

Appendix G – Bilateral Assessment – Residual Issues

The Department included a detailed consideration of Matters of National Environmental Significance (MNES) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in Appendix L of the PAR. OEH also provided advice on Commonwealth matters as detailed in Appendix K of the PAR.

Following consultation with DoEE, further, clarification is provided on how low condition grassland is dealt with under State vs. Commonwealth requirements.

The Department also notes that the Commonwealth has published the Northern Sydney Basin - Hunter Subregion Bioregional Assessment which has been raised by the community as new information that should be considered in the assessment of the project.

Offsetting low condition derived native grassland

Under the NSW Government's offsetting rules established under the Framework for Biodiversity Assessment (FBA), offsets are not required where the condition of a plant community type (PCT) in the disturbance area has a biometric score of less than 17. As discussed in the PAR, there was 111 ha of direct disturbance to the Commonwealth listed Box Gum Woodland (BGW) in the form of derived native grassland (DNG) that was not required to be directly offset under the FBA rules, due to its low condition.

The Department notes that the Revised Mine Plan has avoided a further direct impact on BGW of 4.4 ha, including 2.4 ha of woodland and 2 ha of derived native grassland (DNG).

While the low condition BGW is not required to be directly offset under the NSW offsetting framework, there are substantial excess credits for Box Gum Woodland EEC in the offset areas, excluding offset area 5 (OA5), to account for the low condition DNG as indicated in the table below.

Table 25 | Box Gum Woodland Reconciliation – EPBC

Plant Community Type (PCT)	Condition	Impact Area Credits			Offset Area Credits (excluding OA5)	
		Area (ha)	Credits Required	Average Credits / ha	Area (ha)	Credits Available
Yellow Box grassy woodland on lower hillslopes and valley flats in the southern NSW Brigalow Belt South Bioregion (HU732)	Moderate/ Good Woodland	8.2	464	56.6		
	Moderate/ Good DNG	6.0	126	21.0		
	Low Condition DNG	8.5	0	0		
	Total	22.7	590	26	335	1,903
Grey Box – White Box grassy open woodland on basalt hills in the Merriwa region, upper Hunter Valley (HU690)	Moderate/ Good Woodland	57.3	3,289	57.4		
	Moderate/ Good DNG	68.1	1,380	20.3		
	Low Condition DNG	102.9	0	0		
	Total	228.3	4,669	20.5	1,353	8,394
TOTAL	Moderate/ Good Woodland	65.5	3,753	57.3		
	Moderate/ Good DNG	74.1	1,506	20.3		
	Low Condition DNG	111.4	0	0		
	Total	251	5,259	21	1,688	10,297
Excess BGW Credits in Offset Areas (excluding OA5)						5,038
Excess Credits/ Ha available for Low Condition DNG						45.2

There is an excess of 5,038 BGW credits available which would equate to 45 credits /ha for the 111 ha of low condition DNG, well in excess of the 20 - 21 credits /ha credit liability for DNG in moderate to good condition calculated using the FBA.

The recommended conditions require KEPCO to retire credits in offset areas 1 – 4, Yarran View Offset Area and the Fuzzy Box Offset Area and secure these areas through a Stewardship Agreement under the *Biodiversity Conservation Act 2016* within 2 years of commencing the development. This time period would allow for the applicant to undertake additional surveys in the offset areas to validate the offset credit calculations and for processing of the Stewardship Agreement application, once the development consent is acted upon.

The Department notes that, if approved by the Commission, the proposal would be referred to the Commonwealth Minister for the Environment for determination under the EPBC Act.

Northern Sydney Basin Bioregional Assessment – Hunter Subregion

The Commonwealth Government released its bioregional assessment package for the Northern Sydney Basin - Hunter Subregion in May 2018. The Department notes that the bioregional assessment includes predictions of drawdown covering the Bylong Coal Project area. Concerns were raised by the community and special interest groups that the drawdown and the extent of these predictions exceeds that predicted by the modelling completed by AGE.

The bioregional assessments are undertaken at a regional scale and the results are used to inform more detailed local scale assessment, using finer scale modelling and local data. The bioregional assessment itself indicates that the modelling identifies where impacts are unlikely to occur, and that more detailed local data and modelling would be required to inform project specific impact assessment. That is, large-scale bioregional assessments are not a substitute for careful assessment under State or Commonwealth environmental law.

Appendix G of the Revised Mine Plan Supplementary Report considers the bioregional assessment modelling and notes some of the limitations of this coarser regional modelling, in particular that the bioregional assessment used a 500m grid cell size, compared to the finer resolution 10-75 m grids used in the modelling undertaken by AGE.

Bilateral Assessment – Conditions

The Department notes that there are sufficient like-for-like biodiversity credits in the proposed land-based offsets to offset any residual significant impacts to relevant MNES, subject to final field validation. The recommended conditions require KEPCO to retire credits through its identified land-based offsets and only use supplementary measures or payment into an offset fund if there is a shortfall in credits following the field validation.

The Department has consulted with the Department of the Environment and Energy (DoEE) on acceptable methods for proponents to discharge their offset obligations for MNES. DoEE has advised that it would not allow payments into an offset fund, including to the Biodiversity Conservation Trust, unless it has been endorsed by the Commonwealth Minister responsible for administering the EPBC Act.

Similarly, DoEE requested that if supplementary measures are used instead of land-based offsets for relevant MNES, that it must include conservation actions set out in approved Commonwealth policies or plans, with the contribution determined by converting biodiversity credits to an equivalent dollar value using an offsets calculator approved by the Commonwealth Minister responsible for administering the EPBC Act.

The Department has noted DoEE's requirements in the biodiversity conditions.

The Department has also assessed the impacts of the project on water resources (Sections 24D and 24E of the EPBC Act) and recommended a range of strict conditions to manage and mitigate impacts.

For the reasons set out in Section 6.3 and Appendix L of the PAR, and Section 2.4 of this report, which considers residual issues raised by the Commission, 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.

This is subject to the avoidance, mitigation measures proposed by KEPCO throughout the assessment of the project, and the requirements of the recommended conditions of consent in Appendix H.

The Department is satisfied that the recommended conditions would provide suitable protection for those MNES under the EPBC Act for which there is a residual impact.