

## **TERMS OF REFERENCE FOR A STRATEGIC ASSESSMENT OF A BIODIVERSITY PLAN FOR COAL MINING IN THE UPPER HUNTER VALLEY, NSW**

### **Background**

The Australian and New South Wales Governments have entered into an agreement to undertake a strategic assessment of a Biodiversity Plan for Coal Mining in the Upper Hunter Valley, NSW. The strategic assessment will be undertaken in accordance with the provisions of Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The EPBC Act provides for the protection of defined matters of national environmental significance (MNES). New actions or developments that are likely to have a significant impact on a MNES must be referred and approved by the Australian Government under the EPBC Act before they can proceed. Further information about the EPBC Act is at [www.environment.gov.au/epbc/](http://www.environment.gov.au/epbc/).

As well as project-by-project assessments, the EPBC Act provides for strategic assessments of broader landscapes and the likely cumulative impacts of a number of new developments (further information on strategic assessments is at [www.environment.gov.au/epbc/assessments/strategic.html](http://www.environment.gov.au/epbc/assessments/strategic.html)). The Australian and New South Wales Governments believe that there is significant benefit in proactively identifying potential cumulative impacts on biodiversity from new coal mining in the Upper Hunter Valley and how regional biodiversity values can be protected.

The Upper Hunter Strategic Assessment (UHSA) is focussed on identifying biodiversity values of lands identified for potential new or expanded coal mines over the next 25 years that are located within the indicative biodiversity assessment area shown at Attachment A. The UHSA aims to identify and manage the impacts on those biodiversity values in the context of the broader regional environment (shown as the 'regional study area' at Attachment A). If successful, the methodology could be applied in other regional areas or for other industry sectors.

The Upper Hunter Valley has been identified for this strategic assessment because there are a number of prospective and existing mining exploration licences for which applications to mine or expand existing mines are expected over the next twenty five years. There has been extensive land clearing in the region for a variety of uses over the past 150 years and there is benefit in proactively identifying desired conservation outcomes in advance of inevitable project-by-project applications for future coal mining.

A number of companies with coal exploration licences within the indicative biodiversity assessment area have agreed to participate in the strategic assessment and have committed to undertaking flora and fauna surveys and associated biodiversity assessment reports in accordance with NSW Government requirements. The strategic assessment will be carried out by the NSW and Australian Governments and is subject to regulatory requirements under the EPBC Act and the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act).

A copy of the strategic assessment agreement, signed by the Governments, is at Attachment B. This provides more detail on the strategic assessment process. Essentially, a Biodiversity Plan for Coal Mining in the Upper Hunter Valley (Biodiversity Plan), together with a Strategic Assessment Report, will be prepared by the NSW Government, with input from participating mining companies.

The Biodiversity Plan will identify and document biodiversity values within the company nominated biodiversity assessment areas including threatened ecological communities and species listed under the EPBC Act and protected under the NSW *Threatened Species Conservation Act 1995* (TSC Act). The Biodiversity Plan will also identify mechanisms to achieve desired conservation outcomes, including through avoidance, mitigation and offset arrangements and adaptive management measures.

The Strategic Assessment Report will assess the impacts of implementing the Biodiversity Plan on biodiversity values, particularly any clearing of native vegetation associated with future development of coal mining operations in the nominated biodiversity assessment areas.

The EPBC Act provides for the Biodiversity Plan to be endorsed by the Federal Environment Minister if it provides for adequate protection of the relevant matters of national environmental significance. The EPBC Act also provides for the Minister to approve 'classes of actions' undertaken in accordance with an endorsed plan.

For the purposes of this strategic assessment, classes of actions that will be considered for approval under the EPBC Act are new and expanded coal mining operations within the indicative biodiversity assessment area for future coal mining activities (see Attachment A).

From a NSW perspective applications will continue to require State assessment relating to other impacts on land, water, air quality and noise and socio-economic impacts on communities. However, it is intended that classes of actions meeting the requirements of the Biodiversity Plan will not require further individual biodiversity assessment, pursuant to the EP&A Act.

A number of participating mining companies are proceeding with mine applications within the indicative biodiversity assessment area, for which approvals are expected to be sought prior to the completion of the strategic assessment. Those companies are liaising with the Australian and NSW Governments with a view to aligning their proposals with the outcomes sought from the strategic assessment. The NSW Department of Planning and Infrastructure has issued an interim policy that will apply to mining project approvals for participating companies until the Biodiversity Plan is approved.

Transitional arrangements will also be in place at the Commonwealth level for companies participating in the strategic assessment process, which require approvals before completion of the process. Those applications will need to be referred and assessed in the normal way (for example, by referral, assessment and approval under Parts 7, 8 and 9 of the EPBC Act). In considering biodiversity issues, any decisions on approvals and conditions will have regard to the strategic assessment process and expected outcomes.

### **Terms of reference for the Biodiversity Plan and Strategic Assessment Report**

The strategic assessment agreement between the Australian and NSW Governments states that draft terms of reference (ToR) describing the required content of the Biodiversity Plan and accompanying Strategic Assessment Report will be released for a minimum 28 day public comment period. Draft ToR, prepared by the Australian and NSW Governments were exhibited on 3<sup>rd</sup> June 2013 until 5<sup>th</sup> July 2013. A total of thirteen (13) submissions were received and a summary report, including responses to issues raised in submissions, is included at Attachment C.

Final Terms of Reference are on the next page. They have been modified to address public comments as necessary. The final ToR will form part of the strategic assessment agreement signed by the Governments.

The Biodiversity Plan and Strategic Assessment Report must address the final ToR. These two documents will be exhibited for public comment for a minimum 28 day period. A notice of the availability of these documents for public comment will be sent to all parties that made submissions to the Draft ToR.

### **New water trigger**

The Australian Government has amended the EPBC Act to add a new matter of national environmental significance. Coal seam gas and large coal mining developments that are likely to have a significant impact on a water resource are captured by this amendment. Such projects require approval by the Australian Government under the EPBC Act on a project by project basis.

Opportunities to address this new trigger within this strategic assessment are currently being considered. These ToR will be updated accordingly if required. In the interim, the Australian and New South Wales Governments are committed to preparation and strategic assessment of the Biodiversity Plan under the EPBC Act in accordance with the final ToR.

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### **BACKGROUND AND LIMITS TO SCOPE**

The geographic extent of the strategic assessment is shown at Attachment A. The specific actions being assessed relate to potential future coal mining operations within the indicative biodiversity assessment area identified by the broken red line. The strategic assessment does not identify the specific areas that may be mined because the nature and extent of mining is yet to be determined by the companies involved.

Potential impacts on biodiversity are considered in the context of the broader Upper Hunter region depicted by the area shaded grey. This area is defined by the Interim Biogeographic Regionalisation for Australia (IBRA) subregions that share the same climate, geology, native vegetation and species characteristics.

The strategic assessment is limited to biodiversity values and potential impacts associated with coal mines only. It does not include consideration of the potential impacts of coal seam gas exploration and extraction.

The strategic assessment is concerned with direct and indirect impacts upon biodiversity including Matters of National Environmental Significance (MNES). Potential impacts upon water and air quality, aquatic systems or European and Aboriginal heritage are not included in the strategic assessment.

### **1 PURPOSE AND DESCRIPTION**

Implementation of the strategic assessment methodologies, identification of desired conservation outcomes for the investigation area and how they can be achieved must be fully described in the Biodiversity Plan for Coal Mining in the Upper Hunter Valley, NSW (Biodiversity Plan).

The Biodiversity Plan must describe:

- a) The geographic extent and description of the area to which the Biodiversity Plan applies.
- b) Component legislation, plans, statutes, planning instruments and policies that underpin the Biodiversity Plan and its implementation.
- c) The State and regional context (environmental, social and economic) in which the Biodiversity Plan operates.
- d) Specific outcomes and commitments to protect matters of national environmental significance listed under the EPBC Act, as well as any additional threatened ecological communities and species protected under the NSW *Threatened Species Conservation Act 1995* (TSC Act).
- e) Key studies and investigations that have informed the Biodiversity Plan and Strategic Assessment Report.

- f) Description of and justification for the methodologies used to identify and prioritise desired conservation outcomes for the area to which the Biodiversity Plan applies.
- g) Mechanisms, including avoidance, mitigation and offset arrangements, to achieve the identified conservation outcomes.
- h) Other relevant National, State, regional or industry planning or management frameworks that may affect or influence implementation of the Biodiversity Plan.
- i) Identification of the relevant authorities responsible for implementation of the Biodiversity Plan, particularly in relation to conservation commitments, adaptive management approaches, monitoring, auditing, reporting and compliance arrangements.

## **2 MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE (MNES)**

### **2.1 Identification of affected MNES**

The Strategic Assessment Report must describe MNES likely to be impacted by actions envisaged in the Biodiversity Plan. The following controlling provisions must be addressed:

- World Heritage properties (sections 12 and 15A);
- National Heritage places (sections 15B and 15C);
- Ramsar wetlands (sections 16 and 17B);
- Listed threatened species and communities (sections 18 and 18A);
- Listed migratory species (sections 20 and 20A); and
- The environment on Commonwealth land (sections 26 and 27A).

The Strategic Assessment Report must describe the MNES within the geographic extent of the Biodiversity Plan. This includes the MNES likely to be directly or indirectly impacted. The assessment must:

- a) Describe the current condition of MNES, and past and projected trends and existing threats;
- b) Identify those aspects of the environment, including landscape-scale ecosystem functions and connectivity corridors, considered critical to the continued presence and functioning of MNES identified as potentially at risk;
- c) Describe the methodology for identifying MNES and supporting landscape ecosystem functions and connectivity, and for identifying priority areas for conservation, together with an analysis of the strengths, limitations and expected effectiveness of the methodology; and
- d) Identify any key information gaps, further studies needed and any proposals to address critical information needs.

### **2.3 Identification and analysis of potential impacts**

The Strategic Assessment Report must identify and analyse the likely direct and indirect impacts of possible future coal mining operations on biodiversity and MNES within the strategic assessment area, and against the desired conservation outcomes identified in the Biodiversity Plan.

The Biodiversity Certification Assessment Methodology, developed by the NSW Government must be used as the technical tool for identifying the biodiversity values and calculating offset credits including those related to MNES. Information about the BCAM can be found at

<http://www.environment.nsw.gov.au/biocertification/index.htm>

The Strategic Assessment Report should include analysis of:

- a) Nature of potential coal mining operations and identification and description of the types of impacts considered, including cumulative impacts, and likelihood of occurrence;

- b) Potential impacts on MNES and those aspects of the environment considered critical to the continued presence and functioning of MNES identified in the Biodiversity Plan;
- c) Sensitivity analysis of different development scenarios on achieving the desired conservation outcomes identified in the Biodiversity Plan (for example, clearing of all vegetation within lease areas, partial clearing in accordance with a typical mine plan based on land form, and 'no clearing' scenarios); and
- d) Consideration of climate change and other long term influences on MNES and supporting landscape ecosystems in assessing likely risks and impacts to biodiversity from development.

## **2.4 Measures to avoid, mitigate, offset and adaptively manage impacts**

The Biodiversity Plan and Strategic Assessment Report must identify specific mechanisms to be implemented to avoid, mitigate and offset impacts on biodiversity including MNES that may occur through development within the biodiversity assessment areas, including:

- a) Identification of any areas of high conservation value that require protection, further investigation or specific avoidance, mitigation or offset measures;
- b) Requirements for mitigation of impacts where identified areas of high conservation value may be indirectly impacted;
- c) Offset mechanisms where clearing of native vegetation is proposed within biodiversity assessment areas, including calculation of offset requirements;
- d) Mechanisms to direct offsets to priority conservation areas identified in the Biodiversity Plan, including consideration of financial offset contributions through a trust fund arrangement to strategically purchase offsets and
- e) Mine site rehabilitation obligations and requirements.

The Strategic Assessment Report must include an analysis of the likely effectiveness of the Biodiversity Plan in protecting biodiversity including MNES and in achieving good conservation outcomes at the regional landscape scale, including associated regulatory and policy arrangements to implement commitments.

## **3 PROMOTING ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

The Strategic Assessment Report must describe how the principles of ecologically sustainable development (section 3A of the EPBC Act) have been applied in developing the Biodiversity Plan and how these will be implemented.

## **4 ADAPTIVE MANAGEMENT: ADDRESSING UNCERTAINTY AND MANAGING RISK**

The Biodiversity Plan and Strategic Assessment Report must identify key adaptive management measures addressing uncertainties and inherent risks. Uncertainties could, for example, include knowledge gaps in scientific understanding and the timing, effectiveness, or capacity to implement, maintain, operate and enforce management measures.

The Biodiversity Plan must describe how the adaptive management strategies will be implemented under the Biodiversity Plan to ensure biodiversity including MNES is effectively protected over the life of the Biodiversity Plan. This includes:

- a) How monitoring of biodiversity values and MNES will occur, including monitoring of progress in achieving the desired conservation outcomes identified in the Biodiversity Plan and how the results from monitoring will be analysed and will influence the Biodiversity Plan throughout its life.
- b) How new information relating to MNES or the Biodiversity Plan is to be assessed and accounted for in management of the areas affected by the Biodiversity Plan.

## **5 AUDITING AND REPORTING**

The Biodiversity Plan must set out:

- a) Monitoring, public reporting and independent or third party auditing to be undertaken;



- b) A process that will incorporate these findings into ongoing management of the Biodiversity Plan;
- c) Who is responsible for overseeing and taking these actions and
- d) Record keeping and review processes under the Biodiversity Plan.

## **6 REVIEW, MODIFICATION OR ABANDONMENT**

The Biodiversity Plan must identify and analyse the likely circumstances and procedures that may result in the review, modification or abandonment of the Biodiversity Plan. This is to include a discussion of how any commitments under the Biodiversity Plan will continue to be met.

## **7 ENDORSEMENT CRITERIA**

In determining whether or not to endorse the Biodiversity Plan, the Australian Government Minister will have regard to the extent to which the Biodiversity Plan meets the objectives of the EPBC Act and the criteria that it:

- protects the environment, especially MNES;
- promotes ecologically sustainable development;
- promotes the conservation of biodiversity;
- promotes a cooperative approach to the protection and management of biodiversity and MNES and
- assists in the co-operative implementation of Australia's international environmental responsibilities.

Without limiting the matters the Minister may consider when making the decision whether to endorse the Biodiversity Plan, the Minister will consider the manner in which the Plan:

- identifies direct, indirect and cumulative impacts on MNES;
- avoids impacts on MNES;
- mitigates the impacts on MNES;
- offsets the impacts on MNES;
- contributes to the enhancement of MNES and management of existing threats and
- demonstrates adaptation to reasonable climate change scenarios.

Commitments for the protection and management of MNES must be enforceable and achievable over the life of the Biodiversity Plan. The Biodiversity Plan must demonstrate an effective system of adaptive management that addresses uncertainty and contingency management as well as procedures for monitoring, auditing and public reporting on implementation.

## **8 INFORMATION SOURCES**

For information and data used in the assessment, the Strategic Assessment Report must state:

- a) The source and currency (date) of the information and
- b) The reliability and limitations of the information.

## Attachment A – Geographic Area

### STRATEGIC ASSESSMENT GEOGRAPHIC AREA

The geographic extent of the strategic assessment area is illustrated below.

