

EPBC 2010/5566

To: Declan O'Connor-Cox, Acting Assistant Secretary APAB

From: s22 [redacted], Post Approvals Section

s22 [redacted]

Date: 11-2-19

VARIATION OF CONDITIONS FOR THREE WHITEHAVEN COAL PROJECTS TO EXTEND THE DEADLINE FOR ESTABLISHING LEGALLY BINDING COVENANTS FOR OFFSETS

Timing: As soon as possible.

The variation request was submitted on 10 December 2018. The projects have been non-compliant since 31 December 2018.

Recommendations:

s22 [redacted]

s22 [redacted]

- 3. That you agree to and sign a variation decision instrument at **Attachment C** for condition 13 of EPBC Approval 2010/5566 - Maules Creek Coal Mine, to provide an extension to register a legally binding covenant for offset areas from 31 December 2018 to 31 March 2020.

Agreed / Please discuss

- 4. That you sign the letter at **Attachment D** advising Whitehaven Coal of your decision.

s22 [redacted]

Signed / Not signed

Declan O'Connor-Cox, Acting Assistant Secretary
Assessments (WA, SA, NT) and Post Approvals Branch

Date:

22/2/19

Comments:

Background

- 1. The Minister has delegated you as decision maker for these matters pursuant to section 515 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).
- 2. The approval holder wrote to the Department on 10 December 2018, seeking to vary conditions on three EPBC approvals to provide extensions to register a legally binding covenant for offset areas from 31 December 2018 to 31 December 2019 (**Attachment E**). The approval holder has now become non-compliant in regard to legally securing offsets areas, as these were all due by 31 December 2018.

3. s22 [redacted] EPBC 2010-5566 – Maules Creek Coal Mine.
s22 [redacted]

s22 [redacted]

[redacted]

[redacted]

s22 [redacted]

[redacted]

[redacted] d b [redacted]

EPBC 2010/5566 – Maules Creek Coal Mine

8. On 11 February 2013, the Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP, approved with conditions the action to construct and operate an open cut coal mine 18 km north-east of the township of Boggabri in New South Wales, including associated infrastructure. The approval was corrected once and varied on three occasions (**Attachment H**).
9. The most recent variation, approved on 7 February 2018, varied condition 13 to allow for an extension from 11 February 2018 to 31 December 2018 of the timeframe of the timeframe for the approval holder to establish a legal binding covenant over offset areas required by the approval.
10. The Maules Creek variation attracted some media attention in regard to the extension of time to legally secure the required offsets, and several non-Government Organisations requested a Statement of Reasons for the decision (**Attachment I**). Maules Creek has long been subject to opposition for a range of reasons.
11. EDO NSW wrote to the Minister on 14 December 2018, on behalf of the South East Forest Rescue Inc (**Attachment J**), raising a number of concerns and asserting that the approval holder for Maules Creek Coal Mine (Aston Coal 2 Pty Ltd, a subsidiary of Whitehaven Coal) will be non-compliant after 31 December 2018 in regard to establishing a legally binding covenant for its offset areas, and recommending that the approval should not be varied and that the matter be investigated as a non-compliance issue.
12. The non-compliance allegation has been handled by the Department's Office of Compliance. The Department understands that Whitehaven has been working with the NSW Government to secure the offsets by 31 December 2018, but has been unable to achieve this due to matters beyond their control. The Department also understands that the offsets are being managed under Whitehaven's control in accordance with the Biodiversity Management Plan approved by the NSW Government (**Attachment L**). Given these circumstances, the Department's Office of Compliance has advised that they do not intend to pursue a compliance case against Whitehaven on this matter.

Previous variations to extend the timeframe to legally secure offsets

13. In late 2017 and early 2018, variations to extend the time period for legally securing the offsets to 31 December 2018, were approved. This was based on Whitehaven's advice that, while they had been negotiating extensively with the New South Wales Department of Planning and Environment (DPE) including its Office of Environment and Heritage (OEH) and National Parks and Wildlife Service (NPWS), regarding the securing of the offset areas, compliance with the original timeframes could not be guaranteed given Whitehaven's reliance on those

state authorities to complete the process. At that stage it was expected that arrangements would be in place by 31 December 2018.

14. s47B(a)

Current Variation Request

15. As outlined above, on 10 December 2018, Whitehaven wrote to the Department seeking an extension of the timeframe by a further 12 months to 31 December 2019. This includes a copy of correspondence from the NSW Government Biodiversity Conservation Trust, dated 9 November 2018 (**Attachment E**).
16. NSW agencies have indicated that they have committed to developing conservation agreements for Maules Creek Mine, s22, but due to current constraints and allowing for variables and dependencies, they anticipate that they cannot be completed before the end of 2019.
17. After further discussion with the approval holder, the approval holder agreed to draft variation notices which extend the timeframes to 31 March 2020 (**Attachment K**).

Department evaluation of request

18. In all three projects, approval conditions required the approval holder to legally secure, or legally covenant, offset areas. Variations have previously been approved in all three projects.
 - a. s22
 - b. s22
 - c. The Maules Creek Project approval originally required legal covenanting of the offset areas within five years of approval, or by 11 February 2018 (condition 13). Similar delays in finalising NSW Government arrangements led to the February 2018 decision to vary the timeframe.
19. The correspondence from the NSW Government Biodiversity Conservation Trust, dated 9 November 2018 (**Attachment E**), advised Whitehaven that the Trust does not believe that the required conservation agreements will be finalised until the end of 2019. They also indicate that meeting these timelines rely on a number of parties being able to complete their part of the arrangements, and their own multiple programs and competing priorities. Whitehaven Coal are therefore currently non-compliant with the approval conditions for the three projects, and will remain so unless the proposed variations are approved.
20. After requests from the Department dated 20 December 2018 and 23 January 2019, Whitehaven have provided further detailed information (**Attachment L**) about their ownership of the required offset areas and the management arrangements under relevant approved management plans. They have also provide a detailed account and evidence of their engagement with NSW Government bodies in relation to establishing legal covenants on the offsets sites since mid-2017. Whitehaven also have confirmed with the NSW agency that a completion date of 31 March 2020 would provide sufficient time for the legal covenanting processes to be finalised.

s47E(d)

22s22

23. The current variation request does not seek any change to the direct offset requirements in the approvals, or their management arrangements.

24. In the interests of establishing an achievable timeframe for finalisation, the Department believes that a new deadline of 31 March 2020 should allow for the legal covenanting to be finalised and allows for further unanticipated delays.
25. If you agree to the proposed variations, the Department recommends that a letter of approval should also advise that any future requests need to be received in sufficient time to allow for proper consideration and that any future request will require a very strong case, including written evidence that Whitehaven have done all they can to meet the new deadline.
26. Given the advice by the NSW Government authorities (**Attachment E**) that the legal covenanting process will take at least 12 more months, approving these variations and allowing Whitehaven to remain compliant will yield a no worse environmental outcome.

Sensitivities

27. The most recent Maules Creek variation, approved in February 2018, attracted some media attention and resulted in several requests for a statement of reasons for the decision. The proposed variation is likely to lead to similar requests and media attention.
28. As noted in the background, the South East Forest Alliance and NSW EDO have already pre-empted this variation in respect of Maules Creek with a letter suggesting that a variation should not be approved and that the approval be investigated for non-compliance. It can be expected that a Statement of Reasons for the variation will be required, if it is approved.

Recommendations

29. Based on the Department's assessment, it is recommended that, in accordance with s143 of the EPBC Act, you approve:
 - s22 [REDACTED];
 - s22 [REDACTED];
 - a variation of condition 13 of EPBC Approval 2010/5566-Maules Creek Coal Mine, to provide an extension to register a legally binding covenant for offset areas from 31 December 2018 to 31 March 2020 (**Attachment C**); and
 - you **sign** the letter at **Attachment D**, giving notice of your decision.

ATTACHMENTS

- A: s22 [REDACTED]
- B: s22 [REDACTED]
- C: Notice of variation for 2010/5566 (**for signature**)
- D: Letter to the person taking the action advising of your decision (**for signature**)
- E: Correspondence of 10 December 2018 from Whitehaven Coal, including a copy of a letter from the NSW Biodiversity Conservation Trust (**for information**)
- F: s22 [REDACTED]
- G: s22 [REDACTED]
- H: Conditions of EPBC 2010/5566 approval and approved variations (**for information**)
- I: Statement of Reasons for Variation decision of 7 February 2018 for EPBC 2010/5566 (**for information**)
- J: Copy of correspondence dated 14 December 2018 from the NSW EDO on behalf of the South East Forest Alliance (**for information**)

- K:** Correspondence of 11 February 2019 from Whitehaven Coal agreeing to the draft notices of variation (**for information**)
- L:** Correspondence from Whitehaven dated 21 December 2018 and 25 January 2019 regarding management of offset areas, including Department requests for information (**for information**)

s22



**VARIATION OF CONDITIONS ATTACHED TO APPROVAL
MAULES CREEK (EPBC 2010/5566)**

This decision to vary conditions of approval is made under section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Approved action

Person to whom the approval is granted	Aston Coal 2 Pty Limited ACN: 139 472 567
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Approved action	To construct and operate an open cut coal mine 18 km north-east of the township of Boggabri in New South Wales, including associated infrastructure [See EPBC Act referral 2010/5566].
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Variation

Variation of conditions attached to approval	The variation is delete condition 13 attached to the approval and substitute with the conditions specified in table below
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Date of effect	This variation has effect on the date the instrument is signed
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Person authorised to make decision

Name and position	Declan O'Connor-Cox Acting Assistant Secretary Assessment (WA, SA, NT) and Post Approvals Branch
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Signature

Date of decision

22 February 2019

Date of decision	Conditions attached to approval
Original dated 11/2/2013	<p>Disturbance areas</p> <p>1. The person taking the action must not clear more than 544 hectares (ha) of the EPBC listed White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland critically endangered ecological community within the Maules Creek project area, as identified in <u>Attachment A</u> of these conditions.</p>
Original dated 11/2/2013	<p>2. The person taking the action must not clear more than 1665 ha of habitat for the regent honeyeater (<i>Anthochaera phrygia</i>: formerly <i>Xanthomyza phrygia</i>), swift parrot (<i>Lathamus discolor</i>) or greater long-eared bat (<i>Nyctophilus corbeni</i>), within the Maules Creek project area. The 1665 ha of habitat specified includes the 544 ha of the critically endangered ecological community at condition 1.</p>
Original dated 11/2/2013	<p>3. The person taking the action must submit a Biodiversity Corridor plan for the approval of the Minister within three months of the date of this approval. The plan must address the following matters:</p> <ul style="list-style-type: none"> a) protection of native vegetation of a total width of 500 metres (m) where the Maules Creek coal lease boundary is adjacent to the Boggabri coal mine lease boundary; b) maintenance in perpetuity of this area as a biodiversity corridor, and c) evidence that the biodiversity corridor will be protected in perpetuity through a legal mechanism that would provide the equivalent protection of a conservation covenant. <p>The approved Biodiversity Corridor must be implemented.</p>
Original dated 11/2/2013	<p>4. The person taking the action is required to submit a Conservation and Biodiversity Bond under condition 55 of the NSW state government project approval dated 23 October 2012 (Application 10_0138). It is noted that this bond may be combined with the rehabilitation security deposit as required by the NSW Trade & Investment - Division of Resources and Energy under the NSW <i>Mining Act 1992</i>. The person taking the action must submit details of this bond and the rehabilitation security deposit, to the Minister. If the Minister is not satisfied that the bond and the rehabilitation security deposit lodged by the person taking the action is adequate to provide for the implementation of the requirements referred to under conditions 3, 17, 25-28 the Minister may require the person taking the action establish an additional bond or equivalent financial instrument in trust, under conditions approved in writing by the Minister.</p>
Original dated 11/2/2013	<p>5. The person taking the action must provide a map to the Minister showing the area of the biodiversity corridor within the Maules Creek coal mine lease boundary within one month of this approval decision and detail the amount (in hectares) of White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland critically endangered ecological community and habitat or potential habitat for the regent honeyeater, swift parrot and greater long-eared bat within this area.</p>
Original dated 11/2/2013	<p>6. The person taking the action must submit to the Minister for approval, within three months of the commencement of the action, an approach that:</p> <ul style="list-style-type: none"> a) limits the maximum disturbance (in hectares) specified for each of the years 5, 10, 15 and 21 from the date of this approval of the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and the habitat or potential habitat for the regent honeyeater, swift parrot and greater long-eared bat;

Date of decision	Conditions attached to approval
	<p>b) incorporates an analysis, undertaken by independent ecological experts approved by the Department, that demonstrates the maximum disturbance limits which will minimise any impacts on relevant matters of national environmental significance;</p> <p>c) demonstrates collaboration with the person taking the action to develop and operate the Boggabri Coal Project (EPBC 2009/5256), in order to minimise progressive project area disturbance limits across both sites. The progressive disturbance limits are to be reflected in the development of the Leard Forest Mining Precinct Biodiversity Strategy.</p>
Original dated 11/2/2013	7. The person taking the action must not clear more than the maximum project area disturbance limits specified for each of the years 5, 10, 15 and 21 as described in condition 6, unless otherwise approved by the Minister .
Original dated 11/2/2013	8. The person taking the action must publish the analysis under condition 6 on their website.
Original dated 11/2/2013	<p>Direct Offsets</p> <p>9. The person taking the action must register a legally binding conservation covenant over offset areas of no less than:</p> <ul style="list-style-type: none"> a. 9,334 ha of an equivalent or better quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat; and b. 5,532 ha of an equivalent or better quality of the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community. <p>Note: the 5,532 ha of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community may be included within the 9,334 ha of offset area for the threatened species if it meets the listing criteria for the EPBC-listed critically endangered ecological community as defined in the EPBC listing advice for that community and the requirements of condition 9.</p>
Original dated 11/2/2013. Correction dated 15/2/2013	10. The person taking the action must verify through independent review the quantity and condition class of White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and the quantity and quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat within all proposed offset areas including those proposed in the Environmental Assessment , as defined at <u>Attachment B</u> of these conditions, and any additional offsets as required at condition 9. Details of all independently verified offset areas must be submitted to the Minister for approval by 30 December 2013. The findings of the independent review must be published on the proponent's website.
Original dated 11/2/2013	11. If the independent review finds that the offset areas do not meet the requirements of conditions 9, 12 a and 12 b, then additional areas must be included in the offset areas until all relevant criteria under these conditions are met.
Original dated 11/2/2013	12. The offset areas must be of an overall equivalent or better quality than the areas being cleared. This means: <ul style="list-style-type: none"> a. for White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community, offset areas must meet the definition of the ecological community described in the listing advice, and must be of an overall equivalent or better condition class

Date of decision	Conditions attached to approval
	<p>than the areas being cleared, based on the proportion of each condition class represented and other relevant ecological attributes;</p> <p>b. for the threatened species, the quality of the habitat for the species, taking account of its ecological requirements, must be equivalent to or better than the areas being cleared.</p>
As varied on the date of this notice	<p>13. The mechanism/s for registering a legally binding covenant must provide protection for the offset areas in perpetuity and be registered by 31 March 2020.</p> <p>Evidence of compliance with condition 13 must be provided to the Department within 30 day of registering a legally binding covenant.</p>
Original dated 11/2/2013	<p>14. If the person taking the action proposes to undertake any action within areas secured under condition 9, other than those management activities related to managing the offset areas or as set out in the conditions approval, then approval to undertake that action must be obtained in writing from the Minister. In seeking the Minister's approval, the person undertaking the action must provide a detailed assessment of the area where the action is proposed to take place and an assessment of all associated adverse impacts on matters of national environmental significance. If the Minister agrees to the action within the offset areas, the area identified for the action must be excised from the offset area and alternative offsets secured by the person taking the action at a ratio of at least 20:1 in relation to the impact on matters of national environmental significance.</p>
Original dated 11/2/2013	<p>Indirect Offsets</p> <p>15. To compensate for the loss of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and habitat for the regent honeyeater, swift parrot and greater long-eared bat the person taking the action must submit to the Minister for approval, within 2 years of the date of this approval, a project plan to invest \$1 million for research that will identify effective methodologies for achieving rehabilitation and restoration of functioning White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community on mining sites. The research must be undertaken by a third party and be available to industry and governments generally. The approved project plan must be implemented.</p>
As varied on 16/3/2017	<p>16. To compensate for the loss of the habitat for the regent honeyeater, swift parrot and greater long-eared bat the person taking the action must provide \$1.5 million over the life of the approval (comprising \$500,000 for each of the regent honeyeater, swift parrot and greater long-eared bat), to deliver activities that implement priority recovery actions for the regent honeyeater, swift parrot and greater long-eared bat. A detailed project plan governing the timing of the \$1.5 million funding for the activities and outcomes must be developed. The project plan must be submitted to the Minister for approval by 30 April 2017, or otherwise agreed in writing by the Minister. The project plan should demonstrate consultation with relevant species experts, and be consistent with approved National Recovery Plans where they are available, and as agreed with the relevant Recovery Planning Teams. The approved project plan must be implemented.</p>
Original dated 11/2/2013	<p>Offset management plan</p> <p>17. The person taking the action must submit to the Minister for approval an <i>Offset management plan</i> for all of the offset areas, specified in condition 9,</p>

Date of decision	Conditions attached to approval
	<p>within 12 months of the date of this approval. The approved Offset management plan must be implemented.</p> <p>Note: for consistency, the proponent may develop a Biodiversity Management plan that includes the requirements set for managing offsets and set out in these conditions, to align with the requirements of the NSW state government Project Approval dated 23 October 2012 (application number 10_0138) and this approval.</p>
Original dated 11/2/2013	<p>18. The <i>Offset management plan</i> must include, but not be limited to, the following:</p> <ul style="list-style-type: none"> a) a text description and map which clearly defines the location and boundaries of the offset areas. This must be accompanied by the offset attributes and shapefiles; b) a description of the methodology and results of surveys measuring the baseline ecological conditions in the offset areas. This must be consistent with the State and Transition Model and include but not be limited to: <ul style="list-style-type: none"> i. the extent and condition of all vegetation communities, including a description of the structure, floristics and tree age class representation of each community; ii. the extent and condition class of all areas of the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community; iii. surveys targeting the regent honeyeater, swift parrot and greater long-eared bat; iv. the extent and quality of all areas of habitat for the regent honeyeater, swift parrot and greater long-eared bat; v. the location of all survey sites (including co-ordinates); vi. photo reference points at survey sites. c) clearly defined ecological management objectives for the offset areas; d) detailed description of all ecological management activities proposed to be undertaken, including maps and/or diagrams showing areas to be managed and the timing of the proposed activities; e) details of ongoing ecological monitoring programs, performance criteria, targets and provisions for adaptive management, including but not limited to: <ul style="list-style-type: none"> i. a set of measurable ecological indicators for detecting changes to the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community, including those that may be ascribed to ongoing water stress; ii. a monitoring plan to assess the success of the management activities measured against the baseline condition. The monitoring must be statistically robust and able to quantify change in the condition of the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and habitat for the regent

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	<p>honeyeater, swift parrot and greater long-eared bat. This should include the use of control sites and periodic ecological surveys to be undertaken by a qualified ecologist;</p> <ul style="list-style-type: none"> iii. a list of performance criteria based on the ecological management objectives for the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community and habitat for the regent honeyeater, swift parrot and greater long-eared bat; iv. measures to exclude weeds from all offset areas for the period covered by this approval; v. a description of the potential risks to successful management against the performance criteria, and a description of the contingency measures that would be implemented to mitigate against these risks;
	<ul style="list-style-type: none"> vi. a process by which to report to the department the progress of management activities undertaken in the offset areas and the outcome of those activities, including identifying any need for improved management and activities to undertake such improvement. f) details of all parties responsible for management, monitoring and implementing the management activities, including their position or status as a separate contractor. g) details of the funding requirements for the ongoing management activities, including an estimate of the costs of the activities and details of the parties responsible for funding the activities.
Original dated 11/2/2013	19. Unless otherwise agreed to in writing by the department , the baseline surveys for threatened species must be conducted in accordance with the department's <i>Survey Guidelines for Australia's Threatened Birds</i> and the <i>Survey Guidelines for Australia's Threatened Bats</i> . Subsequent monitoring must be carried out annually at the same time of year as the baseline surveys, unless otherwise agreed to in writing by the department .
Original dated 11/2/2013	<p>Surface and groundwater management plans</p> <p>20. The person taking the action must provide to the Minister for approval, the <i>surface and groundwater management plans</i> as identified in condition 36 of the NSW state government Project Approval dated 23 October 2012 (application number 10_0138). The <i>surface and groundwater management plans</i> must be approved by the Minister prior to commencement of construction.</p>
Original dated 11/2/2013	21. The <i>surface and groundwater management plans</i> must be consistent with the National Water Quality Management Strategy .
Original dated 11/2/2013	22. The person taking the action must, prior to commencement of construction , in collaboration with the proponent to develop and operate the Boggabri Extension (EPBC 2009/5256) and any other approved mines within 20 kilometres (km) of the project area , provide written advice to the Minister demonstrating how the NSW government approved <i>surface and groundwater management plans</i> (condition 20), addresses the cumulative impact of groundwater drawdown as a result of mining and how this may impact on the consequent health of the remnant native vegetation in the

Date of decision	Conditions attached to approval
	<p>Leard State Forest, the Leard State Conservation Area and surrounding areas. In particular the advice must address the following matters:</p> <ul style="list-style-type: none"> a. maximum amount of allowable drawdown in the alluvial aquifer b. drawdown in hard rock c. trigger levels pertaining to drawdown in the alluvial aquifer when corrective actions will be required to be undertaken d. identify the depth of root zone of the native vegetation e. monitoring to assess the ongoing quality and quantity of both surface and groundwater to identify impacts on the native vegetation.
Original dated 11/2/2013	<p>23. The person taking the action must within 6 months of the date of this approval, or such other timeframe specified by the Minister, provide to the Minister a report on:</p> <ul style="list-style-type: none"> a. any updated modelling of surface and groundwater impacts that has been undertaken in preparing the <i>surface and groundwater management plans</i> b. how the <i>surface and groundwater management plans</i> addressed groundwater and surface water impacts on matters of national environmental significance.
Original dated 11/2/2013	<p>Leard Forest Mining Precinct Regional Biodiversity Strategy</p> <p>24. The person taking the action must implement the regional biodiversity strategy as required under condition 41 of the NSW state government project approval dated 23 October 2012 (application number 10_0138). The required scoping report for the development of the strategy must be submitted to the Minister for approval on or before 31 July 2013. The approved strategy must be implemented.</p>
Original dated 11/2/2013	<p>Mine site rehabilitation</p> <p>25. To mitigate the impacts to the White Box-Yellow Box –Blakely's Red Gum Grassy Woodland and Derived Native Grassland and the habitat of the regent honeyeater, swift parrot and greater long-eared bat, the person taking the action must, within 12 months of the commencement of construction, submit to the Minister for approval a <i>mine site rehabilitation plan</i> for the progressive rehabilitation and revegetation of no less than 1665 ha of native forest and woodland (less the portion included in the biodiversity corridor identified in condition 3) in the project area including 544 ha using species consistent with a White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland Ecological Community. This approved <i>mine site rehabilitation plan</i> must be implemented.</p>
Original dated 11/2/2013	<p>26. The person taking the action must:</p> <ul style="list-style-type: none"> a. rehabilitate the site to be consistent with the proposed rehabilitation strategy as provided in the Environmental Assessment and, as required under the NSW State Government approval dated 23 October 2012 (Application 10_0138); and b. not replace top soil and sub soil layers at a depth less than the minimum depths determined through pre-stripping soil surveys as described in condition 27(c).

Date of decision	Conditions attached to approval
	<p>Note: the NSW state government Project Approval dated 23 October 2012 (application number 10_0138) conditions require pre-stripping soil surveys and inventories to inform the availability, rehandling, stockpiling and management of soils, and maximising the salvaging of soil to be used, in the rehabilitation of the site.</p>
<p>Original dated 11/2/2013</p>	<p>27. The <i>mine site rehabilitation plan</i> must include, at a minimum, the following information:</p> <ol style="list-style-type: none"> a. targets and performance indicators to achieve effective restoration of potential habitat for the regent honeyeater, swift parrot and greater long-eared bat and White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community, including weed management; b. details of the vegetation communities to be rehabilitated and the timing of progressive rehabilitation (commencing as soon as practicable following disturbance); c. detailed soil depth surveys and analysis to inform the effective placement and restoration of soils underlying the proposed rehabilitation sites; including mapping of soils across the disturbance sites and soil sampling at no less than one sample point per 20 ha of each soil type identified. Sampling must identify; type, depth, water holding capacity, structure and physio-chemical properties of each of the soil and subsoil layers; d. processes and methodologies for the removal, storage and re-layering of the top soil and sub soil layers underlying the disturbed sites being prepared for rehabilitation. These processes and methodologies must ensure the replacement of top soil and sub soil layers: <ul style="list-style-type: none"> • meet the minimum depth requirements determined from sampling outcomes as identified in condition 27(c); and • replicate other existing soil parameters including, but not limited to, soil type, water holding capacity, structure and physio-chemical properties. e. a process to report annually to the department the rehabilitation management actions undertaken and the outcome of those actions, and the mechanisms to be used to identify the need for improved management; f. a description of the potential risks to successful management and rehabilitation on the project site, including weed invasion, and a description of the contingency measures that would be implemented to mitigate these risks; g. details of long-term management and protection of the mine site, including details of the commitment of funds to achieve this.
<p>Original dated 11/2/2013</p>	<p>28. The <i>mine site rehabilitation plan</i> must be subject to an independent review by a qualified ecologist prior to being submitted to the Minister for approval. The findings of the independent review must be published on the proponent's website.</p>

Date of decision	Conditions attached to approval
Original dated 11/2/2013	<p>Final Landform</p> <p>Note: for consistency, the person taking the action may develop a single mine rehabilitation plan to align with the requirements, including timing of reporting, of the NSW State Government approval dated 23 October 2012 (Application 10_0138) and this approval. The Offset Management Plan and the Rehabilitation management Plan need to be substantially integrated for achieving biodiversity objectives for the rehabilitated mine-site.</p> <p>29. The person taking the action must undertake rehabilitation to ensure the final landform provides the optimum opportunity for the successful restoration of native forest and woodland including the critically endangered White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.</p> <p>Note: for consistency, the proponent may develop a single mine rehabilitation plan to align with the requirements of the NSW Government and this approval. The Offset Management Plan and the Rehabilitation management Plan need to be substantially integrated for achieving biodiversity objectives for the rehabilitated mine-site.</p>
Original dated 11/2/2013	<p>30. The person taking the action must undertake rehabilitation to ensure the final void and landform minimises the extent of any resulting pit lake, avoids salt scalding and ensures that drained waters do not adversely affect the downstream environment and avoids any impacts on matters of national environmental significance.</p> <p>Note: the State approval conditions for project 10_0138 require the preparation and implementation of an updated Final Void and Mine Closure Plan that considers interactions with the adjoining mines, including interaction between final voids, opportunities for integrated mine planning with adjoining mines to minimise environmental impacts, all reasonable and feasible landform options for the final void (including filling) and predicted hydrochemistry and hydrogeology (including long-term groundwater recovery and void groundwater quality).</p>
Original dated 11/2/2013	<p>Survey data</p> <p>31. All survey data collected for the project must be recorded so as to conform to data standards notified from time to time by the department. When requested by the department, the proponent must provide to the department all species and ecological survey data and related survey information from ecological surveys undertaken for matters of national environmental significance. This survey data must be provided within 30 business days of request, or in a timeframe agreed to by the department in writing. The department may use the survey data for other purposes.</p>
Original dated 11/2/2013	<p>32. In the event that any additional matters of national environmental significance are recorded within the project area and a significant impact on the matter/s is likely, the department must be notified in writing within 14 days of the matter/s being recorded. In accordance with condition 37, the Minister may request that the person taking the action revise any relevant plans to ensure better protection of the relevant matter/s.</p>

Date of decision	Conditions attached to approval
Original dated 11/2/2013	<p>Reporting and auditing</p> <p>33. Within 14 days after the commencement of construction, the person taking the action must advise the department in writing of the actual date of commencement of construction.</p>
Original dated 11/2/2013	<p>34. By the end of March of each year after the commencement of the action, the person taking the action must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months, including implementation of any management plans as specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the department at the same time as the compliance report is published.</p>
Original dated 11/2/2013	<p>35. Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.</p>
Original dated 11/2/2013	<p>36. If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans, as specified in the conditions, the person taking the action must submit to the department for the Minister's written approval a revised version of that plan. The varied activity shall not commence until the Minister has approved the revised plan in writing. The Minister will not approve a revised plan, unless the revised plan would result in an equivalent or improved environmental outcome. If the Minister approves the revised plan that plan must be implemented in place of the plan originally approved.</p>
Original dated 11/2/2013	<p>37. If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and communities or listed migratory species to do so, the Minister may request that the person taking the action make specified revisions to the management plan specified in the conditions and submit the revised plan for the Minister's written approval. The person taking the action must comply with any such request. The revised approved plan must be implemented. Unless the Minister has approved the revised plan then the person taking the action must continue to implement the originally approved plan, as specified in the conditions.</p>
Original dated 11/2/2013	<p>38. If, at any time after 5 years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.</p>
Original dated 11/2/2013	<p>Publication of plans</p> <p>39. The person taking the action must maintain accurate records substantiating all activities and outcomes associated with or relevant to the above conditions of approval, including measures taken to implement the management plans required by this approval, and make them available upon request to the department. Such records may be subject to audit by the department or an independent auditor in accordance with section 458 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the department's website. The results of audits may also be publicised through the general media.</p>

Date of decision	Conditions attached to approval
Original dated 11/2/2013	40. Unless otherwise agreed to in writing by the Minister , the person taking the action must publish all management plans referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month of being approved.

Date of decision	Definitions attached to approval
Original dated 11/2/2013 Corrected dated 15/2/2013	<p>Biodiversity corridor – an area of native vegetation at least 250 m wide that has not been previously cleared for mining, which links the existing native vegetation to the east and west of the Maules Creek and Boggabri coal mine leases and is located within the Maules Creek coal mine lease where it is adjacent to the Boggabri coal mine lease boundary. The purpose is to ensure that a minimum 500 m wide native vegetation corridor is maintained between the Boggabri and Maules Creek mines and that any alternative corridor <i>provides equivalent or better ecosystem functionality (including habitat for the regent honeyeater, swift parrot and greater long-eared bat).</i></p> <p>Commencement of construction – the commencement of any activities within the project area which are included in this approval.</p> <p>Condition class – One of three states in which the White Box—Yellow Box—Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community may exist, as defined within the Commonwealth listing advice for the listing of this ecological community as critically endangered under the EPBC Act.</p> <p>Department - the Australian Government Department responsible for the <i>Environment Protection and Biodiversity Conservation Act 1999</i>.</p> <p>Environmental Assessment – The Maules Creek Coal Project Environmental Assessment July 2011, prepared by Hansen Bailey for Aston Coal 2 Pty Ltd, and submitted as part of the approval documents for the Maules Creek Coal Project.</p> <p>Habitat – areas in which a species or community is known to occur or is thought to have the potential to occur based on the biophysical conditions prevailing in the area and the ecological requirements of the species or community.</p> <p>Independent review – an investigation conducted by an independent expert ecologist who has been approved by the department.</p> <p>Minister - the Minister administering the <i>Environment Protection and Biodiversity Conservation Act 1999</i> and includes a delegate of the Minister</p> <p>Matters of national environmental significance – all matters listed under Part 3 of the EPBC Act</p> <p>Offset areas – areas that are proposed to meet the criteria set out in conditions 9, 10, 11, 12 and 13 of the approval, to offset the impacts of the action on matters of national environmental significance.</p> <p>Offset attributes -means an '.xls' file capturing relevant attributes of the Offset Area, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.</p> <p>Project area – the area defined by the Maules Creek Coal Mine Project EPBC Act referral (EPBC Act reference 2010/5566) as lying within the Project Application Boundary.</p> <p>Shapefiles -means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes of the Offset Area, including the shape, EPBC</p>

Date of decision	Definitions attached to approval
	<p>reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format. A geographically referenced raster 'img' file/s must be provided to provide context for the shapefiles.</p> <p>State and Transition Model – Section 3.2 of <i>A Guide to Managing Box Gum Grassy Woodlands</i> (Caring for our Country Environmental Stewardship, 2010), depicts the different condition states (as reflected by disturbance, inputs and altered land use) in which a given vegetation can exist. This publication can be found at: http://www.nrm.gov.au/resources/publications/stewardship/bggw-handbook.html</p> <p>Substantially commence the action – means the extraction of coal from the Maules Creek Coal Mine Project for the purpose of commercial production. Substantial commencement does not include test extraction or extraction of coal samples for quality assurance.</p>



Table C.5 Summary of EPCF Issues - Condition Areas of Best Code Protection and Potential for Threshold EPCF. Issues to be Considered in the Current, Medium, Medium-High and Worst-Case Projections.

Project Name and Address (City/County)	EPCF Issue	Current Issue (Priority/Severity)	Current Issue (Priority/Severity)	Best Code Protection and Potential for Threshold EPCF (Issue to be Considered in the Current, Medium, Medium-High and Worst-Case Projections)				EPCF Issue	Current Issue (Priority/Severity)	Current Issue (Priority/Severity)	Current Issue (Priority/Severity)	Current Issue (Priority/Severity)
				Condition 1 (Issue to be Considered in the Current, Medium, Medium-High and Worst-Case Projections)	Condition 2 (Issue to be Considered in the Current, Medium, Medium-High and Worst-Case Projections)	Condition 3 (Issue to be Considered in the Current, Medium, Medium-High and Worst-Case Projections)	Condition 4 (Issue to be Considered in the Current, Medium, Medium-High and Worst-Case Projections)					
Shelby	142	142	142	142	142	142	142	142	142	142	142	142
...
TOTAL	1984											1984

TABLE 2-6

Table 2-6. Critical Areas of Habitat for Threatened Species to be Conserved in the Eastern, Western, Northern and Short Properties

CIP SETS	[4] HABITAT for White-Winged Woodpecker (White-Winged Woodpecker, Pileated Woodpecker, San Diego Woodpecker, White-Capped Woodpecker)		[5] HABITAT for Prairie and Woodland Songbird		[6] Potential HABITAT for Acids		[7] Potential HABITAT for Puffins		[8] Potential HABITAT for Puffins	
	Good condition vegetation (%)	Low or moderate condition vegetation to be conserved (%)	Good condition vegetation (%)	Low or moderate condition vegetation to be conserved (%)	Good condition vegetation (%)	Low or moderate condition vegetation to be conserved (%)	Good condition vegetation (%)	Low or moderate condition vegetation to be conserved (%)	Good condition vegetation (%)	Low or moderate condition vegetation to be conserved (%)
Blue Ridge	55.0	28.7	0	107.8	0	207.7	0	0	0	29.4
Castle Peak	24.1	115.0	30.3	119.3	30.3	27	0	0	0.1	2.7
Chimney Rock	66.1	126.4	0.1	204.4	0.1	40.3	0.1	0.0	0.0	19.7
Cotton	0	0	0.0	101.1	0	20.5	0	0.0	0	0.0
Hickory	284.7	660.0	102.0	880.7	102.0	100.0	10.0	0	0.0	64.0
Marathon	80.7	172.0	64.5	136.1	64.5	101	0	0	0.0	25.2
St. Lawrence	204.0	170	148.7	101.7	148.7	13	0	0	0.0	20.4
Windsor	140.0	400	160.2	101.7	160.2	40.0	40.0	0	0.0	40.0
Wooded Property	100	11	102.1	101.1	0	47.0	10.0	10.0	0.0	100.0
Yukon	102.0	104.4	102.0	106.4	102.0	10.0	0	100.0	0	10.0
Yukon	100.0	114.0	100.0	110.0	110.0	0	0	100.0	0	10.0
Yukon	10.0	10.0	10.0	10.0	10.0	0	0	0	0.0	10.0
Yukon	100.0	100.0	100.0	100.0	100.0	0.0	0.0	0.0	0.0	100.0
Yukon	100.0	100.0	100.0	100.0	100.0	0.0	0.0	0.0	0.0	100.0
TOTAL	1846.1	1707.7	466.1	474.3	474.3	327.1	327.1	1000.0	98.0	1000.0

Black-necked Stork
 The habitat areas that appear in the above table are based on the findings as reported about habitat.

Black-necked Stork:
 This table reports the areas of habitat for the Black-necked Stork. The Black-necked Stork has breeding habitat on these properties in large wetlands or near and adjacent waterways. The Black-necked Stork has breeding habitat on these properties in large wetlands or near and adjacent waterways. The Black-necked Stork has breeding habitat on these properties in large wetlands or near and adjacent waterways. The Black-necked Stork has breeding habitat on these properties in large wetlands or near and adjacent waterways.

[4] These areas bring species that range over forest, woodland and grassland areas and are very adaptable to modified habitats. These species have been detected or are likely to occur in the other areas from time to time.

[5] These areas provide habitat for species that range over forest and woodland areas. These species have been detected, or are likely to occur in the other areas.

[6] These areas were not detected within the Project Study Area or intensive survey. In spite of this, Acrida species are likely to occur in the Project Study Area but only in the other areas. Grassy and wooded areas are potential habitat for the Acrida in the other areas.

[7] Puffins are known to occur in riparian forest, for both woodland and forest in the other areas. Puffins provide potential habitat for the species; and

[8] Puffins are known to occur in riparian forest, for both woodland and forest in the other areas. Puffins provide potential habitat for the species; and



Ref: EPBC 2010/5566
EPBC 2009/5003
EPBC 2011/5923

Mrs47F
s47F
Whitehaven Coal Limited
231 Conadilly Street
Gunnedah NSW 2380

Dear Mr s47Fr

Thank you for your correspondence of 9 December 2018 seeking variation of approval conditions related to legal securing or covenanting of offsets required for EPBC 2010/5566 (Maules Creek Coal Mine), s22 3

Officers of this Department have reviewed the variation request. As delegate of the Minister, I have varied condition 13 of EPBC Approval 2010/5566, s22 3 under section 143(1)(c) of the *Environment Protection and Biodiversity Conservation Act 1999* to extend the timeframe by which a legally binding covenant must be registered over the offsets sites to 31 March 2020. These conditions must now be undertaken in accordance with the varied conditions specified in the variation notifications, which are attached for your information.

The Department encourages Whitehaven Coal to regularly engage with State regulators in order to finalise the securing and registration of the offset sites within the time period agreed to and as required under these conditions. It is expected that this variation will provide enough time in which to secure the offset and that no further variation requests will be made. Unless there are compelling reasons completely outside Whitehaven's control, a further variation is unlikely to be justified.

In order to avoid future problems, I also ask that Whitehaven provide regular updates to the Department, with supporting documentation, on progress with meeting the new timeframes.

Should you require any further information please contact s22, Post Approvals Section, on (02)s22 or by email: post.approvals@environment.gov.au.

Yours sincerely

s22

Declan O'Connor-Cox
Acting Assistant Secretary
Assessment (WA, SA, NT) and Post Approvals Branch
Environment Standards Division

22 February 2019

Note: Under s 491 of the *Environment Protection and Biodiversity Conservation Act 1999* it is an offence to knowingly provide false and/or misleading information to a departmental officer.

s22

From: s47F [redacted]@whitehavencoal.com.au
Sent: Monday, 10 December 2018 1:05 PM
To: Post Approval
Cc: s22 [redacted]
Subject: FW: WHC - Biodiversity Offset Securement - NSW Biodiversity Conservation Trust (BCT) Advice
Attachments: 20181109 Letter to s47F [redacted] Whitehaven Coal Ltd - Delivery Timelines.pdf
Importance: High

s22

Further to below, and in accordance with advice provided by the NSW BCT (refer attached), WHC request a variation in timing for biodiversity offset securement to the 31st December 2019 for the following EPBC approvals:-

- s22 [redacted]
- EPBC 2010/5566 Condition 13 – Maules Creek Coal Mine, and
- s22 [redacted]

The Department's earliest consideration of this request would be appreciated, and please contact me should you have any queries.

Regs,

s47F [redacted]

s47F [redacted]
s47F [redacted]

Whitehaven Coal Limited

231 Conadilly Street, Gunnedah NSW 2380 Australia

Tel: +61 2 s47F [redacted] **Mobile:** +s47F [redacted]

Email: s47F [redacted]@whitehavencoal.com.au www.whitehavencoal.com.au



WHITEHAVEN COAL

89342678232

From: s47F [redacted]
Sent: Sunday, 9 December 2018 9:45 AM
To: s22 [redacted]
Subject: WHC - Biodiversity Offset Securement - NSW Biodiversity Conservation Trust (BCT) Advice
Importance: High

Hi s22 [redacted]

WHC has been working with the NSW BCT and NSW Department of Planning and Environment (DP&E) to finalise the securing and registration of the s22 [redacted] Maules Creek and s22 [redacted] offset areas by the required 31st December 2018.

The NSW BCT provided advice to WHC and DP&E on the 9th November 2018 that the securing and registration process would necessarily extend beyond 2018; however working within their current constraints and allowing for variables and dependencies, BCT advice anticipates that all securing could be completed by the end of 2019.

DP&E had undertaken to contact yourself regarding the BCT advice however I am unsure if to date this has occurred.

I intend to call you to discuss first thing tomorrow morning, however please feel free to contact me prior if you wish.

Regs,

s47F

s47F r

s47F

Whitehaven Coal Limited

231 Conadilly Street, Gunnedah NSW 2380 Australia

Tel: +61 2 s47F : s47F

Email: s47F @whitehavencoal.com.au www.whitehavencoal.com.au



WHITEHAVEN COAL

89342678232



s47F
s47F
Whitehaven Coal Limited
231 Conadilly Street
GUNNEDAH NSW 2380

Our ref: DOC18/856441

Dear s47F,

Maules Creek s22 offset areas - timelines for delivery of conservation agreements

Thank you for meeting with the Biodiversity Conservation Trust's (BCT) s22 to discuss the requirements and timing for conservation agreements to be established for the Maules Creek, s22. In terms of the timelines for the work required, the BCT can offer Whitehaven Coal (WHC) the following:

The BCT has committed to developing conservation agreements for Whitehaven Coal for Maules Creek Coal (PA10_0138), s22.

s22

We anticipate a further seven to eight agreements will be developed over the remaining properties making up the Maules Creek Offsets (subject to agreement on final configuration).

Working within our current constraints and allowing for variables and dependencies, we anticipate these can all be completed by the end of 2019.

s47E(d):

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Verbal ~~advice~~ ^{advice}
Not achieved.

s22

[Redacted]

[Redacted]

- s22 [Redacted]

- s22 [Redacted]

s47E(d)

[Large redacted block]

It is evident that the steps required to finalise these agreements will not be completed by December 2018. The BCT is tasked with delivery of multiple programs with competing priorities. The timeframe for completion of offset agreements is also influenced by the availability of staff at critical periods of the year. s47E(d)

We look forward to consistent and productive engagement with you to facilitate the delivery of conservation agreements as required.

Yours sincerely

s47F

9 November 2018

s47F

s22

Regional Delivery



**Statement of Reasons for a decision to vary conditions attached to an approval under the
*Environment Protection and Biodiversity Conservation Act 1999***

I, GREG MANNING, Assistant Secretary, Assessments (SA, WA, NT) and Post Approvals Branch, Environment Standards Division, Department of the Environment and Energy (**Department**), delegate of the Minister for the Environment and Energy (**Minister**¹), provide the following statement of reasons for my decision of 7 February 2018 to vary a condition attached to the approval for EPBC 2010/5566 (**action**) under section 143(1)(c) of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

Background

The approval of the action

1. The action is to construct and operate an open cut coal mine 18 km north-east of the township of Boggabri in New South Wales, including associated infrastructure.
2. On 9 August 2010, a delegate of the Minister decided that the action was a controlled action under section 75 of the EPBC Act. The delegate decided that the relevant controlling provisions for the action were sections 18 and 18A (listed threatened species and communities) and sections 20 and 20A (listed migratory species).
3. On 11 February 2013, the former Minister for Sustainability, Environment, Water, Population and Communities approved the taking of the action, subject to conditions, for the purposes of the relevant controlling provisions.

Decision to vary conditions attached to the approval

4. On 20 November 2017 Whitehaven Coal Limited on behalf of Aston Coal 2 Pty Ltd (the **approval holder**) wrote to the Department requesting that the timeframe to secure the required offsets under condition 13 be extended to 31 December 2018.
5. The reason for this request was that while Whitehaven had been negotiating extensively with the New South Wales Department of Planning and Environment (**DPE**), New South Wales Office of Environment and Heritage (**OEH**) and New South Wales National Parks and Wildlife Service (**NPWS**) regarding the securing of the offset areas, compliance with the timeframe in condition 13 could not be guaranteed given Whitehaven's reliance on those state authorities to complete the process.
6. To date, the Department's compliance monitoring team have not taken any compliance action under this approval, or against the approval holder.
7. On 7 February I agreed to vary condition 13 of EPBC Approval 2010/5566 to provide an extension of time to secure the required offset sites under a legally binding conservation mechanism.

¹ References to the Minister in this Statement also include references to a delegate of the Minister, unless otherwise specified.

Evidence or other material on which my findings were based

8. In making my decision to vary an approval condition, I took into account the Departmental briefing provided to me on the decision, which included:
 - a. Conditions of EPBC approval 2010/5566
 - b. Correspondence from the approval holder dated 20 November 2017
 - c. Advice from New South Wales Department of Planning and Environment
 - d. Compliance Monitoring Environmental history check
 - e. Correspondence from the approval holder dated 23 January 2018 indicating agreement with the proposed variation.

Reasons for decision

9. Approval condition 9 (excerpted at Appendix A) requires the person taking the action to register a legally binding conservation covenant over offset areas of the *White Box Yellow Box Blakely's Red Gum Woodland* and derived Native Grassland ecological community and habitat for the Regent Honeyeater, Swift Parrot and Greater Long-eared Bat.
10. Prior to the variation, approval condition 13 (excerpted at Appendix A) required the binding conservation mechanism to be registered within 5 years of the date of the approval (which was 11 February 2018).
11. As noted in paragraph 5, Whitehaven, on behalf of the approval holder, wrote to the Department requesting that the timeframe to secure the required offsets under condition 13 be extended to 31 December 2018. The request did not seek any change to the direct offset requirements in conditions 9 – 12 of the approval, or the management arrangements for those areas in conditions 17 and 18.
12. I noted the correspondence referred to in paragraphs 8(b) and (c) of these reasons, which outlined the progress that is being made in negotiations towards securing the offset properties.

In particular, I noted that:

- a. The approval holder is proposing to secure the necessary offset areas, in part by transferring land into the NSW parks estate, with the other offset lands to be secured via conservation agreements with OEH.
- b. The NPWS have identified the land they would like transferred into the parks estate, and negotiations are continuing on suitable arrangements for transfer.
- c. Whitehaven submitted an application in July 2017 to secure the other offset lands via conservation agreements with OEH.

- d. Advice received from DPE confirmed that negotiations are continuing and as a result of the introduction of the *Biodiversity Conservation Act 2017*, there are delays in processing conservation agreements and the application by Whitehaven will not be processed until late 2018.
13. On the basis of this information, which I accepted, I found that Whitehaven has engaged with relevant New South Wales authorities throughout 2016 and 2017 seeking to finalise the offset securing and registration process, but that it is reliant on State authorities to complete that process, and the delay in securing and registering the conservation mechanisms is not wholly attributable to Whitehaven Coal.
14. The Department advised, and I agreed, that an additional 10 months should provide adequate time to finalise the transfer of lands into the parks estate as well as, the registration of offset sites and that any additional request beyond 31 December 2018 will need to demonstrate that considerable efforts have been made toward securing and registering the offset site and that further extensions are based on delays wholly attributable to State regulators.
15. For these reasons, I was satisfied that the conditions attached to the approval for EPBC 2010/5566 after the proposed variation of condition 13 would be necessary or convenient for the protection of matters protected by the provisions of Part 3 of the EPBC Act for which the approval has effect.
16. In light of the above, and noting that the approval holder agreed to the proposed variation, I therefore decided to vary condition 13 of the approval for EPBC 2010/5566 to provide an extension of time to secure offset sites under a legally binding conservation mechanism, under section 143(1)(c) of the EPBC Act.

Signed

A grey rectangular box containing the handwritten signature 's22' in black ink.

GREG MANNING

12 April 2018



Appendix A – Excerpts of Relevant Approval Conditions

Condition 8

The person taking the action must publish the analysis under condition 6 on their website.

Condition 9

The person taking the action must register a legally binding conservation covenant over **offset areas** of no less than:

- a) 9,334 ha of an equivalent or better quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat; and
- b) 5,532 ha of an equivalent or better quality of the White Box- Yellow Box- Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

Note: the 5,532 ha of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community may be included within the 9,334 ha of offset area for the threatened species if it meets the listing criteria for the EPBC-listed critically endangered ecological community as defined in the EPBC listing advice for that community and the requirements of condition 9.

Condition 10

The person taking the action must verify through **independent review** the quantity and **condition class** of White Box-Yellow Box-Blakey's Red Gum Grassy Woodland and Derived Native Grassland ecological community and the quantity and quality of habitat for the regent honeyeater, swift parrot and greater long-eared bat within all proposed **offset areas** including those proposed in the **Environmental Assessment**, as defined at [Attachment C](#) of these conditions and any additional offsets are required at condition 9. Details of all independently verified **offset areas** must be submitted to the **Minister** for approval by 30 December 2013. The findings of the independent review must be published on the proponent's website.

Condition 13

The mechanism/s for registering a legally binding covenant must provide protection for the offset areas in perpetuity and be registered within 5 years of the date of this approval.

14 December 2018

The Hon Melissa Price MP
Minister for the Environment
Department of the Environment
GPO Box 787
Canberra ACT 2601



By email: Melissa.Price.MP@aph.gov.au

Copy to: compliance@environment.gov.au

Dear Minister

Maules Creek Coal Mine Project (EPBC 2010/5566)

1. We act for South East Forest Rescue Inc., an environmental group dedicated to the conservation and protection of NSW State forests.
2. We refer to approval EPBC2010/5566 (**Approval**) issued on 11 February 2013 for the Maules Creek Coal Mine (**Project**). The Approval was issued under section 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).
3. We are instructed to note the following:
 - (a) Our client is concerned that the Approval holder is likely to be in breach of condition 9 and condition 13 (as amended) of the Approval as at 1 January 2019, by which time the Approval holder is required to have registered legally binding covenants over the offset areas required under the Approval.
 - (b) Our client is aware that the Approval holder is yet to register legally binding covenants over the offset areas required under the Approval. Our client anticipates that, in the event the Approval holder is unable to register these covenants by 31 December 2018, it may seek a variation to the Approval to further extend the time for doing so. In the event this happens, our client is of the view that you should decline to make any such amendment and rather pursue this as a matter of non-compliance with conditions 9 and 13.
 - (c) Alternatively, if you agree to allow for a further extension of time, our client is of the view that you should make additional amendments to the Approval prohibiting the Approval holder from conducting any further clearing (as currently permitted under Approval conditions 1 and 2) until legally binding covenants over the offsets areas have been registered.
4. Information in support of our client's contentions is set out below.

Conditions requiring the Approval holder to secure the offset areas

5. Condition 9 of the Approval requires the person taking the action to register a legally binding conservation covenant over offset areas of no less than:

5,532ha of an equivalent or better quality of the White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

6. Condition 13 of the Approval (as amended) requires that:

[t]he mechanism/s for registering a legally binding covenant must provide protection for the offset area in perpetuity and be registered by 31 December 2018.

Evidence of compliance with condition 13 must be provided to the Department within 30 days of registering a legally binding covenant.

Anticipated breach of the offset conditions

7. Our client is concerned that the offset areas proposed to be secured by the Approval holder in purported compliance with the Approval do not contain adequate areas of critically endangered White Box – Yellow Box – Blakely's Red Gum and Derived Native Grassland ecological community (**Box Gum CEEC**) in order to comply with condition 9 of the Approval.
8. We note that two reports prepared by relevantly qualified experts have previously been provided to the Commonwealth Department of the Environment and Energy (**DoEE**) (as it is now known), namely:
- (a) Report prepared by Wendy Hawes of The Envirofactor Pty Ltd titled 'Field Assessment of Areas Mapped as White Box – Stringybark Grassy Woodland on the Offset Properties 'Wirradale' and 'Mt Lindesay', dated 6 September 2013 (**Envirofactor Report**).
 - (b) Report prepared by John Hunter of Hewlett Hunter Pty Ltd titled 'Preliminary Overview of Independent Assessments of Wirradale & Mt Lindesay Offset Mapping: Updated Amended Version with Additional Survey Sites', dated March 2014 (**Hunter Report**).
9. These reports conclude that the Approval holder's proposed Commonwealth offsets areas within the Wirradale and Mt Lindesay offset properties (forming part of the Approval holder's 'Northern Offset Area') contain significantly less Box Gum CEEC than is claimed (as little as 5% of what is claimed).
10. Our client has reviewed the latest version of the Project Biodiversity Management Plan (**BMP**).¹ Based on this review it appears that the Approval holder has not made any modifications to its proposed Commonwealth offset areas since the preparation of the Envirofactor Report or the Hunter Report. As such, our client remains extremely concerned that the Approval holder has not identified proposed offset areas that are capable of complying with condition 9 of the Approval. Accordingly, it is our client's view that even if the Approval holder registers legally binding covenants over the proposed offset areas on or before 31 December 2018, it will nevertheless be in breach of condition 9.

¹ Dated 12 April 2017 and downloaded from the Maules Creek Coal Mine website (<http://www.whitehavencoal.com.au/maules-creek-mine/>).

11. We note that our client will also write to the Approval holder seeking confirmation that the proposed offset areas have not relevantly changed since 2014. Please advise our office as a matter of priority if you are aware of any proposal by the Approval holder to modify its proposed Commonwealth offset areas so as to include additional areas of Box Gum CEEC.

Clearing of Box Gum CEEC to date

12. Under the NSW State approval for the Project, the Approval holder is permitted to undertake clearing each year between 15 February and 30 April.
13. Plans 3A-3E of the current Mining Operations Plan (**MOP**) for the Project² set out the Approval holder's planned mining and rehabilitation activities for the 2018-2022 calendar years. Plan 2 identifies the mine domains as at the commencement of the current MOP (1 January 2018). On our client's review of satellite imagery as at 30 April 2018 and the maps in the MOP, it appears that:
 - (a) approximately 19.5ha of Box Gum CEEC within the Project area remains uncleared as at 30 April 2018; and
 - (b) the Approval holder intends to clear a further approximately 6ha of Box Gum CEEC in 2019.
14. We note that our client has written to the Approval holder seeking confirmation of the above. The Approval holder advised on 13 December 2018, by its solicitors, that it does not intend to clear any additional Box Gum CEEC in 2019.
15. The total amount of Box Gum CEEC that the Approval holder is permitted to clear under the Approval is 544ha. In other words, it appears that less than 4 per cent of the Box Gum CEEC within the Project area remains uncleared in circumstances where:
 - (a) the Proponent is yet to secure legally binding conservation covenants over the offset areas required under the Approval; and
 - (b) our client has expert evidence that the offset areas that the Approval holder proposes to secure do not contain the requisite number of hectares of Box Gum CEEC to comply with condition 9 of the Approval.

2018 variation to the Approval

16. On 20 November 2017, Whitehaven Coal Limited on behalf of Aston Coal 2 Pty Ltd wrote to the DoEE requesting that the timeframe to secure the required offsets under condition 13 be extended to 31 December 2018.
17. On 7 February 2018, Mr Greg Manning as Delegate for the then Minister for the Environment, made a decision varying condition 13 of the Approval as per the above request.
18. On our client's analysis, between 15 February 2018 and 30 April 2018 the Approval holder cleared a further approximately 18ha of Box Gum CEEC.

² Dated 1 December 2017; also available from the Maules Creek Coal Mine website (<http://www.whitehavencoal.com.au/maules-creek-mine/>).

The Approval holder must not be permitted to clear any further Box Gum CEEC pending registration of offset areas that comply with the Approval

19. As noted above, on our client's calculations the Approval holder has cleared more than 95% of the total area of Box Gum CEEC that it is permitted to clear under the Approval.
20. Box Gum CEEC has been listed as Critically Endangered under the EPBC Act since 17 May 2006. This listing means that it is facing an extremely high risk of extinction in the wild in the immediate future.
21. Accordingly, our client is extremely concerned about the continued clearing of Box Gum CEEC within the Project area prior to securing the required offset areas.
22. We note that the *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy (Offsets Policy)* specifically requires that suitable offsets are 'effective, timely [and] transparent'.³ The Offsets Policy goes on to say:

... an offsets should be implemented either before, or at the same point in time as, the impact arising from the action.
23. For the above reasons, it is our client's position that the Approval holder must not be permitted to clear any further Box Gum CEEC without first securing and independently validating offset areas that comply with condition 9 of the Approval.

Our client's position

24. To summarise, our client's position is as follows:
 - (a) If the Approval holder is unable to secure the offset areas by 31 December 2018, this is a matter of non-compliance that the DoEE should formally investigate and enforce.
 - (b) If the Approval holder seeks to register its current proposed Commonwealth offset areas within time prescribed by condition 13, the DoEE should formally investigate whether these areas are in fact compliant with condition 9, noting the expert views set out in the Envirofactor Report and the Hunter Report.
 - (c) If the Approval holder is unable to secure the offset areas by 31 December 2018 and the Minister is of the view that a further extension of time should be granted, the Approval should be varied to prohibit any further clearing of Box Gum CEEC pending registration and independent validation of the offset areas.
25. In the event that the Approval holder applies to vary the Approval to provide further time to register legally binding covenants over the offsets areas under condition 13, or to in any other way vary their obligations with respect to the offset areas, we are instructed to request that you provide our office with written notice within **7 days** of receipt of any such application.

³ *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* (Oct 2012) p 5.

26. We appreciate your attention to this matter and request that you respond by **Monday 7 January 2019**.

Yours sincerely,
EDO NSW

s47F

s47F
Solicitor

s22

From: s47F [redacted]@whitehavencoal.com.au>
Sent: Monday, 11 February 2019 2:16 PM
To: s22 [redacted]
Subject: FW: Draft variation notices for agreement [SEC=UNCLASSIFIED]
Attachments: s22 [redacted] 2010-5566-20190211-Att C-variation-Maules.docx;
s22 [redacted]



Hi s22

Updated draft variation notices are acceptable.

Regs,

s47F

s47F [redacted] r [redacted]
s47F [redacted]

Whitehaven Coal Limited
231 Conadilly Street, Gunnedah NSW 2380 Australia
Tel: +s47F [redacted]
Email: s47F [redacted]@whitehavencoal.com.au www.whitehavencoal.com.au



From: s22 [redacted]@environment.gov.au>
Sent: Monday, 11 February 2019 1:36 PM
To: s22, s47F [redacted]@whitehavencoal.com.au>
Subject: Draft variation notices for agreement [SEC=UNCLASSIFIED]

Hs47F

I attach updated draft variation notices for s22 [redacted], Maules Ck and s22 [redacted] for your agreement prior to submission to the delegate.

The change from earlier discussions is that the Department does not believe that it is appropriate to allow for further extension without a formal variation.

I am happy to discuss this further with you.

Regards

s22 [redacted]
Post Approvals Section | Environment Standards Division
Department of the Environment and Energy
s22 [redacted]@environment.gov.au | 02 s22 [redacted]



Ref: EPBC 2010/5566
s22

Mr s47F
s47F
Whitehaven Coal Limited
231 Conadilly Street
Gunnedah NSW 2380

Dear Mr s47F

Thank you for your correspondence of 9 December 2018 seeking variation of approval conditions related to legal securing or covenanting of offsets required for EPBC 2010/5566 (Maules Creek Coal Mine), s22 3 3

The Department is currently preparing to brief the Minister's delegate regarding this matter. As this is the latest in a number of requests for extension of time in the case s22 for Maules Creek, the Department now seeks assurance in writing that the required offset areas are currently under the control of Whitehaven or the relevant approval holder and are being managed in accordance with their status as an offset. This information will be required to support a decision by the delegate to vary the conditions.

Please note that it is unlikely the delegate will have considered and made a decision on the requested variations by 31 December 2018, due to the very short period of time available from receipt of your request until the end of the working year. This Department closes for its Christmas break on 24 December 2018, and the delegate must have a reasonable time to consider the request. Nevertheless, we will do our best to expedite consideration.

The Department contact officers for this matter are s22 (until close of business on 21 December 2018 and then from 7 January 2019) and s22 (on 24 December 2018 and then from 2 January until 4 January 2019).

Yours sincerely

s22

s22
s22

20 December 2018

s22

From: s47F s47F @whitehavencoal.com.au>
Sent: Friday, 21 December 2018 10:10 AM
To: s22
Cc: s22
Subject: RE: 2010-5566-20181220-signed letter to whitehaven re offsets.docx.pdf [SEC=UNCLASSIFIED]
Attachments: 2010-5566-20181220-signed letter to whitehaven re offsets.docx.pdf

Hi s22

With respect to the Department's query within the attached letter I can confirm that the offset areas required by EPBC 2010/5566 s22 are currently under the control of Whitehaven and are being managed in accordance with their status as an offset.

It is noted that post approval of EPBC 2010/5566 DoEE requested additional offset areas. Whitehaven controls and manages a large area of land in the region which, based on assessments to date, includes lands that can potentially be utilised as offset areas. These lands will be incorporated in the BCT Conservation Agreements expected to be finalised in 2019.

The Department's noted expedition of its consideration is appreciated.

Regs,

s47F

s47F
s47F

Whitehaven Coal Limited
231 Conadilly Street, Gunnedah NSW 2380 Australia
Tel: +s47F 2
Email s47F r@whitehavencoal.com.au www.whitehavencoal.com.au



From: s22 @environment.gov.au>
Sent: Thursday, 20 December 2018 5:20 PM
To: s47F @whitehavencoal.com.au>
Cc: s22 @environment.gov.au>; s22 @environment.gov.au>
Subject: 2010-5566-20181220-signed letter to whitehaven re offsets.docx.pdf [SEC=UNCLASSIFIED]

Hi s47F

I attach a letter from the s22

Regard

s22

Post Approvals Section | Environment Standards Division
Department of the Environment and Energy
s22 @environment.gov.au | s22

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.



s22

Mr s47F
s47F
Whitehaven Coal Limited
231 Conadilly Street
Gunnedah NSW 2380

Dear Mr s47F

Thank you for your email of 21 December 2018 providing further information in regard to your request for variation to approval conditions related to legal securing or covenanting of offsets required for EPBC 2010/5566 (Maules Creek Coal Mine), s22

The request is for a further extension to those approved in late 2017 and early 2018. The additional requests for variation brings into question the process used for securing legal covenanting of the offsets required by the approvals for s22 and Maules Creek (2013).

The original approval conditions provided five years for the s22 and Maules Creek arrangements to be in place. We note that while the NSW Biodiversity Conservation Trust has indicated that it expects to be to finalise arrangements by the end of 2019, they have not firmly committed to doing so. The Department is also concerned that the ongoing delays have already been heavily criticised by several parties, and in the media in the case of Maules Creek.

The Department therefore requires further information to be in a position to make a decision about the variation requests:

1. Please provide details of the engagement between Whitehaven and the NSW Government in relation to legally covenanting the offset areas. This should be supported with documentary evidence (copies of correspondence).
2. Please provide details of the offset areas currently under the control of Whitehaven and any management arrangements in place that demonstrate they are being managed as offsets as per the approvals.
3. For each of the offsets areas, provide details of the progress reached in finalising arrangements for each offset area, an estimate of when the covenants will be in place and an indication of any risks to achieving that timeframe.
4. Your original request was for a 12 months extension and the Department had suggested the due date should move out to 31 March 2020 to avoid any delays in the lead up to the end of the year, causing further need for variation. Can you please review the timeframe to ensure that this date is sufficient for the legal covenanting to be finalised?

Please contact s22 [redacted] on s22 [redacted] 4 if you wish to discuss this letter.

Yours sincerely

s22 [redacted]

s22 [redacted] r
s22 [redacted] s
23 January 2019

From: s47F @whitehavencoal.com.au
Sent: Friday, 25 January 2019 12:30 PM
To: s22
Subject: RE: 2010-5566-20190123-Maules-letter to s47F re additional information.pdf [SEC=UNCLASSIFIED] (Privileged and Confidential)
Attachments: 27.10 WHC Offset Area Security Tracking v2 Jan18_DOEE.xlsx; WHC - Biodiversity Offsets - Securing; FW: Whitehaven Coal Applications Summary of status and plan to progress; Summary of Actions out of WHC-BCT CA Progress Meeting Friday 17th August

Hs22

Please find following responses to the requests for further information noted in the letter from John Foster dated 23rd January 2019.

- 1. Please provide details of the engagement between Whitehaven and the NSW Government in relation to legally covenanting the offset areas. This should be supported with documentary evidence (copies of correspondence).**

Refer attached 2018 communications log (27.10 WHC Offset Area Security Tracking v2 Jan18_DOEE.xlsx) and key examples of documentary evidence (WHC – Biodiversity Offsets – Securing; FW: Whitehaven Coal Applications Summary of status and plan to progress; Summary of Actions out of WHC-BCT CA Progress Meeting Friday 17th August). Please note WHC considers the attached information to be **Privileged and Confidential**.

Please also note additional WHC communications with the NSW Office of Environment and Heritage (relevant State regulator prior to establishment of the Biodiversity Conservation Trust - BCT) and Department of Planning and Environment in relation to legally covenanting the offset areas extend as far back as June 2017, and earlier.

- 2. Please provide details of the offset areas currently under the control of Whitehaven and management arrangements in place that demonstrate they are being managed as offsets as per the approvals.**

WHC confirms its ownership and hence control of all offset areas.

WHC confirms that it manages all offset areas in accordance with its approved Biodiversity Management Plans, as evidenced by Annual Review reporting and independent auditing (refer following links for MCCM examples).

2017 MCCM Annual Review (Section 6.6)

<https://whitehaven.box.com/s/dxzgkid66ikw59f4lxa6g975b5dndwok>

2017 MCCM Independent Biodiversity Audit

<https://whitehaven.box.com/s/o82rfbwx0e9hvfd19hun66nkbyrdyaaf>

- 3. For each of the offset areas, provide details of the progress reached in finalising arrangements for each offset area, an estimate of when the covenants will be in place and an indication of any risks to achieving that timeframe.**

The current status of covenanting for each EPBC approval is noted in the below table. WHC expects the BCT to finalise the s22 by mid 2019 at latest, and the remainder of the Conservation Agreements to be sequentially finalised by the end of calendar year 2019.

EPBC Approval	Status of Covenanting
---------------	-----------------------

s22 s22 pri il	
EPBC 2010/5566 (Maules Creek Coal Mine)	x2 Draft Conservation Agreement with WHC for population x6-8 Draft Conservation Agreement templates with BCT for finalisation prior to provision to WHC
s22 a	on nt n

WHC has a comprehensive understanding of its requirements to facilitate the finalisation of covenanting, and foresees little risk on its part of achieving stated timeframes.

WHC recognises a low level of risk of not achieving stated timeframes remains with respect to the required input from other parties to finalise covenanting, however will continue to assist these parties wherever possible to address this risk.

4. Your original request was for a 12 month months extension and the Department had suggested the due date should move out to 31 March 2020 to avoid any delays in the lead up to the end of year, causing further need for variation. Can you please review the timeframe to ensure that this date is sufficient for the legal covenanting to be finalised.

WHC referred Item 4 to the BCT who advised that they believe the 31 March 2020 provides sufficient time for the legal covenanting to be finalised.

Please contact me should you have any further queries.

Regards,

s47F

s47F

s47F

Whitehaven Coal Limited

231 Conadilly Street, Gunnedah NSW 2380 Australia

Tel: +s47F 16 Mobile: +s47F

l.com.au



From: s22 @environment.gov.au>

Sent: Wednesday, 23 January 2019 10:57 AM

To: s47F @whitehavencoal.com.au>

Subject: 2010-5566-20190123-Maules-letter to s11C(1) re additional information.pdf [SEC=UNCLASSIFIED]

Hi s47F

Please find attached a letter from s22, s22, seeking further information in regard to the request for variations to the s22, Maules Creek and s22.

Regards

s47F, s22

Post Approvals Section | Environment Standards Division

Department of the Environment and Energy

s22 n@environment.gov.au | 02 (s22) 4