

Upper Hunter Strategic Assessment Interim Policy

Projects requiring approval prior to completion of
the strategic assessment

October 2012

Introduction

The Upper Hunter Strategic Assessment involves the development of a Biodiversity Plan which identifies impacts and likely offset requirements for participating mining companies in the Upper Hunter. Participating Companies will be able to contribute to the Upper Hunter Offsets Fund (established under the Environmental Trust) to satisfy any offset requirements that are imposed as a condition of approval. The projected completion date for the Draft Biodiversity Plan is 30 June 2013.

Once the Biodiversity Plan has been endorsed and approved under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), projects that are compliant with the methods in the approved Plan will no longer need individual referral, assessment and approval under the Commonwealth legislation.

An important question raised by the Industry Reference Group is the treatment of projects captured within the Strategic Assessment framework (e.g. projects within the impact consideration area and proposed by companies participating in the process), but that require approval prior to completion of the Strategic Assessment process.

Statement of policy

NSW Department of Planning and Infrastructure will administer project assessments and approvals for participating mining companies consistent with the intent and expected outcomes of the Strategic Assessment and Biodiversity Plan, including for transitional projects (projects by participating companies that may require approval prior to completion of the Strategic Assessment process). Projects that demonstrate compliance with the expected outcomes of the Biodiversity Plan will be approved and conditioned in accordance with the plan requirements in regard to biodiversity.

Eligibility

For a company to have its mining proposal included under the Strategic Assessment framework they must:

1. assess impacts on NSW threatened species (TSC Act) and matters of national environmental significance (MNES) under the EPBC Act using the Biodiversity Certification Assessment Methodology (BCAM); and
2. contribute an amount agreed by the Company, DP&I and OEI to funding the preparation of the Draft Biodiversity Plan.

Interim Approvals - Path 1 and Path 2 Projects (Attachment)

Some mining companies may desire approval to commence clearing before completion of the strategic assessment. These pathways are depicted in the attached diagram:

- path 1 - approval to clear is required before the draft Biodiversity Plan has been released for public exhibition and the proposed offset fund is not operational. In this case approvals by NSW and the Commonwealth may be issued on a case by case basis and conditioned to cover any uncertainties about expected outcomes of the Biodiversity Plan and the proposed offset fund.
- Path 2 – Approval to clear is required in the period after public exhibition of the draft Biodiversity Plan but before the plan has been finalised or endorsed (or classes of actions approved by the Commonwealth). In this case approvals may be issued by NSW and the Commonwealth that reflect consistency with outcomes anticipated by the draft Biodiversity Plan. If the offset fund is operational, payments may be made to the fund or companies could still use their own offset properties as appropriate.

- Path 3 – Strategic assessment is complete, classes of actions have been approved by the Commonwealth and the offset fund is operational. The only approval required is for issues not covered by the Biodiversity Plan.

Interim Policy

As a policy approach, Path 1 and Path 2 transitional projects will be assessed consistent with the method (i.e. the Biodiversity Certification Assessment Methodology) and approach in the Biodiversity Plan. Proposals will still need to be submitted and assessed under the EP&A Act (or its replacement), but any approvals and conditions will be consistent with the expected outcomes of the Biodiversity Plan. This will include eligibility to contribute to the Upper Hunter Offsets Fund (to be established by the Environmental Trust) in order to meet offset requirements of any approval.

For example, Path 2 projects requiring separate approval prior to final endorsement and approval of the Biodiversity Plan, but following public exhibition of the draft Biodiversity Plan, are expected to be acceptable from a biodiversity perspective subject to demonstrated compliance with the key elements and intent of the draft Plan. Additional conditioning may be required to enforce this approach depending upon the timing.

Path 1 Projects requiring an earlier approval (for example, prior to NSW approval of the Biodiversity Plan) will still be assessed against their consistency with the intent and approach of the Biodiversity Plan at that particular point in time. There will be greater uncertainty at this time and conditioning of any approvals will need to reflect this. For example, conditioning may require payment of the calculated offset to the Environment Trust within a certain timeframe with provisions in the event the establishment of the Trust is delayed. In some circumstances, and subject to satisfactory progress with the strategic assessment, project approval conditions will permit clearing and works to commence prior to payment to the Environmental Trust.

UHSA Interim Policy

KEY

EPBC
Process

NSW
Process

State &
Cwlth

