

BHP

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

28 September 2018



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Introduction

Hunter Valley Energy Coal Pty Ltd (ACN 062 894 464) (HVEC) 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 five kilometres south west of Muswellbrook.

This report has been prepared to address the following conditions in the two approvals issued under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC), held by HVEC:

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

Description of activities

EPBC No.	Project name	Approval holder 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 2017 to 30 June 2018	28 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 2017 to 30 June 2018	28 September 2019

Compliance table

In accordance with Condition 14 of EPBC 2011/5866 and Condition 18 of EPBC 2014/7377 this report provides an update of HVEC's compliance against the relevant approval conditions.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
EPBC Approval No. 2011/5866			
5866	1	Compliant	<p>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 2018 is 138ha comprising:</p> <ul style="list-style-type: none"> • 30ha of woodland; and • 108of derived native grassland.
5866	2	Compliant	<p>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 145ha.</p>
5866	3	Compliant	<p>A 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 in place from 30 June 2017 to 30 December 2017 (Appendix 1). At the time this variation was sought, the Conservation Agreements had been executed by HVEC and OEH and had been submitted to NSW Land and Property Information for</p>

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<p>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</p> <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>registration. The remaining steps for registration were administrative aspects only.</p> <p>All conservation areas and offsets were registered on title before 30 December 2017.</p> <ul style="list-style-type: none"> • Middle Deep Creek and Oakvale Offset Conservation Agreement was registered on title on 20th February 2017 (lodgement number C923341). • Mount Arthur Conservation Area Agreement was registered on title on 21st of December 2017 (lodgement number C993803). • Thomas Mitchell Drive Offsite Offset Conservation Agreement was registered on title on the 6th of February 2017 (lodgement number C892129). • Roxburgh Road Offset Conservation Area Agreement was registered on title on 4th October 2017 (lodgement number C1023938). • Thomas Mitchell Drive Onsite Offset Conservation Agreement was registered on title on the 21st of December 2017 (lodgement number C993841). • Saddlers Creek Conservation Area Agreement was registered on title on the 4th of October 2017 (lodgement number C1023991).
5866	4	Compliant	<p>Progressive regeneration of woodland and forest communities at Mt Arthur Coal commenced in the mid-1990s.</p> <p>During the reporting period, Mt Arthur Coal completed preparing areas at Middle Deep Creek and Thomas Mitchell Drive Onsite Offset for planting. However due to an extended drought planting was postponed. As such, NSW Planning &</p>

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
			Environment and the Department of Energy and Environment were notified on 7 May 2018. Amendments to the Onsite and Near Offsite Offset Program (OMP) and the Middle Deep Creek Offset Program were submitted to the NSW Department of Planning & Environment covering this delay.
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>As discussed in Condition 4 above, ground works were completed in preparation for planting. No planting was done due to drought conditions.</p> <p>Cumberland Ecology completed the FY18 Ecological Development Monitoring.</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.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<ul style="list-style-type: none"> 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: <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 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 		

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<p>et al, 2010) and listing advice for the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community;</p> <p>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;</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</p>		

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<p>identifying any need for improved management and actions to undertake such improvement; and</p> <p>ix. details of the various parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor.</p>		
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.
5866	9	Not Applicable	<p>No grazing activities were undertaken during the reporting year.</p> <p>On 20 September 2017 a neighbouring landowner's cows were found on the Middle Deep Creek offset area due to a damaged fence. The neighbour landowner was notified, the fence was repaired and the cows brought back to the neighbouring landowner's property.</p>
5866	10	Compliant	No activities were undertaken that did not involve managing the conservation and offset areas and regeneration area.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments	
	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.			
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	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.
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	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.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	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.		
5866	14	Compliant	The FY17 Annual Compliance Report was published on the BHP website in September 2017.
5866	15	Compliant	<p>During the reporting period an error relating to the Year 4 planting program was identified in the OMP. The map showing the area to be rehabilitated was smaller than the number of hectares proposed. The amendment of the OMP was approved by the Department of Planning and Environment on 12 January 2018.</p> <p>As stated in Condition 4, planting was postponed due to an extended drought. The NSW Department of Planning & Environment and the Department of Energy and Environment were notified on 7 May 2018. A response was received from the Department of Planning & Environment on 8 May 2018 requesting that an amendment be made to the Biodiversity Management to reflect the amended planting schedule. Amendments to the OMP and the Middle Deep Creek Offset Program were submitted to the NSW Department of Planning & Environment covering this delay.</p>

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
5866	16	Not triggered	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	Compliant	The BMP is published on the BHP company website http://www.bhpbilliton.com/home/society/regulatory/Pages/default.aspx
EPBC Approval No. 2014/7377			
7377	1	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 2018 is 3ha comprising: <ul style="list-style-type: none"> • 1ha of cleared land; and • 2ha of White Box – Yellow Box-Blakely's Red Gum Grassy Woodlands and Derived Native Grassland.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
7377	2	Compliant	During the reporting year no suitable habitat was cleared within the Approval boundaries.
7377	3	Compliant	Saddlers Creek Conservation Area and Middle Deep Creek and Thomas Mitchell Drive Offsite Offset were registered on title on 4 October 2017 and 20 February 2017 respectively.
7377	4	Compliant	An update of the BMP was submitted to the Department of the Environment and Energy and the NSW Department of Planning and Environment on 29 June 2017 in order to incorporate EPBC 2014/7377 and is currently awaiting

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments	
	<p>offsets which are described in the Preliminary Documentation for EPBC 2014/7377. The Preliminary Documentation states:</p> <p>a) the following offsets will be secured to compensate for the removal of the 58.4 ha of Box Gum Woodland CEEC and 53.4 ha of foraging habitat:</p> <p>i. a 410 ha expansion of the existing Middle Deep Creek offset area located approximately 70 km north of the Action area; and</p> <p>ii. a 131 ha expansion of the existing Saddlers Creek offset area located approximately 1 km south of the Action area.</p>		approval. The BMP was developed to address Condition 5 of EPBC 2011/5866 and EPBC 2014/7377.	
7377	5	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 the Mt Arthur Coal mine.	Compliant	This is covered in Section 8 and 10.4 of the BMP.
7377	6	<p>The revised BMP must include the additional offsets for the proposed action described in EPBC 2014/7377 and follow the requirements for the BMP outlined in the conditions in EPBC 2011/5866 described below:</p> <p>a) a text description and map to clearly define the location and boundaries of the conservation and offset areas and regeneration areas. This must be accompanied with the offset attributes and a shape file;</p> <p>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;</p> <p>c) a detailed description of the current condition of the extant vegetation of each conservation and offset area identified in the Preliminary Documentation for EPBC 2014/7377 prior to any</p>	Compliant	The BMP has been developed to address these conditions.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<p>management activities. This will provide a baseline description of the vegetation condition of the additional offset areas for the purpose of monitoring;</p> <p>d) details of measures to offset the impacts to the MNES described in condition 2 and 3 including:</p> <ul style="list-style-type: none"> i. details of management actions that will improve the condition of a minimum of 541 ha within the offset areas; ii. management schedules for the offset areas 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; iii. type of management actions for each offset area and details of methods to be used; iv. timing of management actions for each offset area; v. performance criteria for each action; vi. a detailed monitoring plan for each action including, but not limited to: <ul style="list-style-type: none"> ~ control sites; and ~ 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; 		

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	<p>viii. a process to report, to the Department, the progress of management actions undertaken in offset areas and the outcome of those actions, including identifying any need for improved management and actions to undertake such improvement; and</p> <p>ix. details of the various parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor.</p>		
7377	7	Compliant	This is covered in Section 12.1 of the BMP.
7377	8	Not Applicable	Refer to the response provided for condition 10 of 2011/5866.
7377	9	Compliant	No activities were undertaken that did not involve managing the conservation and offset areas and regeneration area.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	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 offset area, the area identified for the action must be excised from the proposed offset areas and alternative offsets secured in relation to the impact on MNES.		
7377	<p>10 The person taking the action may choose to revise a management plan approved by the Minister without submitting it for approval under s.143A of the EPBC Act, if the taking of the action in accordance with the revised management plan would not be likely to have a new or increased impact on a protected matter under the conditions of this approval. If the person taking the action makes this choice, they must:</p> <p>a) notify the Department in writing that the approved management plan has been revised and provide the Department with an electronic copy of the revised management plan;</p> <p>b) implement the revised management plan from the date that it is submitted to the Department; and</p> <p>c) for the life of this approval, maintain a record of the reasons the person taking the action considers that taking the action in accordance with the revised management plan would not be likely to have a new or increased impact on a protected matter under the conditions of this approval.</p>	Compliant	Refer to the response provided for condition 15 of 2011/5866.
7377	11 The person taking the action may revoke its choice under Condition 10 at any time by notice to the Department. If the person taking the action revokes the choice to implement a revised management plan, without approval under Section 143A	Not triggered	Noted.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	of the EPBC Act, the management plan approved by the Minister must be implemented.		
7377	12 Condition 10 does not apply if the revisions to the approved management plan include changes to offsets provided under the management plan in relation to a matter protected by a controlling provision for the action, unless otherwise agreed in writing by the Minister. This does not otherwise limit the circumstances in which the taking of the action in accordance with a revised management plan would, or would not, be likely to have new or increased impacts.	Not triggered	Noted.
7377	13 If the Minister gives a notice to the person taking the action that the Minister is satisfied that the taking of the action in accordance with the revised management plan would be likely to have a new or increased impact on a protected matter by the conditions of this approval, then: a) condition 10 does not apply, or ceases to apply, in relation to the revised management plan; and b) the person taking the action must implement the previous management plan most recently approved by the Minister. To avoid any doubt, this condition does not affect any operation of conditions 10, 11 and 12 in the period before the day the notice is given. At the time of giving the notice the Minister may also notify that for a specified period of time that Condition 10 does not apply for one or more specified plans required under the approval.	Not triggered.	No notice provided by the Minister.
7377	14 If, at any time after 5 years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially	Compliant	The action commenced during December 2017.

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments
	commence the action without the written agreement of the Minister.		
7377	15	Non compliant – now rectified	In December 2017 an area of 3.4ha was cleared to allow for the placement of topsoil within Area B (Figure 3 of the <i>Open Cut Modification (EPBC 2014/7377) Preliminary Documentation Main Report</i> (Document No. 00734525 prepared by Hunter Valley Energy Coal Pty Ltd, March 2016)). The Department was not notified within 30 days after commencement of the action as prescribed in this condition.
7377	16	Compliant	Refer to the response provided for condition 17 of 2011/5866.
7377	17	Compliant	Refer to the response provided for condition 13 of 2011/5866.
	<p>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 Offset Strategy and Biodiversity Offset Management Plan required by this approval, and make them available upon request to the Department.</p> <p>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.</p>		
7377	18	Compliant	Refer to the response provided for condition 14 of 2011/5866.
	Within three months of the end of each Financial Year (1 July - 30 June) after 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		

Condition Number	Condition	Compliant/ Non Compliant/ Not Triggered	Evidence/Comments	
	<p>approval, including implementation of any management plans as specified in the conditions.</p> <p>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. Reports must remain on the website for the period this approval has effect. The approval holder may cease preparing and publishing compliance reports required by this condition with written agreement of the Minister to do so.</p>			
7377	19	<p>Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.</p>	Not triggered	No notice provided by the Minister.

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: 28 September 2018

Appendix 1: Variation to conditions attached to approval EPBC 2011/5866



Australian Government
Department of the Environment and Energy

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 062 894 464
Approved action	The development of five (5) 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 14 attached to the approval dated 1 March 2011 and substitute 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	James Barker Assistant Secretary Assessments & Governance Branch
Signature	
Date of decision	23 October 2017

Conditions attached to the approval

14. Within three (3) months of the end of each Financial Year (30 June – 1 July) after the **commencement** of the action, the person taking the action must publish a report on their website addressing compliance with the conditions of this approval, including implementation of any management plans and strategies as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any conditions of this approval must be provided to the **Department** at the same time as the compliance report is published. Reports must remain on the website for the period this approval has effect. The approval holder may cease preparing and publishing compliance reports required by this condition with written agreement of the **Minister** to do so.