

# APPENDIX E:

## CONSIDERATION OF COMMONWEALTH MATTERS

---

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).

The Department's assessment has been prepared based on the assessment contained in Epuron's Environmental Assessment (EA), Response to Submissions (RTS) and supplementary information provided during the assessment process, public submissions, and advice provided by the NSW Office of Environment and Heritage (OEH), other NSW government agencies and the Commonwealth Department of Environment and Energy (DoEE).

This Appendix is supplementary to, and should be read in conjunction with, the assessment included in Section 5 of this assessment report which includes the Department's consideration of impacts to listed threatened species and communities, mitigation measures for threatened species, including for Matters of National Environmental Significance (MNES).

### **E. 1 Impacts on EPBC Listed Species and Communities**

As outlined in Section 5.4, the project would potentially have a significant impact on 3 threatened species or ecological communities listed under the EPBC Act, namely White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and Derived Native Grassland Critically Endangered Ecological Community (Box Gum Woodland), Regent Honeyeater (*Anthochaera phrygia*) and the Swift Parrot (*Lathamus discolor*).

The Department notes that both Epuron and OEH concluded that there would not be a significant impact on the Box Gum Woodland, Regent Honeyeater or Swift Parrot, as discussed in Section 5.4 of this assessment report.

Nonetheless, further detailed consideration of the impact on these 3 threatened species or ecological communities is provided below.

Epuron assessed the significance of the impacts on these species using the methodology outlined in the *Matters of National Environmental Significance Significant Impact Guidelines 1.1 (2013)* as documented in Appendix C of the EA and Appendix C of the RTS.

### **E. 2 Requirements for Decisions about Threatened Species and Communities**

In accordance with Section 139 of the EPBC Act, in deciding whether or not to approve, for the purposes of subsection 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 technologies, and by appropriate funding.

The recommendations of this assessment report are consistent with the Biodiversity Convention, which promotes environmental impact assessment (such as this process) to avoid and minimise adverse impacts on biological diversity. Accordingly, the recommended development consent requires avoidance, mitigation and management measures for listed threatened species and communities, and all information related to the project 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, would safeguard representative samples of the natural ecosystems occurring therein (with particular attention being given to endangered species), as well as superlative scenery, striking geological formations and regions. Additional obligations include using their best endeavours to protect such fauna and flora (with 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 on 13 September 2006.

### ***Approved Conservation Advice and National Recovery Plans***

The approved conservation advice and national recovery plans relevant to this project are discussed below and are available at <http://www.environment.gov.au/cgi-bin/sprat/public/conservationadvice.pl>

Approved conservation advice under the EPBC Act for threatened species that would potentially be significantly impacted are available for the Regent Honeyeater and Swift Parrot.

Approved national recovery plans under the EPBC Act for threatened species that would potentially be significantly impacted are available for Box Gum Woodland, the Regent Honeyeater and Swift Parrot.

Epuron considered relevant approved conservation advice and recovery plans in its assessment of impacts on MNES.

### ***Box Gum Woodland***

The Department has considered the approved national recovery plan under the EPBC Act for Box Gum Woodland in assessing the impacts of the project, and notes that its key objective is to achieve no net loss in the extent and condition of Box Gum Woodland. The Department notes that there is no approved conservation advice for Box Gum Woodland that requires consideration under the EPBC Act.

While the project would clear 10.37 ha of Box Gum Woodland listed under the EPBC Act, Epuron is proposing substantive offsets (see Section 5.1 of this assessment report). The Biodiversity Management Plan and biodiversity stewardship agreements would require detailed management actions and monitoring programs to improve the condition of Box Gum Woodland within the offset areas.

As such, the Department considers that with the proposed site mitigation and offset measures, the project would not be inconsistent with the objectives of the national recovery plan. The Department has recommended conditions to formalise these measures (see Appendix G). Key actions of the national recovery plan, including monitoring, would also be implemented as part of the Biodiversity Management Plan.

### ***Regent Honeyeater***

The Department has considered the approved conservation advice and national recovery plan under the EPBC Act for the Regent Honeyeater in assessing the impacts of the project, and notes that the main threats and causes for decline in Regent Honeyeater population are clearing, fragmentation and degradation of its habitat, and competition from Noisy Miners and introduced honeybees.

The national recovery plan includes a number of objectives, recommendations and actions relevant to the project, including maintaining and enhancing the value of Regent Honeyeater habitat and monitoring trends in Regent Honeyeater population size and dispersion.

Epuron's ecological assessments concluded that the project would not have a significant impact on the species, as the project site does not support known or good quality habitat for the Regent Honeyeater, as indicated by the habitat assessments undertaken on site and the lack of records of the species within the project area.

Additionally, the assessment concluded that the project would assist the objectives of the national recovery plan through detailed management actions and monitoring programs by improving the condition of the offset areas in accordance with the Biodiversity Management Plan, and by increasing the understanding of population trends of the species in accordance with the Bird and Bat Adaptive Management Plan.

As such, the Department considers that with the proposed site mitigation and offset measures, the project would not be inconsistent with the objectives of the national recovery plan. The Department has recommended conditions to formalise these measures (see Appendix G). Key actions of the national recovery plan, including monitoring, would also be implemented as part of the Biodiversity Management Plan and Bird and Bat Adaptive Management Plan.

#### Swift Parrot

The Department has considered the approved conservation advice and national recovery plan under the EPBC Act for the Swift Parrot in assessing the impacts of the project, and notes that the main threats and causes for decline in Swift Parrot population are clearing, fragmentation and degradation of its habitat, as well as flight collision hazards, disease and illegal capture and trade.

The national recovery plan includes a number of objectives, recommendations and actions relevant to the project, including maintaining and enhancing the value of Swift Parrot habitat, monitoring trends in Swift Parrot population size and dispersion, and monitoring and managing the incidence of collisions, competition and disease.

Epuron's ecological assessments concluded that as there are no records of the Swift Parrot utilising the region surrounding the project site, most likely due to the lack of larger patches of preferred habitat as the species preferentially utilises richer and more fertile sites lower in the landscape, along gullies and on lower slopes, that the project would not have a significant impact on the species.

Additionally, the assessments concluded that the likelihood of the species to collide with turbines is rare as no known foraging sites are within the region, the vegetation communities within the project site are generally degraded, and turbines would be located along ridgelines while Swift Parrots forage and disperse mostly at lower elevations within vegetated corridors. However, the assessments concluded that the consequence of collision with turbines is moderate, as the species is critically endangered.

The Biodiversity Management Plan and Bird and Bat Adaptive Management Plan would require detailed management actions and monitoring programs to minimise the risk of any bird strike from the project.

The Department considers that with the proposed site mitigation and offset measures, the project would not be inconsistent with the objectives of the national recovery plan. The Department has recommended conditions to formalise these measures (see Appendix G). Key actions of the national recovery plan, including monitoring, would also be implemented as part of the Biodiversity Management Plan and Bird and Bat Adaptive Management Plan.

#### **Threat Abatement Plans**

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

#### Threat Abatement Plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (relevant to Box Gum Woodland)

*Phytophthora cinnamomi* (*P. cinnamomi*) is a microscopic soil-borne organism (i.e. pathogen) that has the ability to cause plant disease and death by interfering with the movement of water and nutrients to plants. It can be spread in water, soil or plant material that contains the pathogen, and dispersal is favoured by moist or wet conditions. It can be carried in both overland and subsurface water flow and by water moving infested soil or organic material. Native and feral animals have been implicated in spreading *P. cinnamomi*, particularly where there are digging behaviours (e.g. pigs, rabbits). Humans, however, have the capacity to disturb and transport more soil than any other vector.

Box Gum Woodland is identified as an ecological community that may be affected by *P. cinnamomi*.

That Department notes that construction related activities have the potential to introduce or spread the pathogen through the movement of vehicles, the use of construction equipment/tools for undertaking excavation work, footwear and the introduction of infected soil or building materials to uninfected areas. The threat abatement plan for managing the impacts of *P. cinnamomi* identifies actions to minimise its spread to uninfected sites and mitigate impacts at infected sites.

The Department has recommended that actions to avoid and mitigate the spread of this pathogen are implemented as part of the Biodiversity Management Plan. Subject to this recommended condition, the Department considers approval of the project would not be inconsistent with the threat abatement plan for disease in natural ecosystems caused by *P. cinnamomi*.

*Threat Abatement Plan for predation, habitat degradation, competition and disease transmission by feral pigs (relevant to Box Gum Woodland)*

Feral pigs impact on native flora and fauna due to their presence, movement, rooting, wallowing, trampling, tusking/rubbing trees and consumption of water, animals, plants and soil organisms. Direct impacts from feral pigs include predation, habitat loss and degradation, competition and disease transmission, which can impact on native flora and fauna.

Measures to control feral animals are recommended in the conditions which would be implemented as part of the Biodiversity Management Plan and/or biodiversity stewardship agreements for the site and offset areas.

Therefore, the Department considers the approval of the project would not be inconsistent with the threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs.

*Threat Abatement Plan for competition and land degradation by rabbits (relevant to Box Gum Woodland and Regent Honeyeater)*

Rabbits have direct impacts on native flora and fauna by grazing on native vegetation and preventing regeneration, and by competing with native fauna for habitat and food. Rabbits also have indirect and secondary impacts, such as supporting populations of introduced predators by providing a food source, and denuding vegetation exposing fauna species to increased predation. Their behaviour, including digging and browsing, also leads to a loss of vegetation cover and consequent slope instability and soil erosion, which further degrades fauna habitat.

Measures to control feral animals are recommended in the conditions which would be implemented as part of the Biodiversity Management Plan and/or biodiversity stewardship agreements for the site and offset areas.

Therefore, the Department considers the approval of the project would not be inconsistent with the threat abatement plan for land degradation by rabbits.

*Threat Abatement Plan for competition and land degradation by unmanaged goats (relevant to Box Gum Woodland)*

Goats affect native flora by grazing on native vegetation and can result in overgrazing. Grazing by goats can prevent regeneration of native flora, cause erosion through overgrazing, foul waterholes and introduce weeds, through ingestion of seeds, which they can deposit in their dung. Goats also compete with native animals for food and shelter.

Measures to control feral animals are recommended in the conditions which would be implemented as part of the Biodiversity Management Plan and/or biodiversity stewardship agreements for the site and offset areas.

Therefore, the Department considers the approval of the project would not be inconsistent with the threat abatement plan for land degradation by unmanaged goats.

*Threat Abatement Plan for predation by feral cats (relevant to Swift Parrot)*

Feral cats are significant predators in Australia that interact with native fauna in various ways, including predation, competition for resources and transmission of disease.

Measures to control feral animals are recommended in the conditions which would be implemented as part of the Biodiversity Management Plan and/or biodiversity stewardship agreements for the site and offset areas.

Therefore, the Department considers the approval of the project would not be inconsistent with the threat abatement plan for predation for by feral cats.

Threat Abatement Plan for the biological effects, including lethal toxic ingestion, caused by cane toads (relevant to Box Gum Woodland)

While cane toads have the potential to colonise new habitats created by the construction of sediment and detention basins, this species is not known to occur in the region, and it is therefore unlikely that disturbance as a result of the project would lead to the presence of cane toads.

### **E. 3 Requirements for Decisions about World Heritage Properties**

The Commonwealth determined that the project is not a controlled action for the controlling provision of World Heritage (Section 12 and Section 15A of the EPBC Act) and therefore further consideration is not required.

### **E. 4 Requirements for Decisions about National Heritage Places**

The Commonwealth determined that the project is not a controlled action for the controlling provision of National Heritage (Section 15B and Section 15C of the EPBC Act) and therefore further consideration is not required.

### **E. 5 Additional EPBC Act Considerations**

Table E1 contains the additional mandatory considerations, factors to be taken into account and factors to have regard to under the EPBC Act additional to those already discussed.

**Table E1: Additional considerations for the Commonwealth Minister under the EPBC Act**

<b>EPBC Act section</b>	<b>Considerations</b>	<b>Conclusion</b>
<b>Mandatory considerations</b>		
136(1)(b)	Social and economic matters are discussed in Sections 2 and 5 of the assessment report.	The Department considers that the proposed development would result in a range of benefits for the local and regional economy and is of public benefit.  Negative social impacts, particularly on the local community residing in the area have been considered in the assessment of the development.  A range of mitigation measures have been proposed by Epuron, including provision of a Voluntary Planning Agreement with Warrumbungle Council and Upper Hunter Shire Council.
<b>Factors to be taken into account</b>		
3A, 391(2)	Principles of ecologically sustainable development (ESD), including the precautionary principle, have been taken into account, in particular: <ul style="list-style-type: none"><li>• the long term and short term economic, environmental, social and equitable considerations that are relevant to this decision;</li><li>• conditions that restrict environmental impacts and impose monitoring and adaptive management, reduce any lack of certainty related to the potential impacts of the project;</li><li>• conditions requiring the project to be delivered and operated in a sustainable way to protect the environment for future generations and conserving the relevant matters of national environmental significance;</li><li>• advice provided within this report reflects the importance of conserving biological diversity, ecological and cultural integrity in relation to all of the controlling provisions for this project; and</li></ul>	The Department considers that the project, if undertaken in accordance with the recommended conditions of consent, would be consistent with the principles of ESD.

<b>EPBC Act section</b>	<b>Considerations</b>	<b>Conclusion</b>
	<ul style="list-style-type: none"> <li>mitigation measures to be implemented which reflect improved valuation, pricing and incentive mechanisms are promoted by placing a financial cost on the proponent to mitigate the environmental impacts of the project.</li> </ul>	
136(2)(e)	Other information on the relevant impacts of the action.	The Department considers that all information relevant to the impacts of the project has been taken into account in its assessment.
<b>Factors to have regard to</b>		
176(5)	Bioregional plans	There is no approved bioregional plan related to the activity
<b>Considerations on deciding on conditions</b>		
134(4)	<p>Must consider:</p> <ul style="list-style-type: none"> <li>information provided by the person proposing to take the action or by the designated proponent of the action; and</li> <li>the desirability of ensuring as far as practicable that the condition is a cost effective means for the Commonwealth and the person taking the action to achieve the object of the condition.</li> </ul>	<p>All project related documentation is available from the Department's website <a href="http://www.majorprojects.planning.nsw.gov.au">www.majorprojects.planning.nsw.gov.au</a></p> <p>The Department considers that the conditions at Appendix G are a cost effective means of achieving their purpose. The conditions are based on the material provided by Epuron that was prepared in consultation with the Department, DoEE, OEH, EPA and other government agencies.</p>

#### **E. 6 Conclusions on Controlling Provisions**

For the reasons set out in Section 5.4 and this Appendix, the Department considers that the impacts of the action would be acceptable, subject to avoidance, mitigation measures described in Epuron's EA and RTS, and the recommended conditions of consent in Appendix G.

#### **E. 7 Other Protected Matters**

The Commonwealth DoEE determined that other matters under the EPBC Act are not controlling provisions with respect to the proposed action. These include listed World Heritage, National Heritage, migratory species, Ramsar wetlands, Commonwealth marine environment, Commonwealth land, Commonwealth action, nuclear action, Great Barrier Reef Marine Park, Commonwealth Heritage places overseas and a water resource, in relation to coal seam gas development and large coal mining development.