

Our ref: SSD 41134610

Mr Stephen Barry
Planning Director
Independent Planning Commission NSW
Via email

13/09/2024

Subject: Spicers Creek Wind Farm – Additional Information

Dear Mr Barry

I refer to your letter dated 22 August 2024, seeking additional information on the proposed Spicers Creek Wind Farm (Project) for consideration of the NSW Independent Planning Commission (Commission). The Department also requested further information from Squadron relating to engagement with holders of exploration licenses. The Department’s responses to each of the Commission Panel’s questions are set out below.

Question 1: Engagement with exploration licence holders

Please provide details of the Applicant’s engagement, or attempt(s) to engage, with the holders of exploration licences that overlap the Site. Please also provide the outcomes and/or impacts of any such engagement on the project’s proposed design.

The Department notes that Squadron informed and consulted with the two mineral exploration licences (EL) holders across parts of the project site, Orange Minerals (EL9290) and Monzonite Metals (EL8646), as well as Alkane Resources (EL8338), who has an EL on land adjacent to the project, as detailed in the Submissions Report (dated December 2023).

Further to the consultation outlined in the Submissions Report, Squadron has advised the Department of the following detail on the extent of consultation and any outcomes of such engagement:

Table 1 | Squadron consultation with EL Holders within the project site

EL Holder	Date	Mechanism	Consultation Details/Outcomes
EL9290 – Orange Minerals	31/08/2023	Meeting	Information sharing and, discussion around the interaction of the project and the exploration activities, particularly regarding what land could be accessed with the project’s Option to Lease Agreements (OLAs). Agreed actions: <ul style="list-style-type: none">- Squadron to review OLAs with legal team- Squadron to provide spatial data of the project- Squadron to provide ongoing project updates

EL Holder	Date	Mechanism	Consultation Details/Outcomes
	31/08/2023	Email	Provision of presentation on the project shared during meeting
	8/09/2023	Email	Provision of project boundary spatial data and further information in relation to exploration of the tenement in relation to OLAs
	30/04/2024	Email	Project Newsletter 6 April 2025
	21/06/2024	Email	Project – Recent news – June 2024
	29/07/2024	Email	Cyber security information: Squadron Energy – Cyber Security Information
	30/07/2024	Email	Project update – July 2024
EL8646 – Monzonite Metals	30/04/2024	Email	Project Newsletter 6 April 2024
	21/06/2024	Email	Project – Recent news – June 2024
	29/07/2024	Email	Cyber security information: Squadron Energy – Cyber Security Information
	30/07/2024	Email	Project update – July 2024

As noted above, Squadron has provided additional evidence of engagement with the relevant EL Holders, including the provision of project updates throughout the planning process. All agreed actions from the meeting held on 31 August 2023 with Orange Minerals were followed up. Squadron has confirmed it would not object to exploration activities occurring, subject to Land Access Agreements with the host landowners.

The Department sought advice from the Department of Regional NSW – Mining, Exploration and Geoscience (MEG) throughout the assessment process, who confirmed in advice on the Submissions Report (dated 17 January 2024) that Squadron has “*informed and consulted with EL holders*” and recommended ongoing engagement and consultation with the EL holders, which Squadron has committed to.

The Department notes that the project would not prohibit exploration activities from occurring, and the development corridor would occupy only a small portion of the areas covered by the EL. With the exception of the construction period, there would be limited constraints to exploration activities during the operation of the project, should it be approved. Further, wind turbines are not permanent infrastructure and would not prevent the potential for future recovery of viable resources by the EL Holders.

Question 2: Serious and irreversible impacts (SAIL)

The Commission notes the Department's Assessment Report incorporates differing estimates of the extent of Box Gum Woodland within NSW and is informed by advice provided by Dr Col Driscoll (referencing the NSW State Vegetation Type Map, 2023) to the Department in relation to the Moolarben Coal Project. The Panel seeks either:

- a. confirmation from the Biodiversity, Conservation and Science (BCS) Group that the Department's assessment of SAIL in relation to Box Gum Woodland, including commentary on the extent of Box Gum Woodland, is appropriate; or
- b. a clear articulation of why BCS disagrees with the Department's approach in the Assessment Report.

The Department and the Biodiversity, Conservation and Science (BCS) Group acknowledge that it is the decision maker's role to determine whether or not a proposal is likely to result in a serious and irreversible Impact (SAIL). An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of an ecological community becoming extinct based on the four principles set out in Clause 6.7 of the *Biodiversity Conservation Regulation 2017* (BC Regulation). White Box Yellow Box Blakely's Red Gum Woodland (Box Gum Woodland) is listed as an entity at risk of SAIL on the basis of principles 1 and 2 in the BC Regulation. These principles are:

Principle 1: "it will cause a further decline of the ... ecological community that is ... reasonably suspected to be in a rapid rate of decline, or"

Principle 2: "it will further reduce the population size of the ... ecological community ... reasonably suspected to have a very small population size, ..."

The Department notes that BCS provided advice in response to a number of Squadron's documents over time throughout the assessment process.

BCS, in their advice on Squadron's Submissions Report (dated 31 January 2024), provided their assessment of the potential for the project to result in a SAIL on Box Gum Woodland. Their assessment concluded that:

"The SAIL assessment indicates a total of 44.6 ha of impact to this TEC...The project will reduce the ecological function experienced by this community and will contribute to further decline of geographic extent for this community, and as such SAIL is considered likely based on Principles 1 and 2."

BCS conclude their assessment of SAIL in that advice by noting that "the proponent has not proposed any additional and appropriate measures for Box Gum Woodland CEEC to minimise this impact" and provided their recommendations for these measures. The recommendation requests that Squadron "Revise the BDAR, in consultation with BCS, to provide additional and appropriate measures for Box Gum Woodland CEEC in accordance with section 7.16(3) of the BC Act [*Biodiversity Conservation Act 2016*]."

Squadron subsequently provided the Department with additional information in their BDAR Addendum (dated 17 May 2024) which included a commitment to conserve in perpetuity, an additional area of NSW Box Gum Woodland CEEC equivalent to the quantum of woodlands (but not including an equivalent area of the derived native grassland state of the community) impacted by the project via a biodiversity stewardships agreement (BSA) site. The Department notes that this commitment was prepared in consultation with both the Department and BCS. Squadron committed to finalising the details of the BSA in consultation with BCS and the Department. The Department also notes that under the BC Act it is the role of the consent authority to determine whether there are additional and appropriate measures to minimise those impacts if the consent authority determines that the impact is likely to be SAll. That is, additional and appropriate measures should not be incorporated into the BDAR as recommended by BCS. Any further avoidance and minimisation measures included in the revised BDAR should then be considered by the consent authority prior to making a determination on SAll.

BCS advice (dated 27 May 2024) on the BDAR Addendum considered that additional and appropriate measures for Box Gum Woodland should consider the entire community including both woodland and derived grassland states. Squadron, subsequently in additional information provided on 19 June 2024, committed to securing additional land comprising the full extent of impacts to Box Gum Woodland including **both** woodland and derived grassland providing the quantum of Box Gum Woodland that BCS had requested. To be clear, this is in addition to offsets for the credit obligations required under the Biodiversity Offset Scheme in applying the BAM.

The Department in their recommended instrument of consent, included condition B25(c)(iii) ensuring that Squadron's commitment for an area of 53.8 ha of Box Gum Woodland be securely conserved within a BSA comprising the full extent of both woodland and derived grasslands states, for the purpose of rehabilitation, enhancement and protection.

BCS in their advice on the Department's draft conditions noted that they *"support the condition requiring a quantum commensurate to the impacted vegetation at the development site for the purpose of rehabilitation, enhancement and protection, to be secured in perpetuity."* BCS did note that without additional supporting details and evidence, BCS is unable to *"confirm whether the additional and appropriate measure will minimise SAll to Box Gum Woodland CEEC from the proposed development."*

The Department notes that condition B25 requires the Biodiversity Management Plan including a requirement for securing 53.8 ha of Box Gum Woodland to be prepared in consultation with BCS and to the satisfaction of the Planning Secretary. The Department considers that this approach would ensure that BCS is provided with appropriate detail post approval.

The Department notes that although BCS has not revised their conclusion on the likelihood of the project resulting in SAll on Box Gum Woodland, this conclusion was reached earlier in the assessment process on the basis that the project will *"reduce the ecological function experienced by this community and will contribute to further decline of geographic extent for this community"*. This conclusion was also

made before the commitment by Squadron to secure 53.8 ha of Box Gum Woodland and that commitment is what BCS had requested in its comments and are reflected in the recommended conditions of consent.

The Department's Assessment Report provides a detailed explanation of its consideration and assessment of the project's potential to result in a SAIL on Box Gum Woodland. The key point of disagreement between the Department and BCS is the decision on whether the impact of the project on Box Gum Woodland constitutes SAIL.

The Department reiterates that the focus of its assessment is centred on the key statement from the BC Regulation Clause 6.7(2) that "*An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct".*

The Department notes that this phrase or the individual words are not defined within the BC Act or Regulation. Whether a project would cause SAIL to a specific community or species is a matter of fact and degree, and there is no simple 'rule' or 'formula' that can be applied to all communities and species. However, the Department considers that the above phrase should be interpreted to mean a real chance or possibility that the development would be an important or significant contributor to the chance or possibility that one of the relevant species or communities will become extinct.

Further, the Department notes that none of the relevant statutory documents relating to SAIL state that 'any loss' of a species or community would necessarily contribute significantly to the risk of extinction.

The advice provided by Dr Col Driscoll in relation to the recent estimates of the extent of Box Gum Woodland in NSW is useful in understanding the scientific uncertainty and wide range of estimated extents of the community and further emphasises the degree of subjectivity required when making this assessment. However, given this uncertainty it is appropriate to apply the precautionary principle and assume the worst case scenario being the 2006 Threatened Species Scientific Committee estimate of the extent of the community remaining in NSW. In this scenario, the project's impact of 53.8 ha represents at worst up to 0.02% of the remaining area in NSW, or up to 0.85% when considered cumulatively with all other upcoming projects in the Central West Orana region. A cumulative impact of less than 1% is unlikely to contribute significantly to Box Gum Woodland community becoming extinct and therefore it would be reasonable for the consent authority to form the opinion that the impacts on Box Gum Woodland are unlikely to be SAIL.

The Department also noted in its assessment report that Squadron committed to that an area of 53.8 ha of Box Gum Woodland be securely conserved in perpetuity within a BSA and reflected this commitment in its recommended conditions.

In determining whether an impact is likely to be regarded as serious and irreversible, the consent authority is to consider the assessment material including the BDAR (prepared by an accredited assessor) and other relevant information including advice from BCS and the recommendation from

the Department, in making its determination. The Department has considered all of these in determining the likelihood of SAI.

In accordance with the framework for decision making set out within the *Guidance to assist a decision-maker to determine a serious and irreversible impact* (Department of Planning, Industry and Environment, 2019), please set out how each of Steps 1 to 5 of that Guidance have been followed in the assessment of all three entities at risk of SAI.

The Department acknowledges that the decision maker is generally required to determine whether or not any of the residual impacts of the proposed development are serious and irreversible in accordance with BC Act and the *Local Land Services Act 2013* (LLS Act). To assist a decision maker with this task, the BC Act and the BC Regulation provides a framework to make this determination.

The Department has carefully considered the framework for decision making as set out in the '*Guidance to assist a decision maker to determine a serious and irreversible impact* (NSW DPIE – EES, 2019)' in its assessment of the project, and is summarised in Table 2 below.

Table 2 - Summary of the Department's assessment against the framework for decision making

Step	Box Gum Woodland	Large bent-winged bat	Large-eared pied bat
<p>Step 1: Identify relevant entities at risk of a SAI</p> <p>Identify if the entity is present If entity is present, map location Avoid impact on these entities</p>	<p>Of the projects 1,470 ha development footprint, 53.8 ha is Box Gum Woodland. The development corridor was selected and refined to avoid impacts to this community where possible.</p> <p>The extent of Box Gum Woodland within the development corridor is mapped on Figure 5.1 of the Amended BDAR Addendum dated 17 May 2024.</p> <p>Details of avoidance strategies are summarised in Step 3 below.</p>	<p>Large bent-winged bat was recorded in the project site during surveys and the location is mapped on Figure 5.1 of the Amended BDAR dated 7 December 2024.</p> <p>Foraging habitat is present on site.</p>	<p>Bat call analysis data indicated the possible presence of large-eared pied bat.</p> <p>Foraging habitat present on site.</p>
<p>Step 2: Evaluate the extinction risk of the entity to be impacted</p> <p>Report on the factors influencing extinction risk for the entity (i.e. principles) Make an assessment at the state scale</p>	<p>Box Gum Woodland is listed as a potential entity at risk of SAI based on Principle 1 (in a rapid rate of decline) and Principle 2 (a very small population size). See table 9.1.1 of amended BDAR.</p> <p>The project would represent an impact of 0.007%, and 0.02% of the total remaining area of Box Gum Woodland in NSW (see section 6.3.6 of the assessment report).</p>	<p>Large bent-winged bat is listed as a potential entity at risk of SAI based on Principle 4 (relating to breeding habitat). No breeding habitat would be directly impacted by the project and therefore there is no extinction risk for the entity.</p>	<p>Large-eared pied bat is listed as a potential entity at risk of SAI based on Principle 4 (relating to breeding habitat). No breeding habitat would be directly impacted by the project and therefore there is no extinction risk for the entity.</p>
<p>Step 3: Detail measures taken to avoid, minimise and mitigate impacts on the entity</p> <p>Set out measures the proponent proposed to avoid or mitigate impacts</p>	<p>Squadron sought to avoid and minimise impacts by:</p> <ul style="list-style-type: none"> - reducing the area of Box Gum Woodland CEEC within the development corridor, noting the area of this community within the development corridor has decreased from 419 ha to 156 ha between January 2022 and the current design (a 62% reduction). Importantly, only 53.8 ha of this occurs within the development footprint; - locating turbines and associated infrastructure within exotic vegetation or Category 1 (exempt) land and/or derived grasslands and avoiding areas of high conservation value native vegetation; - reducing the number of turbines from 138 in early planning stages to 122 at SEARs request, and further again to 117 in the EIS; - reducing the development footprint from 1,520 ha at EIS exhibition to 1,470 ha; - removing the proposed site access via Binginbar Road to avoid impacts to Box Gum Woodland. 	<p>The project layout avoids large bent-winged bat breeding habitat, with no known breeding habitat within 2 km of the site.</p>	<p>The project layout avoids large-eared pied bat breeding habitat, with no known breeding habitat within 2 km of the site.</p>

Step	Box Gum Woodland	Large bent-winged bat	Large-eared pied bat
	<p>Squadron also offered to securely conserve an area of approximately 53.8 ha of Box Gum Woodland comprising 31.3 ha of intact woodland, 9.9 ha of disturbed and modified woodland and 12.6 ha of DNG (i.e. equivalent to total clearing of this community required for the project) within a Biodiversity Stewardship Agreement (BSA) area for the purpose of rehabilitation, enhancement and protection, in perpetuity.</p>		
<p>Step 4: Evaluate a serious and irreversible impact</p> <p>Assessment under criteria in the BAM .</p> <p>Estimate the impact on the viability of the entity at the local, IBRA and state scales.</p> <p>Decide if proposal is likely to increase extinction risk</p>	<p>Table 9.1 and 9.2 of the Amended BDAR dated 7 December 2024 provides Squadron’s assessment against the criteria of the BAM. The Department’s assessment report provides a detailed consideration of extent of Box Gum Woodland within NSW.</p> <p>As Box Gum Woodland is listed on the basis of ‘population size’ and ‘rate of decline’, it is particularly relevant to consider the project’s potential impacts on Box Gum Woodland against the total area remaining in NSW. The project’s impact of 53.8 ha represents at worst up to 0.02% of the remaining area in NSW, or up to 0.85% when considered cumulatively with all other upcoming projects in the Central-West Orana region.</p>	<p>There would be no impact to breeding habitat and therefore would not increase the extinction risk for large bent-winged bat.</p>	<p>There would be no impact to breeding habitat and therefore would not increase the extinction risk for large-eared pied bat.</p>
<p>Step 5: Decision-making</p> <p>For SSD/SSI - decision maker is required to take likely SAIL into consideration, and Determine if there are any additional and appropriate measures that will minimise the impact if approval is granted.</p>	<p>The Department considers that it would be reasonable to conclude that a cumulative impact of less than 1% using the most conservative assumptions is unlikely to contribute significantly to extinction of Box Gum Woodland, and therefore unlikely to be SAIL.</p>	<p>The Department considers that the project’s impacts would not contribute to the risk of extinction of this species and would not constitute a SAIL for large bent-winged bat.</p>	<p>The Department considers that the project’s impacts would not contribute to the risk of extinction of this species, and would not constitute SAIL for large-eared pied bat.</p>

Conclusion

Thank you for the opportunity to provide this additional information regarding the Project.

If you wish to discuss the matter further, please contact Nicole Brewer on [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]

Nicole Brewer
Director
Energy Assessments