

MT ARTHUR COAL EXTENSION PROJECT
EPBC 2011/5866 ANNUAL COMPLIANCE REPORT
21 MAY 2014 TO 21 MAY 2015



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1.0 Introduction

Hunter Valley Energy Coal (HVEC) Pty Ltd operates the Mt Arthur Coal complex, which consists of approved open cut and underground mining operations, a rail loop and associated rail loading facilities. The operations are located in the Upper Hunter Valley, NSW approximately 5 kilometres south west of Muswellbrook.

On 30 April 2012 HVEC obtained approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC 2011/5866) for the development of five new open cut extension areas to uncover additional coal reserves on the existing Mt Arthur Coal complex.

2.0 Commencement of Action

The date of commencement for the proposed action was 21 May 2012, as notified to the former Department of Sustainability, Environment, Water, Population and Communities, now known as the Department of the Environment (the Department) on 31 May 2013, in accordance with condition 12 of EPBC 2011/5866.

3.0 Variations to Approval

On 14 November 2014 the Department granted a Variation to Conditions Attached to Approval EPBC 2011/586, to vary the delivery date of condition 3. A copy of this letter is provided in Appendix 1.

4.0 Annual Progress Update

Condition 14 of EPBC 2011/5866 requires that within three months of every anniversary of action commencement, HVEC must publish a report on their website addressing compliance with approval conditions. Proof of report publication and details of non-compliance with approval conditions must also be provided to the Department.

This annual report covers the period 21 May 2014 to 21 May 2015 and details HVEC's compliance with EPBC 2011/5866. There were no identified instances of non-compliance with EPBC 2011/5866 during the reporting period with the exception of an administrative issue with condition 17 which has now been rectified. The compliance status of all conditions is presented in Table 1.

Table 2 details the proposed Mt Arthur Coal complex biodiversity offset strategy, as provided in EPBC 2011/5866.

This report will also be published on BHP Billiton's Regulatory Information website, at: www.bhpbilliton.com.

Table 1: Compliance with EPBC 2011/5866 approval conditions

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
1	<p>The person taking the action must not clear more than 693.8 ha of the EPBC-listed White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland critically endangered ecological community (147.8 ha of woodland and 546 ha derived native grassland) within the proposed action areas of the Mt Arthur coal complex.</p>	<p>No areas of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland or Derived Native Grassland were cleared within the proposed action areas during the reporting period.</p> <p>In total, 21.3 ha of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and 64.1 ha of Derived Native Grassland have been cleared in total within the proposed action areas since the date of commencement.</p> <p>Note that two very small areas of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland were cleared prior to this reporting period for the purposes of an internal road and a clean water diversion drain. A correction to account for these areas cleared prior to the current reporting period has been applied to the cumulative totals above.</p>	Compliant
2	<p>The person taking the action must not clear more than 362.7 ha of woodland providing suitable habitat for the EPBC listed Regent Honeyeater and Swift Parrot within the proposed action areas of the Mt Arthur coal complex. Woodland that provides suitable habitat for these species on this site includes the box-ironbark dominated woodlands and the remaining woodland and forest vegetation types present on the proposed action areas.</p>	<p>10.4 ha of woodland and forest vegetation providing suitable habitat for the Regent Honeyeater and Swift Parrot, including 10.1 ha of Narrow-leaved Ironbark Woodland and 0.3 ha of Forest Red Gum Woodland, was cleared within the proposed action areas during the reporting period.</p> <p>In total, 98.1 ha of woodland and forest vegetation providing suitable habitat for the Regent Honeyeater and Swift Parrot, including 36 ha of Narrow-leaved Ironbark Woodland, 21.3 ha White Box-Yellow Box-Blakely's Red Gum Grassy Woodland, 21.3 ha of Slaty Box Woodland and 9.1 ha of Spotted Gum Forest that was cleared during previous reporting periods, has been cleared within the proposed action areas since the date of commencement.</p> <p>Note that in previous years' reports this figure was misreported as only the portion of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland cleared. A correction has been made to include the box-ironbark dominated woodlands as well as the remaining woodland and</p>	Compliant

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
3	<p>The person taking the action must register a legally binding conservation covenant over the conservation and offset areas identified in Table 2 [table number changed for report purposes] by 30 June 2015 [timeframe varied by the Department on 14 November 2014]. The mechanism must provide enduring protection for no less than:</p> <ul style="list-style-type: none"> a) 707.7 ha of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community (Box Gum Woodland); and b) 738.7 ha of suitable habitat for <i>Anthochaera phrygia</i> (Regent Honeyeater) and <i>Lathamus discolor</i> (Swift Parrot). <p><i>Note: Offsetting requirements for Regent Honeyeater and Swift Parrot habitat may be accommodated within the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community components if this habitat is verified as present and includes specific habitat requirements for each of these species in accordance with the department's listing advice, conservation advice and/or recovery plans.</i></p>	<p>forest vegetation types.</p> <p>The conservation and offset areas identified in Table 2 have been managed as offset areas in accordance with the approved Biodiversity Management Plan (BMP).</p> <p>HVEC submitted a letter dated 29 April 2015 requesting a variation to Condition 3 to require completion of the requirements by 31 December 2016. The same letter (dated 29 April 2015) included the Statement of Compliance for Condition 3 requested by the Audit and Assurance Section on 30 March 2015 and was misdirected to the Post Approvals section. HVEC's letter dated 29 April 2015 was redirected to the Audit and Assurance Section on 7 May 2015 and written clarification was provided to the Post Approvals Section on the 7 May 2015 requesting that this letter also be processed as an application for variation to Condition 3 of EPBC 2011/5866 based on the justification provided in the letter. Further information to support the request for variation was provided to the Department on 22 June 2015 following discussion with the Post Approvals Section.</p> <p>Since the Modified Project Approval PA 09_0062 MOD1 was granted on 26 September 2014, Hunter Valley Energy Coal Pty Ltd (HVEC) (for which an EPBC referral has now been lodged – EPBC 2014/7377) has made significant progress with regard to identifying the most appropriate biodiversity offset protection mechanism likely to be acceptable to the:</p> <ul style="list-style-type: none"> • NSW Office of Environment and Heritage (OEH); • NSW Department of Trade and Investment; • NSW Department of Planning and Environment (DPE); and • Commonwealth Department of the Environment (the Department). <p>In December 2014, the OEH advised HVEC that a Conservation</p>	Not triggered

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
		<p>Agreement under Part 4 Division 12 of the NSW <i>National Parks and Wildlife Act 1974</i> would be a suitable mechanism for the offset areas (non-mined areas) associated with the Mt Arthur Coal Complex. Pursuant to Schedule 3 Condition 40 (as amended by NSW Planning and Environment) of the Modified Project Approval PA09_0062 MOD1, HVEC is required to revise the BMP and associated Offset Management Programs by 30 June 2015. These documents will require consistency with the conditions to be incorporated into a Conservation Agreement and therefore the plans and agreements were prepared and submitted in parallel. On 22 June 2015, HVEC lodged six conservation agreement applications with the OEH for the Mt Arthur Coal offset areas, progressing toward securing approval of the agreements by 31 December 2016. The assessment of these conservation agreements will progress during the next reporting period. The BMP and associated Offset Management Programs were submitted to DPE for approval on 23 June 2015. The BMP will be provided to the Department once approved by DPE.</p> <p>The OEH advised HVEC on 19 December 2014 that the timeframe for establishing a Conservation Agreement is approximately 18 months from the time that an application is received. On 31 March 2015, to account for the 18 month timeframe for establishing a Conservation Agreement as advised by OEH, DPE approved a variation to Schedule 3 Condition 39 (requirement for long term security to be established for offset areas) to require completion of the long-term security arrangements by 31 December 2016.</p> <p>The variation to Condition 3 of EPBC 2011/5866 to require completion of the requirements by 31 December 2016 was requested by HVEC to ensure consistency with the timeframe approved by DPE. The Post Approvals Section confirmed verbally on 22 June 2015 that on the basis that HVEC has lodged a variation request together with the requested supporting information; the Department does not consider the absence of a formal letter of variation from the Post Approvals</p>	

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
		Section as presenting a compliance issue. In accordance with this advice, HVEC have continued to classify the status of this Condition as 'Not triggered'.	
4	The person taking the action must commence progressive regeneration of 1915 ha of woodland and forest communities, including 299.20 ha of Box Gum Woodland identified in Table 2 [table number changed for report purposes], as described in the Preliminary Documentation within 1 year of commencement of construction.	Progressive regeneration of woodland and forest communities at Mt Arthur Coal commenced in the mid-1990s. At the end of the reporting period, Mt Arthur Coal had completed regeneration of 309.5 ha of woodland and forest communities (habitat for EPBC listed birds). This includes 30.9 ha of Box Gum Woodland that was seeded during the reporting period.	Compliant
5	The person taking the action must submit for the Minister's approval the Biodiversity Management Plan (BMP) for the project by 30 June 2013. The BMP must reflect the proposed Mt Arthur Coal Complex Biodiversity Offset Strategy as outlined in Table 2 [table number changed for report purposes] and as generally described in the Preliminary Documentation and focus on the re- establishment and protection of a minimum of 707.7 ha of Box Gum Woodland and a minimum of 738.7 ha of suitable habitat for Regent Honeyeater and Swift Parrot. The approved BMP must be implemented.	HVEC submitted the BMP to the Minister for approval on 28 June 2013. Revisions to the BMP were submitted to address comments received from the Department on 31 October 2013 and 28 March 2014. The BMP was approved by the Department on 12 August 2014 and is currently being implemented.	Compliant
6	The BMP must describe how the implementation of the offset strategy would be integrated with the overall rehabilitation of the site and with local and regional corridors, existing conservation areas and existing biodiversity commitments at Mt Arthur Coal.	The Department has reviewed the BMP and found that it meets the requirements of Condition 6. The BMP was approved by the Department on 12 August 2014.	Compliant
7	The BMP must include, but not be limited to, the following information: a) a text description and map to clearly define the location, boundaries and size of the conservation and offset areas and the regeneration area and rehabilitation corridors. This must be accompanied with the offset attributes and a shape file; b) details of the mechanisms, legal instrument, steps and timing for registering a legally binding conservation covenant that provides enduring protection over each nominated conservation and offset area; c) a detailed description of the current condition of the extant	The Department has reviewed the BMP and found that it meets the requirements of this Condition 7. The BMP was approved by the Department on 12 August 2014.	Compliant

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
	<p>vegetation of each conservation and offset area prior to any management activities. This will provide a baseline description of the vegetation condition for the purpose of monitoring;</p> <p>d) details of vegetation communities to be re-established to achieve the 500 ha regeneration area and 1415 ha of rehabilitated corridors:</p> <ul style="list-style-type: none"> i. timing of progressive regeneration; ii. criteria to determine success of re-establishment of the Box Gum Woodland and other woodland and forest communities; iii. documentation including mapping of current environmental values relevant to MNES of the area; iv. where revegetation through planting seedlings and/or seeds is intended details of appropriate species and ratios of species relevant to historically occurring listed migratory and listed threatened species' habitat and the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community; and v. the source and provenance of the seed and/or seedlings which will be used. <p>e) details of measures to offset the impacts to the MNES described in conditions 3 and 4 including:</p> <ul style="list-style-type: none"> i. details of management actions that will improve the condition of a minimum of 707.7 ha within the conservation and offset areas and 299.2 ha regeneration area to 'state 1' consistent with the state and transition model for Box Gum Woodland (Rawlings et al, 2010) and listing advice for the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community; ii. management schedules for all conservation and offset areas, the regeneration area and the rehabilitation corridors identifying targeted actions for specific areas to protect and enhance the extent and condition of habitat values of the offset areas, a map showing areas to be managed; 		

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	<ul style="list-style-type: none"> iii. type of actions for each conservation and offset area, the regeneration area and rehabilitation corridors and details of methods to be used; iv. timing of management actions for each area; v. performance criteria for each action; vi. a detailed monitoring plan for each action including, but not limited to, control sites, periodic ecological surveys to be undertaken by a qualified ecologist, as agreed to in writing by the Minister, and consistent with survey guidelines for nationally threatened species and communities, to assess the success of the management actions measured against identified milestones and objectives; vii. contingency measures to be implemented if performance criteria are not met; viii. a process to report, to the Department, the progress of management actions undertaken in the conservation and offset areas, regeneration area and rehabilitation corridors and the outcome of those actions, including identifying any need for improved management and actions to undertake such improvement; and ix. details of the various parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor. 		

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
8	<p>Where strategic grazing is proposed as a management tool, the person undertaking the action must provide, as part of the BMP identified in condition 5, details of the proposed grazing activities for each management area. This must include:</p> <ul style="list-style-type: none"> a) objectives b) details of the grazing methods to be used c) timing including seasons in which grazing will occur, period of grazing and rest period d) stocking rate per season e) monitoring of impacts of grazing including any changes in the condition of vegetation, habitat and weed density. 	<p>The Department has reviewed the BMP and found that it meets the requirements of this Condition 8. The BMP was approved by the Department on 12 August 2014.</p>	Compliant
9	<p>Grazing activities must be undertaken in accordance with the guidelines for strategic grazing (Rawlings et al, 2010) and managed so that for each management unit at least 70% of the sward meets a minimum height of 10cm.</p>	<p>Permanent grazing is not currently being undertaken on Mt Arthur Coal offset properties. The Department was advised by HVEC on 15 January 2015 of a short-term fire hazard reduction program which involved cattle grazing on a portion of the Thomas Mitchell Drive Off-site Offset Area in order to implement recommendations from the NSW Rural Fire Service made on 23 December 2014 in relation to providing adequate fire protection for neighbouring properties. This short-term fire hazard reduction program was conducted consistent with the principles outlined in Section 1.3 and 5.2 of the approved BMP.</p>	Compliant
10	<p>If the person undertaking the action proposes to undertake any action within the conservation and offset areas and regeneration area, other than those management activities related to managing the conservation and offset areas and regeneration area, or as set out in the conditions, approval must be obtained, in writing from the Minister. In seeking the Minister's approval the person undertaking the action must provide a detailed assessment of the area where the action is proposed to take place and an assessment of all associated adverse impacts on MNES. If the Minister agrees to the action within the conservation or offset area, the area identified for the action may be excised from the proposed conservation and offset areas and alternative offsets may be required in relation to the impact on MNES.</p>	<p>During the reporting period HVEC did not undertake any action within the conservation and offset areas or regeneration area, other than those management activities relating to managing the areas.</p>	Not triggered

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
11	All survey data collected for the project must be collected and recorded so as to conform to data standards notified from time to time by the Department. When requested by the Department, the proponent must provide to the Department all species and ecological survey data and related survey information from ecological surveys undertaken for MNES. This survey data must be provided within 30 business days of request, or in a timeframe agreed to by the Department in writing. The Department may use the survey data for other purposes.	Records of data collected from conservation and offset area surveys during the reporting period are maintained by Mt Arthur Coal. No requests for survey data were made by the Department during the reporting period.	Compliant
12	Within 14 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.	HVEC commenced the action on 21 May 2012 and advised the Department of the commencement of the action on 31 May 2012. Notification was made via a letter issued to Ms Adrienne Lea at the Department.	Compliant
13	The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the Biodiversity Offset Strategy and the Biodiversity Management Plan required by this approval, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.	Records substantiating all activities relevant to the conditions of the approval are accurately maintained by HVEC. No requests for records of activities were made by the Department during the reporting period.	Compliant
14	Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of the Biodiversity Offset Strategy and the Biodiversity Management Plan as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the Department at the same time as the compliance report is published.	HVEC commenced the action on 21 May 2012. This report represents the third Annual Compliance Report, covering the period 21 May 2014 to 21 May 2015. This report will be published on BHP Billiton's Regulatory Information website and submitted to the Department by 21 August 2015.	Compliant

Condition number	Condition	Actions undertaken during the reporting period within the proposed action areas	Status
15	<p>If the person taking the action wishes to carry out any activity otherwise than in accordance with the Biodiversity Offset Strategy and the Biodiversity Management Plan as specified in the conditions, the person taking the action must submit to the Department for the Minister's written approval a revised version of that Biodiversity Offset Strategy and the Biodiversity Management Plan. The varied activity shall not commence until the Minister has approved the varied plan in writing. The Minister will not approve a varied plan unless the revised plan would result in an equivalent or improved environmental outcome over time. If the Minister approves the revised Biodiversity Offset Strategy and the Biodiversity Management Plan, that Biodiversity Offset Strategy and the Biodiversity Management Plan, must be implemented in place of the Biodiversity Offset Strategy and the Biodiversity Management Plan, originally approved.</p>	<p>HVEC has not undertaken any activities in conservation or offset areas, otherwise than in accordance with the Biodiversity Offset Strategy and BMP as specified in the approval conditions.</p>	Not triggered
16	<p>If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and communities and listed migratory species to do so, the Minister may request that the person taking the action make specified revisions to the Biodiversity Offset Strategy and the Biodiversity Management Plan, specified in the conditions and submit the revised Biodiversity Offset Strategy and the Biodiversity Management Plan for the Minister's written approval. The person taking the action must comply with any such request. The revised approved Biodiversity Offset Strategy and the Biodiversity Management Plan must be implemented. Unless the Minister has approved the revised Biodiversity Offset Strategy and the Biodiversity Management Plan then the person taking the action must continue to implement the Biodiversity Offset Strategy and the Biodiversity Management Plan originally approved, as specified in the conditions.</p>	Noted.	Not triggered
17	<p>Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month of being approved.</p>	<p>The BMP is published on the company website http://www.bhpbilliton.com/home/society/regulatory/Pages/default.aspx however this was not completed within 1 month of being approved.</p>	Partially compliant (administrative issue) – now rectified

Table 2: Proposed Mt Arthur Coal complex biodiversity offset strategy (EPBC 2011/5866)

Offset/conservation area	Offset type and minimum size (ha)	
	EPBC-listed Box Gum Woodland	Habitat for EPBC listed birds
Existing remnant vegetation		
Mt Arthur Conservation Area	67	74
Saddlers Creek Conservation Area	87.1	51.2
Thomas Mitchell Drive Offset Area (on-site)	55.7	36.5
Thomas Mitchell Drive Offset Area (off-site)	4.9	63.9 (+ 62.05 marginal)
Middle Deep Creek Offset Area	493	373
Constable Offset Area	0	78
	707.7	738.7
Proposed regeneration		
500 Ha Regeneration Area	299.20	500
1415 ha Rehabilitation Corridors		1415
Total		1915

Appendix 1: Variation to Conditions Attached to Approval EPBC 2011/5866



Australian Government
Department of the Environment

VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Mt Arthur Coal Extension Project, Muswellbrook, NSW (EPBC 2011/5866)

This decision to vary a condition of approval is made under section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Approved action

Person to whom the approval is granted Hunter Valley Energy Coal Limited
ACN: 062894464

Approved action

The development of five new open cut extension areas to uncover additional coal reserves on the existing Mt Arthur Coal Complex near Muswellbrook in the Upper Hunter Valley, New South Wales as described in the referral received by the Department on 1 March 2011 [See EPBC Act referral 2011/5866].

Variation

Variation of conditions of approval

The variation is:
Delete varied condition 3 of 3 June 2014 and insert the condition specified below.

Date of effect

This variation has effect on the date the instrument is signed

Person authorised to make decision

name and position Shane Gaddes
Assistant Secretary
Compliance and Enforcement Branch

Signature

Date of decision

14 November 2014

Varied condition attached to the approval

3. The person taking the action must register a legally binding conservation covenant over the **conservation and offset areas** identified in Table 1 (and shown in Appendix 2a and 2b) by 30 June 2015. The mechanism must provide enduring protection for no less than:

- a) 707.7 ha of White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community (Box Gum Woodland); and
- b) 738.7 ha of suitable habitat for *Anthochaera phrygia* (Regent Honeyeater) and *Lathamus discolor* (Swift Parrot).

Note: Offsetting requirements for Regent Honeyeater and Swift Parrot habitat may be accommodated within the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community components if this habitat is verified as present and includes specific habitat requirements for each of these species in accordance with the department's listing advice, conservation advice and/or recovery plans.