



Approval

Mt Arthur Coal open cut modification, Muswellbrook, NSW, (EPBC 2014/7377).

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

person to whom the approval is granted Hunter Valley Energy Coal Pty Ltd

proponent's ACN (if applicable) ACN 062 894 464

proposed action The continuation of the open cut mining operations of approximately 128 million tonnes of run-of-the-mine (ROM) coal at a rate of 32 million tonnes per annum of ROM Coal within HVEC's existing mining tenements and application area – ML 1487, ML 1358, ML 1548, Sublease CL 229, ML 1655 and ML 1739.

[See **EPBC Act** referral 2014/7377]

Approval decision

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved with Conditions

conditions of approval

This approval is subject to the conditions specified below.

expiry date of approval

This approval has effect until 30 June 2026

Decision-maker

name and position Kim Farrant
Assistant Secretary
Assessments (NSW, ACT) and Fuel Branch

signature



date of decision 5.12.16

Conditions attached to the approval

1. The **person taking the action** must not clear more than 58.4 ha (within modification areas A-E shown in Appendix A) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) listed *White Box Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grassland* Critically Endangered Ecological Community.
2. The **person taking the action** must not clear more than 53.4 ha (within modification areas A-E shown in Appendix A) of woodland that provides suitable habitat for the Regent Honeyeater (*Anthochaera phrygia*), Swift Parrot (*Lathamus discolor*) and Grey-headed Flying-fox (*Pteropus poliocephalus*). 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 referred areas.
3. The **person taking the action** must compensate for the loss of 58.4 ha of the *White Box Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grassland* Critically Endangered Ecological Community and 53.4 hectares of native woodland which provides foraging and nesting habitat for the Regent Honeyeater (*Anthochaera phrygia*), Swift Parrot (*Lathamus discolor*) and Grey-headed Flying-fox (*Pteropus poliocephalus*) by:
 - a) securing the following offsets, prior to **commencement of the action**, through a **legally binding conservation covenant** over the conservation and offset areas:
 - i. 131 ha expansion of the Saddlers Creek Conservation area located approximately 1 km south of the proposed action area; and
 - ii. 410 ha expansion of the Middle Deep Creek Offset area located approximately 70 km north of the Action area.
4. The **person taking the action** must submit to the **Department**, for approval by the **Minister**, a revised Biodiversity Management Plan (BMP) for the project by 30 June 2017. The BMP must reflect the proposed Mt Arthur Coal Complex Biodiversity Offset Strategy as generally described in the Preliminary Documentation for EPBC

2011/5866, and include the additional offsets which are described in the Preliminary Documentation for EPBC 2014/7377. The Preliminary Documentation states:

- 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:
 - i. a 410 ha expansion of the existing Middle Deep Creek offset area located approximately 70 km north of the Action area; and
 - ii. a 131 ha expansion of the existing Saddlers Creek offset area located approximately 1 km south of the Action area.
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.
6. 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:
 - 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;
 - 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 identified in the Preliminary Documentation for EPBC 2014/7377 prior to any management activities. This will provide a baseline description of the vegetation condition of the additional offset areas for the purpose of monitoring;
 - d) details of measures to offset the impacts to the MNES described in condition 2 and 3 including:
 - 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:
 - 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;
 - 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
 - ix. details of the various parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor.
7. 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:
- 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; and
 - e) monitoring of impacts of grazing including any changes in the condition of vegetation, habitat and weed density.
8. Grazing activities must be undertaken in accordance with the guidelines for strategic grazing in *A Guide to Managing Box Gum Grassy Woodlands*, Kimberlie Rawlings, David Freudenberger and David Carr, Department of Environment, Water, Heritage and the Arts, Canberra, 2010.
9. If the person undertaking the action proposes to undertake any action within the offset areas, other than those management activities related to managing the offset areas, 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 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.
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:
- 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;

- b) implement the revised management plan from the date that it is submitted to the **Department**; and
 - 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.
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 of the EPBC Act, the management plan approved by the **Minister** must be implemented.
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**.
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.

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 **commence the action** without the written agreement of the **Minister**.
15. Within 30 days after the **commencement of the action**, the **person taking the action** must advise the **Department** in writing of the actual date of **commencement**.
16. 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 by the **Minister** or being submitted under Condition 10a.
17. 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**. 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.

18. 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 approval, including implementation of any management plans 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. 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.
19. 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**.

Definitions

Commencement of the action means the first instance of earthworks, vegetation removal or construction of any infrastructure, excluding fences and signage, associated with the proposed action. Commencement does not include:

- minor physical disturbance necessary to undertake pre-clearance surveys or establish monitoring programs or geotechnical investigations; or
- activities that are critical to commencement that are associated with mobilisation of plant and equipment, materials, machinery and personnel prior to the start of development only if such activities will have no adverse impact on matters of national environmental significance.

The **Department**. The Australian Government Department or any other agency that is responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

EPBC Act offset Policy means the Australian Government Department of Sustainability, Environment, Water Population and Communities (2012) *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*. Commonwealth of Australia, Canberra.

Legally binding conservation covenant means a legal mechanism that has been agreed by the Minister to secure and protect an offset site in perpetuity under NSW State legislation.

The **Minister** is the Commonwealth minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the **Minister**.

New or increased impact: A new or increased impact on any matter protected by the controlling provisions for the action, when compared to the plan that has been approved by the Minister.

Offset attributes, means an '.xls' file capturing relevant attributes of the Offset site, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.

Person taking the action is the person to whom the approval is granted as identified on the approval notice for EPBC 2014/7377.

The **Plan**, Biodiversity Management Plan.

Protected matter/s means any matter protected under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* for which this approval applies. These are: White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community, Regent Honeyeater (*Anthochaera Phrygia*), Swift Parrot (*Lathamus discolor*), and the Grey-headed Flying-fox (*Pteropus poliocephalus*).

