



Appendix

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Regulatory
Correspondence



**Major Projects Assessment
Mining & Industry**

Contact: Anna Bradley
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Our Ref: S04/01709

Mr Toshiro Shibahara
Boggabri Coal Pty Limited
GPO Box 1127
BRISBANE QLD 4001

CC: Mr Joe Rennick

Dear Mr Shibahara,

**Boggabri Coal Project (MP 09_0182)
Director-General's Requirements**

The Department has received your application for the Boggabri Coal Project.

I have attached a copy of the Director-General's requirements for the project. These requirements have been prepared in consultation with the relevant agencies, based on the information you have provided to date. I have also attached a copy of the agencies' comments for your information.

Please note that the Director-General may alter these requirements at any time.

The Department expects that the project will require separate approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and that the EPBC approval process will be integrated with the NSW approval process. The Department is aware that the project is not yet subject to a declaration as a controlled action under the EPBC Act. Nonetheless, the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA) has provided some preliminary advice on the project which has been attached to these requirements. However, if the project is subsequently declared to be a controlled action, I would appreciate it if you would advise the Department accordingly as supplementary requirements may need to be issued for the project.

I would appreciate it if you would contact the Department at least two weeks before you propose to submit your EA for the project. This will enable the Department to determine the:

- applicable fee (see Division 1A, Part 15 of the Environmental Planning and Assessment Regulation 2000); and
- number of copies (hard-copy and CD-ROM) of the EA that will be required for exhibition purposes.

Once it receives the EA, the Department will review it in consultation with the relevant agencies to determine if it adequately addresses the Director-General's requirements, and may require you to revise it prior to public exhibition.

The Department is required to make all the relevant information associated with the project publicly available on its website. Consequently, I would appreciate it if you would ensure that all the documents you subsequently submit to the Department are in a suitable format for the web, and arrange for an electronic version of the EA to be hosted on a suitable website.

If you have any enquiries about these requirements, please contact Anna Bradley at the details listed above.

Yours sincerely

 17/12/09

David Kitto
Director
Mining and Industry
As delegate for the Director-General

Director-General's Requirements

Section 75F of the *Environmental Planning and Assessment Act 1979*

Application Number	09_0182
Project	<p>The Boggabri Coal Project, which includes:</p> <ul style="list-style-type: none"> • producing up to 7 million tonnes per annum (Mtpa) of coal for 21 years, using open cut methods; • upgrading, augmenting and using existing facilities and infrastructure; • constructing and operating additional facilities and infrastructure such as a Coal Handling and Preparation Plant and a rail spur, loop and rail bridge over the Kamilaroi Highway; • closing of a section of Leard Forest Road to allow access to additional coal reserves; • employment of up to 500 operational employees; • continued 24 hour operations; and • progressive rehabilitation of all disturbed areas.
Location	386 Leard Forest Road, Boggabri (about 30 kilometres north of Gunnedah)
Proponent	Boggabri Coal Pty Limited
Date of Issue	17 December 2009
General Requirements	<p>The Environmental Assessment of the project must include:</p> <ul style="list-style-type: none"> • an executive summary; • a detailed description of: <ul style="list-style-type: none"> – historical mining operations; – existing and approved mining operations/facilities, including any statutory approvals that apply to these operations/facilities; and – the existing environmental management and monitoring regime; • a detailed description of the project, including the: <ul style="list-style-type: none"> – need for the project; – alternatives considered including justification for the proposed mine plan; – likely staging of the project; – likely interactions between the project and existing and proposed mining operations; and – plans of any proposed building works; • a risk assessment of the potential environmental impacts of the project, identifying the key issues for further assessment; • a detailed assessment of the key issues specified below, and any other significant issues identified in the risk assessment (see above), which includes: <ul style="list-style-type: none"> – a description of the existing environment, using sufficient baseline data; – an assessment of the potential impacts of the project, including any cumulative impacts, taking into consideration any relevant guidelines, policies, plans and statutory provisions (see below); and – a description of the measures that would be implemented to avoid, minimise and if necessary, offset the potential impacts of the project, including detailed contingency plans for managing any significant risks to the environment; • a statement of commitments, outlining all the proposed environmental management and monitoring measures; • a conclusion justifying the project on economic, social and environmental

	<p>grounds, taking into consideration whether the project is consistent with the objects of the <i>Environmental Planning & Assessment Act 1979</i>; and</p> <ul style="list-style-type: none"> • a signed statement from the author of the Environmental Assessment, certifying that the information contained within the document is neither false nor misleading.
<p>Key Issues</p>	<ul style="list-style-type: none"> • Biodiversity – including: <ul style="list-style-type: none"> – measures taken to avoid impacts on biodiversity; – accurate estimates of the proposed vegetation clearing; – a detailed assessment of the potential impacts of the project on any: <ul style="list-style-type: none"> ○ terrestrial or aquatic threatened species, populations, ecological communities or their habitats, including; <ul style="list-style-type: none"> – <i>White Box - Yellow Box - Blakely's Red Gum Grassy Woodlands and Derived Native Grassland</i>; and – <i>Weeping Myall Woodland</i>; ○ regionally significant remnant vegetation, or vegetation corridors; and – an offset strategy to ensure the project maintains or improves the biodiversity values of the region in the medium to long term (in accordance with NSW and Commonwealth policies); • Soil and Water – including: <ul style="list-style-type: none"> – detailed modelling of the potential surface and groundwater impacts of the project; – a detailed site water balance, including a description of the measures to be implemented to minimise water use on site; – a detailed assessment of the potential impacts of the project on: <ul style="list-style-type: none"> ○ the quality and quantity of both surface and ground water resources; ○ water users, both in the vicinity of and downstream of the project; ○ the riparian and ecological values of the watercourses both on site and downstream of the project; and ○ environmental flows; and – a detailed description of the proposed water management system for the project and water monitoring program. • Air Quality – including a quantitative assessment of the potential air quality impacts of the project; • Noise & Blasting – including a quantitative assessment of the potential: <ul style="list-style-type: none"> – construction, operational and transport impacts (noise modelling should be based on applicable meteorological and stability category temperature inversion conditions to be developed in consultation with DECCW); and – blasting impacts of the project on people, livestock and property; • Traffic & Transport – including: <ul style="list-style-type: none"> – accurate predictions of the road and rail traffic of the project; – a detailed assessment of the potential impacts of this traffic on the capacity, efficiency, and safety of the road and rail networks; – a detailed description of the strategy for the proposed closure of Leard Forest Road; and – a detailed assessment of the potential impacts on the road/rail crossings at Gunnedah and Curlewis (with suitable consultation to be undertaken with Whitehaven Coal Limited); • Heritage – both Aboriginal and non-Aboriginal; • Greenhouse Gases – including: <ul style="list-style-type: none"> – a qualitative assessment of the potential scope 1, 2 and 3 greenhouse gas emissions of the project and identification of which emissions would be covered by the Commonwealth Government's proposed Carbon Pollution Reduction Scheme; – a qualitative assessment of the potential impacts of these emissions on the environment; and

	<p>project and ensure it is energy efficient;</p> <ul style="list-style-type: none"> • Visual; • Waste - including: <ul style="list-style-type: none"> - accurate estimates of the quantity and nature of the potential waste streams of the project, including tailings and coarse reject; and - a detailed description of the measures that would be implemented to minimise the production of waste on site, and ensure that any waste produced is appropriately handled and disposed of; • Hazards - including bushfires; • Rehabilitation - a detailed description of the proposed rehabilitation strategy for the project area having regard to the key principles in the strategic framework for mine closure (see relevant guidelines below), including: <ul style="list-style-type: none"> - rehabilitation objectives, methodology and proposed completion criteria; - nominated final land use, having regard to any relevant strategic land use planning or resource management plans or policies; and - the potential for integrating this strategy with any other offset strategies in the region; • Social & Economic - including: <ul style="list-style-type: none"> - an assessment of the potential impacts of the project on the local and regional community, paying particular attention to the demand it may generate for the provision of additional infrastructure and services; and - a detailed assessment of the costs and benefits of the project as a whole, and whether it would result in a net benefit for the NSW community.
References	<p>The environmental assessment of the key issues listed above must take into account relevant guidelines, policies, and plans. While not exhaustive, the following attachment contains a list of some of the guidelines, policies, and plans that may be relevant to the environmental assessment of this project.</p>
Consultation	<p>During the preparation of the Environmental Assessment, you should consult with the relevant local, State or Commonwealth Government authorities, service providers, community groups and affected landowners.</p> <p>In particular you must consult with:</p> <ul style="list-style-type: none"> • The Commonwealth Department of Environment, Water, Heritage and the Arts; • Department of Environment, Climate Change and Water, including the NSW Office of Water; • Industry and Investment NSW; • Department of Transport and Infrastructure; • Narrabri Shire Council; • Gunnedah Shire Council; and • Namoi Catchment Management Authority. <p>The consultation process and the issues raised must be described in the Environmental Assessment.</p>
Deemed Refusal Period	90 days

Policies, Guidelines & Plans

Biodiversity		
	Draft Guidelines for Threatened Species Assessment under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) (DEC)	
	NSW State Groundwater Dependent Ecosystem Policy (DLWC)	
	Policy & Guidelines - Aquatic Habitat Management and Fish Conservation (NSW Fisheries)	
	Policy & Guidelines - Fish Friendly Waterway Crossings (NSW Fisheries)	
	State Environmental Planning Policy No. 44 – Koala Habitat Protection	
Soil & Water		
<i>Soil</i>	Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites (ANZECC)	
	Rural Land Capability Mapping (DLWC)	
	Agricultural Land Classification (DPI)	
<i>Surface Water</i>	National Water Quality Management Strategy: Australian Guidelines for Fresh and Marine Water Quality (ANZECC/ARMCANZ)	
	National Water Quality Management Strategy: Australian Guidelines for Water Quality Monitoring and Reporting (ANZECC/ARMCANZ)	
	National Water Quality Management Strategy: Guidelines for Sewerage Systems – Effluent Management (ARMCANZ/ANZECC)	
	National Water Quality Management Strategy: Guidelines for Sewerage Systems – Use of Reclaimed Water (ARMCANZ/ANZECC)	
	Using the ANZECC Guideline and Water Quality Objectives in NSW (DEC)	
	State Water Management Outcomes Plan	
	Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003 (DECCW)	
	NSW Government Water Quality and River Flow Objectives (DECC)	
	Approved Methods for the Sampling and Analysis of Water Pollutants in NSW (DEC)	
	Managing Urban Stormwater: Soils & Construction (Landcom)	
	Managing Urban Stormwater: Treatment Techniques (DECC)	
	Managing Urban Stormwater: Source Control (DECC)	
	Floodplain Management Manual (DNR)	
	Floodplain Risk Management Guideline (DECC)	
	A Rehabilitation Manual for Australian Streams (LWRRDC and CRCCH)	
	Technical Guidelines: Bunding & Spill Management (DECC)	
	Environmental Guidelines: Use of Effluent by Irrigation (DECC)	
	<i>Groundwater</i>	National Water Quality Management Strategy Guidelines for Groundwater Protection in Australia (ARMCANZ/ANZECC)
		NSW State Groundwater Policy Framework Document (DLWC, 1997)
NSW State Groundwater Quality Protection Policy (DLWC, 1998)		
NSW State Groundwater Quantity Management Policy (DLWC, 1998)		
Murray-Darling Basin Groundwater Quality. Sampling Guidelines. Technical Report No 3 (MDBC)		
Murray-Darling Basin Commission. Groundwater Flow Modelling Guideline (Aquaterra Consulting Pty Ltd)		
Guidelines for the Assessment & Management of Groundwater Contamination (DECC, 2007)		
Water Sharing Plan for the Upper and Lower Namoi Groundwater Sources (2003)		

Air Quality	
	Protection of the Environment Operations (Clean Air) Regulation 2002
	Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (DEC)
	Approved Methods for the Sampling and Analysis of Air Pollutants in NSW (DEC)
Noise & Blasting	
	NSW Industrial Noise Policy (DECC)
	Environmental Noise Management – Assessing Vibration: a technical guide (DEC)
	Environmental Criteria for Road Traffic Noise (NSW EPA)
	Interim Guideline for the Assessment of Noise From Rail Infrastructure Projects (DECC)
	Technical basis for guidelines to minimise annoyance due to blasting overpressure and ground vibration (ANZEC)
	Interim Construction Noise Guideline (DECC)
	DIN 4150 Part 3 - Structural Vibration: effects of vibration on structures (ISO, 1999)
Traffic & Transport	
	Guide to Traffic Generating Development (RTA)
	Road Design Guide (RTA)
Heritage	
<i>Aboriginal</i>	Draft Guidelines for Aboriginal Cultural Heritage Assessment and Community Consultation (DoP and DEC)
<i>Non-Aboriginal</i>	NSW Heritage Manual (NSW Heritage Office) The Burra Charter (The Australia ICOMOS charter for places of cultural significance)
Greenhouse Gases	
	National Greenhouse Accounts Factors (Australian Department of Climate Change (DCC))
	Guidelines for Energy Savings Action Plans (DEUS)
Waste	
	Waste Classification Guidelines (DECC)
Hazards	
	State Environmental Planning Policy No. 33 – Hazardous and Offensive Development
	Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines (DUAP)
	Hazardous Industry Planning Advisory Paper No. 6 – Guidelines for Hazard Analysis
Rehabilitation	
	Mine Rehabilitation – Leading Practice Sustainable Development Program for the Mining Industry (Commonwealth of Australia)
	Mine Closure and Completion – Leading Practice Sustainable Development Program for the Mining Industry (Commonwealth of Australia)
	Strategic Framework for Mine Closure (ANZMEC-MCA)
Social & Economic	
	Draft Economic Evaluation in Environmental Impact Assessment (DOP)
	Techniques for Effective Social Impact Assessment: A Practical Guide (Office of Social Policy, NSW Government Social Policy Directorate)



Australian Government

Department of the Environment, Water, Heritage and the Arts

Mr Toshiro Shibahara
Director
Boggabri Coal Pty Ltd
GPO Box 1127
BRISBANE QLD 4001

Dear Mr Shibahara

Boggabri Coal Mine – EPBC Referral

I refer to your recent referral submitted under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for the Boggabri Coal mine project, located approximately 15 km north east of the township of Boggabri, in the Narrabri local government area, NSW, and the discussions you have had with officers of the Mining Assessment Section of this Department.

I understand that preliminary verbal advice has been given to you by the Mining Assessment Section concerning the issues relating to processing a two part referral as currently submitted, and your request for two separate decisions by the Minister. As you have been advised, it is not possible for the Minister to make two separate decisions on the two components submitted within a single referral.

We have now carefully considered the description of the proposal referred and wish to provide the following advice in relation to accepting the referral pursuant to section 68 of the EPBC Act.

The description of the proposal that has currently been referred includes the following two components:

- Actions to be undertaken within the existing Boggabri coal mine, and
- Actions to be undertaken within the proposed extension to the existing Boggabri coal mine – 'Boggabri extension'.

We note that the referred action for the existing Boggabri coal mine includes mining activities which are currently underway.

As you are aware, the existing Boggabri coal mining operations had been considered under the previous national environmental legislation, the *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act), and the administrative procedures made under that Act. The *Environmental Reform (Consequential Provisions) Act 1999* (ERCP Act) provides an exemption from Part 3 of the EPBC Act for actions that were previously assessed under the EPIP Act. It is therefore the view of this Department that referral and approval of the existing Boggabri coal project is not required under the EPBC Act.

This view is consistent with the previous advice provided by this Department in relation to this matter to the then Deputy Prime Minister, and Minister for Transport and Regional Services, in March 2005. We understand that a copy of this letter has been provided to you.

The proposed Boggabri extension was not subject to assessment under the EPIP Act and therefore is not exempt from the requirements of the EPBC Act. Based on the information provided in the referral, the potential for significant impacts on the matters of NES as a result of the proposed Boggabri extension appear likely. A referral for the Boggabri extension will therefore be required.



In light of the information provided above, the Department recommends that a referral be made under the EPBC Act for the proposed Boggabri extension only. You may wish to provide information in relation to the existing Boggabri project under section 2.6 of the referral form to indicate the status of the existing Boggabri coal mine.

While this is the Department's view, it should be noted however that there are grounds in the EPBC Act for third parties to seek an injunction in relation to any breach of the EPBC Act.

Please do not hesitate to contact Mr Steve Mercer (02 6274 1861) or Ms Manel Samarakoon (02 6274 1080) if you have any queries or wish to discuss this matter further.

Yours sincerely



Rose Webb
Assistant Secretary
Compliance and Enforcement Branch

10 December 2009

Cc: James Bailey, Hansen Bailey Environmental Consultants
Brian Cox, Idemitsu Australia Resources
David White, Sparkes Helmore
David Kitto – NSW Department of Planning



Australian Government

Department of the Environment, Water, Heritage and the Arts

Toshiro Shibahara
Director
Boggabri Coal Pty Ltd
GPO Box 1127
BRISBANE QLD 4001

Date: 5 February 2010
EPBC Ref: 2009/5256
EPBC contact: Lucy Butterfield
02 6274 2063
Lucy.Butterfield@environment.gov.au

Dear Mr Shibahara

Decision on referral Extension to Existing Operations at Boggabri Coal Mine, NSW

This proposed action, to construct and operate an extension to the Boggabri open cut coal mine at Boggabri in New South Wales, has now been considered under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

We have decided that the proposed action is a controlled action and, as such, requires assessment and approval by the Minister for the Environment, Heritage and the Arts before it can proceed.

It appears that the proposed action is likely to have a significant impact on the following matters protected by the EPBC Act:

- Listed threatened species and ecological communities (sections 18 & 18A)
- Listed migratory species (sections 20 & 20A)

For example, based on the information available in the referral, the proposed action is likely to have a significant impact because:

- It involves the removal of areas of the listed critically endangered white box- yellow box- Blakely's red gum grassy woodland and derived native grassland ecological community; and
- It involves removal of potential habitat for the listed endangered and migratory Regent Honeyeater (*Anthochaera phrygia*) and the listed vulnerable *Pultenaea setulosa* and Greater Long-eared Bat (*Nyctophilus timoriensis*).

Please note that this decision only relates to the potential for significant impact on the specific matters protected under Chapter 4 of the EPBC Act.

We have also decided that the project will need to be assessed through accredited assessment. The accredited assessment approach will be that under Part 3A of the *Environmental Planning and Assessment Act 1974* (NSW). This means that this single assessment may be used for the purpose of both the State and Commonwealth approval processes.

A copy of the document recording these decisions is enclosed.

I have also written to the following parties to advise them of this decision:

Referring party	Alex Cockerill, Parsons Brinckerhoff
State authority	John Ross, NSW Department of Planning

If you have any questions about the referral process or this decision, please contact the EPBC project manager and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely



Michelle Wicks
A/g Assistant Secretary
Environment Assessment Branch



**Notification of
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled
action
DECISION ON ASSESSMENT APPROACH**

Boggabri Coal Mine Extension (EPBC 2009/5256)

This decision is made under section 75 and section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

proposed action	To construct and operate an extension to the Boggabri open cut coal mine at Boggabri in New South Wales, including associated infrastructure, and as described in the referral received under the EPBC Act on 22 December 2009.
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decision on proposed action	The proposed action is a controlled action. The project will require assessment and approval under the EPBC Act before it can proceed.
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relevant controlling provisions	<ul style="list-style-type: none">• Listed threatened species and communities (sections 18 & 18A)• Listed migratory species (sections 20 & 20A)
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designated proponent	Boggabri Coal Pty Ltd 77 122 -87 398
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assessment approach	The project will be assessed by accredited assessment under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
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Decision-maker	
Name and position	Michelle Wicks A/g Assistant Secretary Environment Assessment Branch

Signature	
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date of decision	5/2/2010
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