

APPENDIX L: CONSIDERATION OF 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 the Bylong Coal Project Environmental Impact Statement (EIS), KEPCO'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) and other NSW agencies, 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 6 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).

The Department has also considered the advice provided by OEH on MNES which is provided in Appendix K.

L.1 Impacts on EPBC Listed Species and Communities

As outlined in Section 6.6, the project may have a significant impact on four threatened species or ecological communities listed under the EPBC Act, namely Box Gum Woodland, Regent Honeyeater, the Large-eared Pied Bat and the New Holland Mouse. The Department notes that both Cumberland Ecology and OEH concluded that there would not be a significant impact on the New Holland Mouse.

Nonetheless, further detailed consideration of the impact on these four species is provided below.

The Department has also considered the impacts of the action on the following EPBC listed species:

- *Flora species*: *Ozothamnus tessellatus*, *Tylophora linearis*, *Prostanthera cryptandroides* (Wollemi Mint Bush), *Homoranthus darwinioides*, Ingram's Ziera, *Prostanthera discolor*, *Commersonia rosea*, Silky Pomaderris (*Pomaderris sericea*), *Philotheca ericifolia* and Austral Toadflax (*Thesium australe*); and
- *Fauna species*: Brush-tailed Rock-wallaby, Spotted Tail Quoll, Corben's Long-eared Bat (South-eastern Long-eared Bat), Swift Parrot, Pink-tailed Worm-lizard, Broad-headed Snake, Koala and Grey-headed Flying-fox.

Cumberland Ecology assessed the significance of the impacts on these species using the methodology outlined in *Matters of National Environmental Significance Significant Impact Guidelines 1.1 (2013)* as documented in Appendix I of Appendix J of the EIS.

In relation to *Ozothamnus tessellatus*, no individuals were recorded in the disturbance area, with a small number of individuals recorded in the subsidence area. Following consideration of impacts and assessment of significance on *Ozothamnus tessellatus* in section I.3.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to *Tylophora linearis*, no individuals were recorded in the disturbance area with the project designed to avoid impacts to a known population. Following consideration of impacts and assessment of significance on *Tylophora linearis* in section I.3.1 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to *Prostanthera discolor*, no individuals were recorded in the study area. Following consideration of impacts and assessment of significance on *Prostanthera discolor* in section I.3.3 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to Ingram's Ziera, the EIS assessment concluded that the species was unlikely to be present due to the project being outside the known range of the species, with no records observed in the area. In particular, the species is known only from a geographic range of 25 km, within Goonoo State Forest, 35-60 km north-north-east of Dubbo on the western plains of NSW. The Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to Austral Toadflax (*Thesium australe*), no individuals were recorded in the study area and locality. Following consideration of impacts and assessment of significance on Austral Toadflax in section I.3.4 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to *Homoranthus darwinioides*, *Prostanthera cryptandroides*, *Commersonia rosea*, *Pomaderris sericea* and *Philothea ericifolia* no individuals were recorded in the study area. However, there is potential for the species to occur at higher elevations within the subsidence area and the locality. The EIS concludes that it is unlikely that these species would be significantly impacted by subsidence. Department accepts that impacts to these species would not be significant and would not require further mitigation or offsetting.

In relation to, the Brush-tailed Rock-wallaby, the project would directly impact on 125 ha of potential habitat. However, there is substantive area of habitat in adjoining National Park estate, with only one individual was recorded by in surveys completed by the Applicant in the study area. Following consideration of impacts on the Brush-tailed Rock-wallaby in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to, the Spotted-tailed Quoll, the project would directly impact on 229 ha of potential habitat. Surveys undertaken for the project did not identify the species, however there are historical recordings within the Study Area. Following consideration of impacts on the Spotted-tailed Quoll in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to Corben's Long-eared Bat, the project would directly impact on 229 ha of potential habitat. Surveys undertaken for the project did not identify the species, however there is one historical recording within the Study Area and additional records in the locality. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to the Swift Parrot, the project would directly impact on 229 ha of potential habitat. Surveys undertaken for the project did not identify the species within the study area. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to the Koala, the project would directly impact on 229 ha of potential habitat. The latest record of Koala in the locality is from 1980. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to the Grey-headed Flying-fox, the project would directly impact on 229 ha of potential habitat. There have been no records of this species within the Study Area or within the locality. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting.

In relation to the Broad-headed Snake, the project would directly impact on 125 ha of potential habitat. Surveys undertaken for the project did not identify the species within the study area and no known populations would be affected. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

In relation to the Pink-tailed Worm-lizard, the project would directly impact on 710 ha of potential habitat. Surveys undertaken for the project did not identify the species within the study area with only one record in the locality in Goulburn River National Park. Following consideration of impacts and assessment of significance on this species in section I.4.2 of Appendix I - Appendix J of the EIS, the Department accepts that impacts to this species would not be significant and would not require further mitigation or offsetting. Further, the FBA assessment did not identify the species as requiring species credits.

The Department also notes that while there is unlikely to be a significant impact on these EPBC listed species, under the FBA the Spotted-tail Quoll, Swift Parrot, Corben's Long-eared Bat, are ecosystem credit species and the proposed offsets would provide sufficient credits to offset the impact on these species. Further, the FBA required 688 species credits for the Brush-tailed Rock-wallaby with the offsets providing 5,005 credits (see Section 6.6).

L.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 significantly impacted is available for the New Holland Mouse,

Approved recovery plans under the EPBC Act for threatened species that are likely to be significantly impacted is available for Box Gum Woodland, the Regent Honeyeater and the Large-eared Pied Bat.

Cumberland Ecology and OEH (Appendix K) considered relevant recovery plans and approved conservation advice in their assessment of impacts on MNES. The Department has considered this advice in its assessment.

- **Box Gum Woodland**

The recovery plan for Box Gum Woodland aims to achieve no net loss in extent and condition. The Department notes that there is no approved conservation advice for Box Gum Woodland CEEC that requires consideration under the EPBC Act.

While the project would clear 251 ha of the Box Gum Woodland CEEC, substantive offsets are proposed (see Section 6.6 of the assessment report), such that the action would not be inconsistent with the Recovery Plan.

In particular, the additional offset areas include 1,765 ha of Box Gum Woodland with the FBA ecosystem impact credits of 5,259 credits being satisfied, with 20,233 credits available in the offset areas.

The Biodiversity Management Plan and Biobanking Agreements would also require detailed management actions and monitoring programs to improve the condition of Box Gum Woodland within these offset areas.

- **Regent Honeyeater**

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 180 ha of habitat for the Regent Honeyeater with a calculated species credit requirement of 13,892 credits. OEH considered the extent of potential Regent Honeyeater habitat within the Kerrabee subregion with approximately 49,500 ha of habitat. The project would therefore mean a loss of around 0.4% of potential Regent Honeyeater habitat. OEH considers that the project is unlikely to cause the extinction of significantly reduce the viability of the species in the subregion.

The proposed offsets would provide 2,184 ha of Regent Honeyeater habitat, that is an offset ratio of more than 12:1 in land area and 15,507 species credits. While some of this offset area is within the subsidence impacted area, the Department is satisfied that the species offset credits have been conservatively applied and account for the small reduction predicted in biodiversity values.

The Department considers that with the proposed site mitigation and offset measures (see Section 6.6 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 Schedules 3 and 4 of Appendix M). 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.

- **Large-eared Pied Bat**

The Department has considered the approved National Recovery Plan under the EPBC Act in assessing the impacts of the project on the Large-eared Pied Bat and notes that a key objective is to identify priority roost and maternity sites for protection.

While the project would clear 56 ha of habitat for the Regent Honeyeater with a calculated species credit requirement of 728 credits.

The proposed offsets would provide 1,031 ha of Large-eared Pied Bat habitat and 2,187 species credits, well in excess of the requirements under the FBA.

The Department considers that with the proposed site mitigation and offset measures (see Section 6.6 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 Schedules 3 and 4 of Appendix M). These conditions include a requirement to undertake bat monitoring at potential roost habitat sites along cliff lines. KEPCO has also committed to avoid impacts on the the more significant cliff lines including cliff C5, as recommended by OEH.

- **New Holland Mouse**

The Department has considered the Conservation Advice under the EPBC Act in assessing the impacts of the project on the New Holland Mouse.

The New Holland Mouse was not recorded within the project disturbance boundary with one record within the study area. However, 127 ha of habitat would be cleared with a further 1,347 ha within the Subsidence Area. Within the study area there is a further 3,631 ha of potential habitat.

The New Holland Mouse is an ecosystem credit species under the FBA and would generate 7,215 ecosystem impact credits. The proposed offsets would provide 1,608 ha of New Holland Mouse habitat and 23,694 species credits, well in excess of the requirements under the FBA.

The Department considers that with the proposed site mitigation and offset measures (see Section 6.6 of the assessment report), the action would not be inconsistent with the Conservation Advice for the New Holland Mouse.

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, tusking 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 and New Holland Mouse)**

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

Measures to control feral animals are recommended in the development consent conditions which would be implemented as part of a Biodiversity Management Plan and/or Biobanking Agreement(s) 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.

L.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.

L.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.

L.5 Additional EPBC Act considerations

Table L1 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 L1 – 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 2 and 6 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; conditions that restrict environmental impacts and impose monitoring and adaptive management, reduce any lack of certainty related to the potential impacts of the Bylong Coal 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 project. 	The Department considers that the project, if undertaken in accordance with the recommended conditions of consent, would be consistent with the principles of ESD.
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).	The Department has reviewed the advice and recommendations of the IESC, and considered KEPCO's response to these matters in Section 6.3.
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 M are a cost effective means of achieving their purpose. The conditions are based on the material provided by KEPCO that was prepared in consultation with the Department, DoEE, DPI Water, EPA, OEH and other agencies.</p>

L.6 Conclusions on controlling provisions

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

For the reasons set out in Section 6.6, Appendix K and this Appendix, the Department recommends that the impacts of the action would be acceptable, subject to avoidance, mitigation measures described in KEPCO's EIS, RTS, Supplementary RTS and additional advice provided to the Department and the recommended conditions of consent in Appendix M.

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 6.3 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 KEPCO's EIS, RTS and Supplementary RTS, and the requirements of the recommended conditions of consent in Appendix M.

L.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.