Plan, which would be updated to reflect the proposed modification.

The proposed modification would not be inconsistent with the above Threat Abatement Plan, particularly in relation to Objective 2 which promotes the maintenance and recovery of native species and ecological communities that are affected by rabbit competition and land degradation.

The proposed addition to the site's RWEPP would ensure native species and ecological communities are maintained to a high quality standard. This area includes management measures to control pests and weed infestations, and would be protected under a conservation agreement.

F.2 ADDITIONAL EPBC ACT CONSIDERATIONS

Table F1 contains the additional mandatory considerations, factors to be taken into account and factors to have regard under the Act, additional to those already discussed, which the Commonwealth Minister must consider in determining the proposed action.

Table F1: 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 Appendix K of the EA and Section 5.4 of the Department's Assessment Report.	The Department considers that the project would result in a range of benefits to the local community and local and regional economy through improvements in network efficiency.
Factors to be taken into account		
3A, 136(2)(a), 391(2)	Principles of ecologically sustainable development (ESD), including the precautionary principle, have been taken into account, particularly: <ul style="list-style-type: none"> The long-term and short-term economic, environmental, social and equitable considerations that are relevant to this decision; Conditions that restrict environmental impacts and impose monitoring and adaptive management reduce any lack of certainty related to the potential impacts of the project; Conditions requiring the project to be delivered and operate 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 and ecological integrity in relation to the controlling provisions for the project; and Mitigation measures to be implemented which minimise potential impacts of the project on biodiversity within the project area. 	The Department considers that the project, if undertaken in accordance with recommended conditions of approval, would be consistent with the principles of ESD.
136(2)(e)	Other information on the relevant impacts of the proposed 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 have been taken into account in this assessment. The Department's consideration on key issues is presented in Section 5 of this report.
Factors to have regard to		
176(5)	Bioregional plans	There is no relevant bioregional plan.
Considerations on deciding on conditions		
134(4)	Must consider: <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(s) is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition. 	Documentation is provided by WCPL in Appendices D & E of its EA (see Appendix A of the assessment report) and RTS (see Appendix C of the assessment report). The Department considers that the proposed conditions are a cost effective means of achieving their purpose.

F.3 THREATENED SPECIES AND COMMUNITIES (SECTIONS 18 & 18A OF EPBC ACT)

For the reasons set out in **Section 5.3** of the assessment report, the Department recommends that the impacts of the action on threatened species and communities would be acceptable, subject to the implementation of the avoidance and mitigation measures described in WCPL's EA and RTS, and to the requirements of the recommended conditions of approval.

The Department believes that existing conditions 40 – 41A and 44 – 50 in Schedule 4 of the existing development consent provide a suitable regulatory framework to manage the risk of impact to listed threatened species from the modification.

Accordingly, the Department recommends that the Commonwealth Minister require WCPL to implement conditions 1, 2 and 2A of Schedule 3, conditions 22, 22C, 40 – 41A and 44 – 50 in Schedule 4 of the consent (as proposed to be amended by the Notice of Modification), where they relate to the management of potential impacts on listed threatened species under the EPBC Act.

F.4 A WATER RESOURCE, IN RELATION TO COAL SEAM GAS DEVELOPMENT AND LARGE COAL MINING DEVELOPMENT (SECTIONS 24D AND 24E OF THE EPBC ACT)

For the reasons set out in **Section 5.2** of the assessment report, the Department concludes that the impacts of the action on water resources are acceptable, subject to the avoidance and mitigation measures described in WCPL's EA, RTS and response to the IESC review, and the requirements of the existing development consent and recommended notice of modification.

The Department believes that existing conditions 22 – 39 in Schedule 4 of the existing development consent provide a suitable regulatory framework to manage the risk of impact to water resources from the modification, in particular, potential impacts to private water users and the need to monitor surface water and groundwater, and implement a response plan in the event of adverse impacts.

Accordingly, the Department recommends the Commonwealth Minister require WCPL to implement conditions 1, 2 and 2A of Schedule 3 and conditions 22, 22C, 22D and 23 - 39 in Schedule 4 of the consent (as proposed to be amended by the Notice of Modification), where they relate to the management of potential impacts on water resources under the EPBC Act.

F.5 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 migratory species, Ramsar wetlands, Commonwealth marine environment, world heritage properties, national heritage places, nuclear action and Great Barrier Reef Marine Park.
