

BHP

Mt Arthur Coal Extension Project EPBC 2011/5866 and 2014/7377

21 September 2017



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Introduction

Hunter Valley Energy Coal (HVEC) Pty Ltd (ACN 062894464) operates the Mt Arthur Coal complex, which consists of approved open cut and underground mining operations, a rail loop and associated rail loading facilities and is the Approval Holder. The operations are located in the Upper Hunter Valley, NSW approximately five kilometres south west of Muswellbrook.

HVEC currently holds two approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). This report has been prepared to address:

- Condition 18 of EPBC 2014/7377; and
- Condition 14 of EPBC 2011/5866.

At the time of preparation of this report the action referred to in EPBC 2014/7377 had not commenced.

Description of activities

EPBC No.	Project name	Approval holder and ACN or ABN	Approved action	Location	Person accepting responsibility for the report	Dates for the reporting period of the report	Date of preparation of the report
2011/5866	Mt Arthur Coal Extension Project	ACN 062 894 464	The development of five new open cut extension areas to uncover additional coal reserves on the existing Mt Arthur Coal Complex	Muswellbrook in the Upper Hunter Valley, NSW	Sarah Withell	21 May 2016 to 20 May 2017	21 September 2017
2014/7377	Mt Arthur Coal open cut modification	ACN 062 894 464	The continuation of the open cut mining operations of approximately 128 million tonnes of ROM Coal within HVEC's existing mining tenements and application area – ML1487, ML 1358, ML 1548, Sublease CL 229, ML 1655 and ML 1739	Muswellbrook, NSW	Sarah Withell	1 July 2016 to 30 June 2017	21 September 2017

Compliance table

In accordance with Condition 14 of approval number 2011/5866 this report provides an update of HVEC's compliance against the relevant approval conditions (Table 1). At the time of writing the action had not commenced for EPBC approval 2014/7377 and no assessment of compliance against conditions has been provided.

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
5866 1	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.	Compliant	Total area of EPBC-listed White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland critically endangered ecological community cleared to July 2017 is 125ha comprising: <ul style="list-style-type: none"> • 26ha of woodland; and • 99ha of derived native grassland.
5866 2	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.	Compliant	Total area of woodland (i.e. box gum woodland, forest red gum woodland, narrow-leaved ironbark woodland, bullock – narrow-leaved ironbark forest, slaty box woodland and spotted gum forest) providing suitable habitat for the Regent Honeyeater and Swift Parrot within the proposed action areas of the Mt Arthur coal complex cleared to July 2017 is 131ha.
5866 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 31 December 2016 or another date agreed to in writing by the Minister. The mechanism must provide enduring protection for no less than: <ol 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 	Compliant	A variation to condition 3 was approved by the Department of the Environment and Energy on 30 November 2016 extending the date when the conservation covenant must be in place from 31 December 2016 to 30 June 2017. HVEC has continued to work very closely with the Conservation Team at the Office of Environment and Heritage (OEH) to prepare six Conservation Agreements. <p>A further variation to condition 3 was approved by the Department of the Environment and Energy on 29 June 2017 extending the date when the conservation covenant must be</p>

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
	<p>b) 738.7 ha of suitable habitat for <i>Anthochaera phrygia</i> (Regent Honeyeater) and <i>Lathamus discolor</i> (Swift Parrot).</p> <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>in place from 30 June 2017 to 30 December 2017. The Conservation Agreements have been executed by HVEC and OEI and have been submitted to NSW Land and Property Information for registration. The remaining steps for registration are administrative aspects only.</p> <p>Appendix 1 below includes copies of the variations received to date.</p>
5866	4	Compliant	<p>Progressive regeneration of woodland and forest communities at Mt Arthur Coal commenced in the mid-1990s. During the reporting period, Mt Arthur Coal completed regeneration of approximately 60ha of woodland and forest communities and approximately 40ha of Box Gum Woodland.</p>
5866	5	Compliant	<p>HVEC submitted the BMP to the Minister for approval on 28 June 2013. The BMP was approved by the Department on 12 August 2014 and is currently being implemented.</p> <p>An update of the BMP was submitted to the Department on the 29th of June 2017 in order to incorporate EPBC 2014/7377. The BMP was developed to address Condition 5 of EPBC 2015/5866 and EPBC 2014/7377. Comments were received from the Department on the 24th of July 2017. The comments are currently being addressed at the time of preparation of this report.</p> <p>Year 3 of the rehabilitation program was executed during FY17. Rehabilitation planting was carried out at Thomas Mitchell Drive On Site Offset and at the north eastern corner of Middle Deep Creek involving slashing and ripping, poisoning and planting. Over 12,000 seedlings were planted</p>

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
			<p>at Thomas Mitchell Drive On Site Offset covering over 30 hectares and over 6,000 seedlings were planted at Middle Deep Creek covering around 10 hectares.</p> <p>Cumberland Ecology completed the FY17 Ecological Development Monitoring (June 2017).</p>
5866	6	Compliant	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.
5866	7	Compliant	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.
			<p>The BMP must include, but not be limited to, the following information:</p> <ul style="list-style-type: none"> 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 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; d) details of vegetation communities to be re-established to achieve the 500 ha regeneration area and 1415 ha of rehabilitated corridors:

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
	<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. e) details of measures to offset the impacts to the MNES described in conditions 3 and 4 including: <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 		

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
	<p>values of the offset areas, a map showing areas to be managed;</p> <p>iii. type of actions for each conservation and offset area, the regeneration area and rehabilitation corridors and details of methods to be used;</p> <p>iv. timing of management actions for each area;</p> <p>v. performance criteria for each action;</p> <p>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;</p> <p>vii. contingency measures to be implemented if performance criteria are not met;</p> <p>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</p> <p>details of the various parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor.</p>		

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
5866	8	Compliant	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>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 <p>monitoring of impacts of grazing including any changes in the condition of vegetation, habitat and weed density.</p>		
5866	9	Not Applicable	No grazing activities were undertaken during the reporting year.
5866	10	Not Applicable	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>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>		

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
5866 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.	Compliant	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.
5866 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.	Compliant	Refer to 21 May 2014 to 21 May 2015 report.
5866 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.	Compliant	Accurate records substantiating all activities associated with or relevant to the conditions of approval are maintained by HVEC. No requests for records of activities were made by the Department during the reporting period.
5866 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	Non compliant	<p>Due to an oversight relating to conflicting reporting periods of the two EPBC Approvals that HVEC holds (i.e. 2011/5866 and 2014/7377) the correct reporting date for 2011/5866 was missed.</p> <p><u>Correcting the Non-Compliance Details</u></p> <ul style="list-style-type: none"> Detected by: Edward Nock

Condition Number	Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
	provided to the Department at the same time as the compliance report is published.		<ul style="list-style-type: none"> • Date Detected: 24 August 2017 • Notification: The Department of Environment and Energy was notified over the phone on the 25th of August 2017 and a follow up email was sent to epbcmonitoring@environment.gov.au • Corrective actions: A request for a variation of Condition 14 was submitted on the 25th of August 2017. The variation involves replacing condition 14 with the reporting condition (18) from EPBC 2014/7377 aligning reporting against Financial Year. • Who was responsible for the variation: Edward Nock • Date corrective action commenced: 25 August 2017 <p>What measures will be taken to avoid recurrence: Reporting will be aligned to financial year reflecting the majority of our environmental reporting requirements.</p>
5866	15 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	Not Applicable	HVEC has not undertaken any activities in conservation or offset areas other than in accordance with the Biodiversity Offset Strategy and BMP as specified in the approval conditions.

Condition Number		Condition	Compliant/ Non Compliant/ Not Applicable	Evidence/Comments
		Plan, must be implemented in place of the Biodiversity Offset Strategy and the Biodiversity Management Plan, originally approved.		
5866	16	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.	Not Applicable	No request was received from the Minister to make specified revisions to the Biodiversity Offset Strategy and the Biodiversity Management Plan during the reporting year.
5866	17	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.	Compliant	The BMP is published on the company website http://www.bhpbilliton.com/home/society/regulatory/Pages/default.aspx

Table 1: 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

New environmental risks

No new environmental risks from the Project were identified during the reporting period.

Declaration of accuracy

In making this declaration, I am aware that sections 490 and 491 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents. The offence is punishable on conviction by imprisonment or a fine, or both. I declare that all the information and documentation supporting this compliance report is true and correct in every particular. I am authorised to bind the approval holder to this declaration and that I have no knowledge of that authorisation being revoked at the time of making this declaration.

Signed: 

Full name (please print): Edward Nock

Position (please print): HSE Superintendent

Organisation (please print including ABN/ACN if applicable): Hunter Valley Energy Coal Limited (ACN 062894464)

Date: 21 September 2017

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, New South Wales (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
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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].
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Variation

Variation of conditions of approval	The variation is: Delete condition 3 and substitute with the condition specified below
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Date of effect	This variation has effect on the date the instrument is signed
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Person authorised to make decision

name and position	Shane Gaddes Assistant Secretary Compliance & Enforcement Branch
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Signature

S. Gaddes

Date of decision

15/1/2016

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 31 December 2016 or another date agreed to in writing by the **Minister**. 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.



Australian Government
Department of the Environment and Energy

VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Mt Arthur Coal Extension Project, Muswellbrook, New South Wales Project (EPBC No 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: 062 894 464
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 condition 3 attached to the approval dated 30 April 2012 and substitute with the condition specified below. Note: All other conditions including the definitions in the approval dated 30 April 2012 remain unchanged.
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Date of effect	This variation has effect on the date the instrument is signed
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Person authorised to make decision

name and position	James Barker Assistant Secretary Assessments (Qld, Tas, Vic) and Governance Branch
Signature	
Date of decision	29 / 6 2017

Conditions 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 December 2017. The mechanism must provide enduring protection for no less than:
- 707.7 ha of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community (Box Gum Woodland); and
 - 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.