

APPENDIX F – MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

In accordance with the Bilateral Agreement between the Commonwealth and NSW Governments, the Department provides the following additional information required by the Commonwealth Minister, in deciding whether or not to approve a proposal under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

F.1 REQUIREMENTS FOR DECISIONS ABOUT THREATENED SPECIES AND ENDANGERED ECOLOGICAL COMMUNITIES

In accordance with section 139 of the EPBC Act, in deciding whether or not to approve, for the purposes of section 18 or section 18A of the EPBC Act, the taking of an action and what conditions to attach to such an approval, the Commonwealth Minister must not act inconsistently with certain international environmental obligations, Recovery Plans or Threat Abatement Plans. The Commonwealth Minister must also have regard to relevant approved conservation advices.

Australia's International Obligations

Australia's obligations under the *Convention on Biological Diversity* (Biodiversity Convention) include the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. The recommendations in the Department's Assessment Report are not inconsistent with the Biodiversity Convention, which promotes environmental impact assessment (such as this process) to avoid and minimise adverse impacts on biological diversity. The recommended approval requires avoidance, mitigation and management measures, and offsetting for listed threatened species and communities in the event of adverse impacts. All information related to the proposed action is required to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Australia's obligations under the *Convention on Conservation of Nature in the South Pacific* (Apia Convention) include encouraging the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystems occurring therein (particular attention being given to endangered species), as well as superlative scenery, striking geological formations and regions. Additional obligations include signatories using their best endeavours to protect such fauna and flora (special attention being given to migratory species) so as to safeguard them from unwise exploitation and other threats that may lead to their extinction. The Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, Australia's obligations under the Convention have been taken into consideration. The recommendations are not inconsistent with the Convention, which has the general aims of conservation of biodiversity.

The *Convention on International Trade in Endangered Species of Wild Flora and Fauna* (CITES) is an international agreement between governments which seeks to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The recommendations are not inconsistent with CITES as the proposed action does not involve international trade in specimens of wild animals or plants.

Recovery Plans and Approved Conservation Advices

The applicable recovery plans and approved conservation advices are discussed below.

- National Recovery Plan and Approved Conservation Advice for the Regent Honeyeater (*Anthochaera Phrygia*)

The National Recovery Plan considers the conservation requirements of the Regent Honeyeater across its known range and identifies actions to ensure its long-term viability. The Recovery Plan provides information on habitat requirements, ecology, distribution, conservation status, key threats, management issues, research and monitoring, captive breeding and translocation, and community education. The Hunter Valley is identified in the recovery plan as a known breeding area for the Regent Honeyeater, where the species is regularly recorded.

The Conservation Advice for the Regent Honeyeater was approved by the Commonwealth Minister on 25 June 2015 and identifies the main threats as destruction/degradation/fragmentation of the

species' habitat. The Conservation Advice identifies local and regional priority actions that could be implemented to support recovery of the species.

The objectives of both documents are to:

- *Reverse the long-term population trend of decline and increase the numbers of regent honeyeaters to a level where there is a viable, wild breeding population, even in poor breeding years; and*
- *Maintain key regent honeyeater habitat in a condition that maximises survival and reproductive success, and provides refugia during periods of extreme environmental fluctuation.*

WCPL proposes to clear 2 ha of derived grassland to construct additional surface infrastructure to support the proposed longwalls. Vegetation clearance results in total loss of the vegetation affected and may cause community and habitat fragmentation, increased erosion, and weed and feral animal incursion. However, since the areas to be cleared are already cleared of woodland, it is unlikely that Regent Honeyeater habitat or habitat connectivity would be significantly reduced by the proposal.

As such, the proposed modification aligns with the Regent Honeyeater Recovery Plan and Approved Conservation Advice objectives by avoiding impacts to the extent and quality of Regent Honeyeater habitat.

- National Recovery Plan and Approved Conservation Advice for the Swift Parrot (*Lathamus discolor*)

The National Recovery Plan considers the conservation requirements of the Swift Parrot across its known range and identifies actions to ensure its long-term viability. The Recovery Plan provides information on habitat requirements, ecology, distribution, conservation status, key threats, management issues, research and monitoring, captive breeding and translocation, and community education. The Hunter Valley is identified in the recovery plan as a winter foraging area for the Swift Parrot where the species is regularly recorded.

The Conservation Advice for the Swift Parrot was approved by the Commonwealth Minister on 5 May 2016 and identifies the main threats as predation from Sugar Gliders and loss/alteration of its habitat. The Conservation Advice identifies local and regional priority actions that could be implemented to support the recovery of the species.

The objectives of both documents are to:

- *to prevent further decline of the Swift Parrot population; and*
- *to achieve a demonstrable sustained improvement in the quality and quantity of Swift Parrot habitat to increase carrying capacity.*

WCPL proposes to clear 2 ha of derived grassland to construct additional surface infrastructure to support the proposed longwalls. Vegetation clearance results in total loss of the vegetation affected and may cause community and habitat fragmentation, increased erosion, and weed and feral animal incursion. However, since the areas to be cleared are already cleared of woodland, it is unlikely that Swift Parrot habitat would be significantly reduced by the proposal.

As such, the proposed modification aligns with the Swift Parrot Recovery Plan and Approved Conservation Advice objectives by avoiding impacts to the foraging habitat of Swift Parrot.

- Approved Conservation Advice (including listing advice) for the Central Hunter Valley Eucalypt Forest and Woodland

In April 2015, the Commonwealth Minister approved the Conservation Advice for the *Central Hunter Valley Eucalypt Forest and Woodland*. The Conservation Advice identifies vegetation clearance and landscape fragmentation as a key threat affecting this CEEC. Other key threats include invasive flora species, pests, infrastructure development and removal of fallen timber and trees. The Conservation Advice identifies and prioritises conservation actions that could be implemented to assist the recovery of the ecological community. A recovery plan for the community is not recommended.

No woodland vegetation would be removed as part of the proposed modification. The Department considers the scale of clearing of derived grassland, and any potential adverse impacts, to be minor in nature due to the abundance of similar or better habitat surrounding the modification area as well as the small scale and patchy nature of the clearing and the existing fragmentation of vegetation communities in the broader area.

The Department considers WCPL's proposed actions to be in accordance with the Conservation Advice, particularly in regard to the priority of avoidance of adverse impacts to this community.

Threat Abatement Plans

The Threat Abatement Plans relevant to this action are discussed below and are available at <http://www.environment.gov.au/biodiversity/threatened/threat-abatement-plans/approved>.

- Threat abatement plan for competition and land degradation by rabbits

Rabbits (along with foxes and cats) are considered to be Australia's most serious vertebrate pests. They are significant predators of native fauna in Australia, and severely affect native flora and fauna, vegetation communities, landforms, geomorphic processes and sensitive sites. Due to the widely established population of rabbits, the Threat Abatement Plan for this species aims to minimise its impacts on biodiversity.

The proposed action could increase the competition for Swift Parrot and Regent Honeyeater habitat through clearance and modification of habitat. However, given the small nature of the proposed surface disturbance area and the fact that the area to be cleared is derived grassland, the risk of this impact is considered to be very low.

WCPL has proposed that feral animal management and control would be continued using the site's Flora and Fauna Management Plan, which would be updated to reflect the proposed modification.

The proposed modification would not be inconsistent with the Threat Abatement Plan, particularly in relation to Objective 2 which promotes the maintenance and recovery of native species and ecological communities that are affected by rabbit competition and land degradation. The site operates under an approved Flora and Fauna Management Plan. This plan includes management measures to control pests and weed infestations.

- Threat abatement plan for predation by feral cats

Feral cats are a serious pest in Australia and can have severe effects on native fauna through predation, competition and disease transmission. The Threat Abatement Plan for this species focuses on reducing recruitment of domestic/stray cats near human habitation to the feral cat population and to manage negative impacts of feral cats.

As the proposed surface disturbance area is small (2 ha) and the area to be cleared is derived grassland, the risk of this impact is considered to be very low. WCPL has proposed that feral animal management and control would be continued using the site's Flora and Fauna Management Plan, which would be updated to reflect the proposed modification. With these measures in place, the Department is satisfied that the action would not be inconsistent with the threat abatement plan for predation by feral cats.

F.2 ADDITIONAL EPBC ACT CONSIDERATIONS

Table F1 contains the additional mandatory considerations, factors to be taken into account and factors to have regard to under the Act, additional to those already discussed, which the Commonwealth Minister must consider in determining the proposed action.

Table F1: Additional considerations for the Commonwealth Minister under the EPBC Act

EPBC Act Section	Considerations	Conclusion
Mandatory considerations		
136(1)(b)	Social and economic matters are discussed in the EA and Section 5.4 of the Department's Assessment Report.	The Department considers that the project would result in a range of benefits to the local community and local and regional economy.
Factors to be taken into account		
3A, 136(2)(a), 391(2)	Principles of ecologically sustainable development (ESD), including the precautionary principle, have been taken into account, particularly: <ul style="list-style-type: none"> • long-term and short-term economic, environmental, social and equitable considerations that are relevant to this decision; • conditions that restrict environmental impacts and impose monitoring and adaptive management 	The Department considers that the project, if undertaken in accordance with the recommended conditions of approval, would be consistent with the principles of ESD.

	<p>reduce any lack of certainty related to the potential impacts of the project;</p> <ul style="list-style-type: none"> • conditions requiring the project to be delivered and operated in a sustainable way to protect the environment for future generations and conserve the affected matters of national environmental significance; • advice provided within this report reflects the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for the project; and • mitigation measures to be implemented which minimise potential impacts of the project on biodiversity within the project area. 	
136(2)(e)	Other information on the relevant impacts of the proposed action – the Department is not aware of any relevant information not addressed in this assessment report.	The Department considers that all information relevant to the impacts of the project have been taken into account in this assessment. The Department's consideration on key issues is in Section 5 of this report.
Factors to have regard to		
176(5)	Bioregional plans	There is no relevant bioregional plan.
Considerations on deciding on conditions		
134(4)	<p>Must consider:</p> <ul style="list-style-type: none"> • information provided by the person proposing to take the action or by the designated proponent of the action; and • the desirability of ensuring as far as practicable that condition(s) are a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition. 	<p>Documentation is provided by WCPL in Appendices D & E of its EA (see Appendix A of the assessment report) and RTS (see Appendix C of the assessment report).</p> <p>The Department considers that the proposed conditions are a cost-effective means of achieving their purpose.</p>

F.3 THREATENED SPECIES AND COMMUNITIES (SECTIONS 18 & 18A OF EPBC ACT)

For the reasons set out in **Section 5.3** of the assessment report, the Department recommends that the impacts of the action on threatened species and communities would be acceptable, subject to implementation of the avoidance and mitigation measures described in WCPL's EA and RTS, and to the requirements of the recommended conditions of approval.

The Department believes that existing conditions 40 – 41A and 44 – 50 in Schedule 4 of the existing development consent provide a suitable regulatory framework to manage the risk of impacts to listed threatened species from the modification.

Accordingly, the Department recommends that the Commonwealth Minister require WCPL to implement conditions 1, 2 and 2A of Schedule 3, conditions 22, 22C, 40 – 41A and 44 – 50 in Schedule 4 of the consent (as proposed to be amended by the Notice of Modification), where they relate to the management of potential impacts on listed threatened species under the EPBC Act.

F.4 A WATER RESOURCE, IN RELATION TO COAL SEAM GAS DEVELOPMENT AND LARGE COAL MINING DEVELOPMENT (SECTIONS 24D AND 24E OF THE EPBC ACT)

For the reasons set out in **Section 5.2** of the assessment report, the Department concludes that the impacts of the action on water resources are acceptable, subject to the avoidance and mitigation measures described in WCPL's EA, RTS and response to the IESC review, and the requirements of the existing development consent and recommended Notice of Modification.

The Department believes that existing conditions 22 – 39 in Schedule 4 of the existing development consent provide a suitable regulatory framework to manage the risk of impact to water resources from the modification, in particular, potential impacts to private water users and the need to monitor surface water and groundwater, and implement a response plan in the event of adverse impacts.

Accordingly, the Department recommends the Commonwealth Minister require WCPL to implement conditions 1, 2 and 2A of Schedule 3 and conditions 22, 22C, 22D and 23 - 39 in Schedule 4 of the

consent (as proposed to be amended by the Notice of Modification), where they relate to the management of potential impacts on water resources under the EPBC Act.

F.5 OTHER PROTECTED MATTERS

The Commonwealth Department of the Environment and Energy determined that other matters under the EPBC Act are not controlling provisions with respect to the proposed action. These include listed migratory species, Ramsar wetlands, the Commonwealth marine environment, world heritage properties, national heritage places, nuclear action and the Great Barrier Reef Marine Park.