

DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION AND COMMUNITIES

For Decision: Shane Gaddes, A/g AS, CEB
Through: s22 [redacted], Director, AMN

File No: 2012/04830
Section: AMN
Priority: Medium

s22

Ulan Coal Continued Operations Project, Ulan, NSW - EPBC 2009/5252

Recommendations:

- 1. Approve the variations to Conditions 2 and 4 of the approval for this project at Attachment A. Approved/Not approved
- 2. Sign the letter to the person taking the action advising of your decision at Attachment B. Signed/Not signed

changes required

Comments:

S. Gaddes

Shane Gaddes

A/g AS, CEB

24 December 2012

Key Points:

- The Minister has delegated you as decision maker for this matter.
- On 30 November 2010 a delegate of the Minister approved the extension of an open cut coal mine, development of Ulan West underground mine and modification or construction of new infrastructure associated with these operations at Ulan, NSW. Attachment C.
- Condition 2 of the EPBC approval for this project requires the proponent, Ulan Coal Mines Limited (UCML), to register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1 of the EPBC approval. This is to offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat.
- Additionally, condition 4 of the approval requires UCML to provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1 of the EPBC approval. The conservation mechanism must be agreed to in writing by the department and finalised within 2 years of the date of the approval. These conservation areas are required to offset the impacts on the Large – eared Pied Bat.
- Under the current approval, conditions 2 and 4 require that these covenants must be registered within 2 years of the date of the approval, therefore making them due by no later than 30 November 2012.

- On 30 November 2012 the proponent wrote to the department formally requesting a variation to approval conditions 2 and 4 to extend the timeframe for implementation of the conservation arrangements to 31 May 2013. **Attachment D**.

Background:

- On 6 November 2012 UCML wrote to an out-posted officer from the NSW Assessments Section of the department, proposing to enter into a Voluntary Conservation Agreement (VCA) under the *National Parks & Wildlife Act 1974* to satisfy both the State and Commonwealth conditions of approval. Further, UCML requested an extension of time in order to finalise the process for protection in perpetuity of the offsets relating to the approval. **Attachment E**.
- As the project was being actively managed in Approvals Monitoring, the above letter was forwarded onto the Approvals Monitoring North Section (AMN) for appropriate action.
- On 22 November 2012 AMN wrote back to UCML (**Attachment F**), advising them that:
 - On 21 June 2011 the department had received a similar letter from Mr Jamie Lees, the previous Environment & Community Manager of the Ulan Complex. This letter had requested an extension until December 2011 in order to finalise the process for protection in perpetuity of the offsets relating to the approval, noting that this extension of time would "allow for the relevant meetings between DoPI and the Department to occur and agree on a preferred approach to securing offsets". At the time, the department had advised Mr Lees that no extension was necessary, given that UCML had until 30 November 2012 to finalise the conservation mechanisms;
 - Since June 2011, there had been no further communication with the department in relation to registering covenants over the required offset areas, nor any indication of potential delays associated with doing so, until the email dated 6 November 2012;
 - the department cannot make a decision to extend this timeframe without first receiving a formal, written request to vary the approval conditions; and
 - When requesting a variation UCML need to demonstrate that a change to the conditions, specifically conditions 2 and 4 of the approval, is necessary or convenient for:
 - a) protecting a protected matter for which the approval has effect; or
 - b) repairing or mitigating actual or likely damage to a protected matter for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
- On 30 November 2012 a formal request was received from UCML to vary approval conditions 2 and 4. This correspondence noted that UCML remained committed to registering all required offset covenants as soon as practicable but before proceeding further had been waiting for the VCA to be formally accepted as an appropriate mechanism and the content of the VCA approved by NSW and Commonwealth departments.

UCML stated that this had been intended to occur via a joint agency meeting to be organised by the Department of Planning and Infrastructure (DP&I). UCML noted that they had again raised the matter of the proposed joint agency meeting with DP&I, who, last week, had undertaken to prioritise the matter. Therefore, delays in registering all required offset covenants have been attributed to DP&I and do not appear to have been caused by UCML. **Attachment D**.

- On 10 December 2012 AMN provided UCML with a copy of the draft variation notice for their consideration. UCML replied the same day, noting their agreement to the proposed wording of the variation notice. **Attachment G**.

- Officers of the Approvals Monitoring North Section have considered the proposed variations and are satisfied that an extension to the timeframe will not only bring UCML into compliance but will also allow them to achieve protection of the areas required under the conditions of approval. While a non compliance (infringement notice) could possibly have been pursued for failure to secure the offsets within the required timeframe, the formal request for the variation was received on the same day as the offsets were required to be secured and this course of action would not achieve protection of the protected matters. Accordingly, the variation is considered necessary and convenient for the protection of the matters of national environmental significance under Section 143(c)(i) of the EPBC Act.
- AMN therefore recommend that you approve the variations to Conditions 2 and 4 of the EPBC approval and sign the Variation Notice at **Attachment A** and the letter to UCML advising of your decision at **Attachment B**.

Reviewed by:

s22
Assistant Director, AMN

s22

s22

15 December 2012

Prepared by:

s22
Senior Project Officer

s22

s22

19 December 2012

Consultation: EACD, NSW

Attachments:

- A:** Notice of Variation (for delegate's signature)
- B:** Letter to proponent advising of your decision (for delegate's signature)
- C:** Signed copy of approval conditions dated 30/11/2010
- D:** Correspondence of 30/11/2012 from proponent requesting a variation
- E:** Correspondence of 06/11/2012 from proponent
- F:** Correspondence of 22/11/2012 from AMN to proponent
- G:** Correspondence of 10/12/2012 between AMN & proponent re draft variation



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW EPBC No 2009/5252

This decision to vary a condition 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 Ulan Coal Mines Limited
ACN 000 189 248

Approved action To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.

Variation

Variation of conditions of approval The variation is:
Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and substitute with the conditions specified below.

Note: All other conditions including the definitions in the approval dated 30 November 2010 remain unchanged.

Date of effect This variation has effect on the date the instrument is signed

Person authorised to make decision

name and position Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch

Signature *S. Gaddes*

Date of decision *24 December 2012*

Condition attached to the approval

2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 May 2013 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 May 2013.

If the conservation mechanism cannot be finalised by 31 May 2013, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



B

Our reference: 2009/5252

Contact Officer: s22
Telephone: s22 Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Dan Clifford
General Manager
Ulan Coal Mines Limited
PMB 3006
MUDGEES NSW 2850

Dear Mr Clifford

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

I refer to your letter of 30 November 2012 to s22 of the Compliance and Enforcement Branch, requesting a variation to conditions 2 and 4 of the Approval dated 30 November 2010.

The Approvals Monitoring North Section has the responsibility for managing projects that have been approved. Your request has been assessed and the following advice is provided.

As delegate of the Minister for Sustainability, Environment, Water, Population and Communities, I have decided to approve your request to vary conditions 2 and 4 of the approval in accordance with the provisions of the national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

If you have any enquiries please contact s22 on s22

Yours sincerely

Shane Gaddes
A/g Assistant Secretary
Compliance & Enforcement Branch
Environment Assessment and Compliance Division


24 December 2012



APPROVAL DECISION

Ulan Coal Continued Operations Project, Ulan, NSW – EPBC No 2009/5252

This decision is made under sections 130 and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

person to whom the approval is granted	Ulan Coal Mines Limited ACN 000 189 248
proposed action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
approval decision	The approval has effect for: <ul style="list-style-type: none">• Listed threatened species and communities (sections 18 & 18A)• Listed migratory species (sections 20 & 20A)
conditions of approval	This approval is subject to the conditions specified below.
expiry date of approval	This approval has effect until September 2031
Person authorised to make decision	
name and position	James Barker A/g Assistant Secretary Environment Assessment Branch
signature	
date of decision	30 November 2010

Conditions attached to the approval

1. The person taking the action must not clear more than 69 hectares of White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community in the project area.
2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered within 2 years of the date of this approval and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
3. To offset the impacts to the White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community, and to the habitat for the Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must, before commencement of operations (excluding first workings), obtain the Minister's approval of an Offset Management Plan for the Bobadeen and the Bobadeen East Offset Area.
This plan must include details of:
 - a. the desired outcomes/objectives of implementing the plan;
 - b. details of the Bobadeen Offset area, clearly define the location and boundaries of Bobadeen Offset area, through maps and / or textual descriptions as well as an accompanying *shapefile*;
 - c. details of the Bobadeen East offset area, clearly define the location and boundaries of the Bobadeen East Offset area, through maps and / or textual descriptions as well as an accompanying *shapefile*;
 - d. management actions that are proposed to protect offset areas and to enhance the extent and condition of the White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community and habitat values including weed control, fire management, erosion and sediment control, exclusion of livestock and restrictions on access;
 - e. measures for the long-term protection of the established White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community and habitat for the Swift Parrot, Regent Honeyeater and Large – eared Pied Bat;
 - f. measures to monitor subsidence and any proposed remediation works should subsidence occur;
 - g. the timing responsibilities and performance criteria for such actions;
 - h. the development and implementation of a monitoring program;
 - i. a process to report to the Department the offset area management actions undertaken and the outcome of those actions, identifying any need for improved management. For the five years after the commencement of operations, reports are to be submitted annually on or before the anniversary of the commencement of operations. Subsequently reports are to be submitted every fifth year on or before the anniversary of the commencement of operations;
 - j. a description of the potential risks to successful management and rehabilitation in the offset areas, and a description of the contingency measures that would be implemented to mitigate these risks; and
 - k. details of parties responsible for monitoring, reviewing and implementing the plan.The approved Offset Management Plan must be implemented. Any changes to the Offset Management Plan must be approved by the Minister and approved variations to the Plan must be implemented. This plan may be made publicly available on the internet by the Department.

4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised within 2 years of the date of this approval.

If the conservation mechanism cannot be finalised within 2 years of the date of this approval, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.

5. To offset the impacts on the Large – eared Pied Bat, the person taking the action must, before commencement of operations, (excluding first workings), obtain the Minister's approval of an Offset Management Plan for the Brokenback Conservation Area and Spring Gully Cliff Line Management Area.

This plan must include details of:

- a. the desired outcomes/objectives of implementing the plan;
- b. details of the Brokenback Conservation Area, clearly define the location and boundaries of the Brokenback Conservation Area, through maps and / or textual descriptions as well as an accompanying *shapefile*;
- c. details of the Spring Gully Cliff Line Management Area, clearly define the location and boundaries of the Spring Gully Line Management Area, through maps and / or textual descriptions as well as an accompanying *shapefile*;
- d. management actions that are proposed to protect areas and to enhance their value to Large – eared Pied Bat including weed control, fire management, erosion and sediment control, livestock management, and restrictions on access;
- e. measures for the long-term protection of these areas;
- f. the timing responsibilities and performance criteria for such actions;
- g. the development and implementation of a monitoring program;
- h. a process to report to the department the offset area management actions undertaken and the outcome of those actions, identifying any need for improved management. For the five years after the commencement of operations, reports are to be submitted annually on or before the anniversary of the commencement of operations. Subsequently reports are to be submitted every fifth year on or before the anniversary of the commencement of operations;
- i. a description of the potential risks to successful management and rehabilitation in the offset areas, and a description of the contingency measures that would be implemented to mitigate these risks; and
- j. details of parties responsible for monitoring, reviewing and implementing the plan.

The approved Offset Management Plan must be implemented. Any changes to the Offset Management Plan must be approved by the Minister and approved variations to the Plan must be implemented. This plan may be made publicly available on the internet by the Department.

6. Within 14 days after commencement of operations, the person taking the action must advise the Department in writing of the actual date of commencement of operations.

7. On or before every 12 month anniversary of the commencement of the operations, the person taking the action must submit to the Department an annual report addressing compliance with the conditions of this approval. The annual reports must list each approval condition and the actions taken to address each approval condition. Annual reports must be provided until the Minister is satisfied that the proponent has complied with all conditions of the approval and the Department has advised the person taking the action, in writing, that all the approval conditions have been complied with. This report may be made publicly available on the internet by the Department.

<p>8. On the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with these 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. The report of the independent auditor may be made publicly available on the internet by the Department.</p>
<p>9. If the Minister believes that it is necessary or desirable for the better protection of the White Box – Yellow Box – Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community, Regent Honeyeater, Swift Parrot or Large-eared Pied Bat to do so, the Minister may request that the person taking the action make specified revisions to any plans approved pursuant to these conditions. The person taking the action must comply with any such request. The revised plans must be implemented.</p>
<p>10. If commencement of operations has not occurred within 5 years of the date of this approval, operations must not commence without the written agreement of the Minister.</p>

Definitions:

The Department: the Australian Government Department responsible for the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

Minister: the Minister responsible for the EPBC Act

First Workings: the construction of development headings within the Ulan No.3 Underground operations which are designed for stability during development and longwall mining

Commencement of operations: any preparatory works required to be undertaken in relation to the action described in the EPBC referral 2009/5252 (other than first workings within Ulan No. 3 Underground operations) including clearing of vegetation, the erection of any on-site temporary structures and/or the use of construction or excavation equipment on site for the purposes of breaking the ground

Project area: the area described in the referral received under the EPBC Act on 18 December 2009.

Shapefile: an ESRI Shapefile, containing '.shp', '.shx.' and '.dbf' files and other files capturing attributes including at least the EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

Ulan Coal Continued Operations Project EPBC 2009/5252

Offsets

Bobadeen Vegetation Offset Area		Bobadeen East Vegetation Offset Area		Brokenback Conservation Area		Spring Gully Cliffline Management Area	
Lot	DP	Lot	DP	Lot	DP	Lot	DP
4	701346	73	750736	41	750735	83	704077
45	750735	61	750736	3	534014	54	750736
15	750735	81	750736	22	750735		
54	750736	1	701346	42	750735		
2	750736			43	750735		
3	701346			46	750735		
4	701346						
54	750736						
3	701346						
4	701346						
45	750735						
15	750735						
54	750736						
45	750735						
15	750735						
54	750736						
2	840034						
4	701346						
45	750735						
15	750735						
45	750735						
54	750736						

s22



From: s22
Sent: Tuesday, 18 December 2012 2:59 PM
To: s22
Subject: Attachment D - Correspondence of 30/11/2012 from proponent requesting a variation [SEC=UNCLASSIFIED]
Attachments: 20121130 Ulan Coal Mines Limited SEWPac further request extension for perpetuity arrangements.pdf

Attachment D

From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Friday, 30 November 2012 3:13 PM
To: Post Approval
Cc: s22 ; s22 ; s22 dclifford@xstratacoal.com.au; ncharnock@xstratacoal.com.au
Subject: RE: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Good afternoon s22

As we discussed this morning, I have attached a letter which will be sent to your office today. I will prepare a file transfer for the larger documents that will be attached with the letter. Please contact me if you do not receive these and if you have any questions. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333
s47F

Email: rstoney@xstratacoal.com.au
www.xstratacoal.com

From: Post Approval [mailto:PostApproval@environment.gov.au]
Sent: Thursday, 22 November 2012 2:58 PM
To: Stoney, Robyn (Ulan - Coal)
Cc: s22 ; s22 ; s22 Clifford, Dan (NSW - Coal)
Subject: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Hi Robyn

Ulan Coal Mines Limited, Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

Thank you for your email (below) and the attached letter of 6 November 2012 to s22 from the NSW Assessments Section of the Department of Environment, Water, Population and Communities (the department). As advised in our letter dated 5 April 2011 (attached), your project is now in the post-approval phase and the Approvals Monitoring North Section is the point of contact for all communication with the department. As such, s22 has kindly passed your request on to me for consideration.

I note from the letter attached to your email that Ulan Coal Mines Limited is proposing to enter into a Voluntary Conservation Agreement (VCA) under the National Parks & Wildlife Act 1974 to satisfy both the State and Commonwealth conditions of approval. Further, Ulan Coal Mines Limited is requesting an

extension of time to in order to finalise the process for protection in perpetuity of the offsets relating to the approval.

As you are aware, EPBC approval conditions 2 and 4 require that a legally binding conservation covenant must be registered on the four offset sites: Bobadeen; Bobadeen East; Brokenback; and Spring Gully. Covenant conditions must ensure that each of the offset areas is managed in perpetuity for the protection and enhancement of the specified matters of national environmental significance, as identified in the approval conditions. Additionally, both condition 2 and 4 require that all covenants must be registered within two years of the date of the approval, therefore by no later than 30 November 2012.

I note that on 21 June 2011 the department received a similar letter from Mr Jamie Lees, the previous Environment & Community Manager of the Ulan Complex. This letter requested an extension until December 2011 in order to finalise the process for protection in perpetuity of the offsets relating to the approval, noting that this extension of time would "allow for the relevant meetings between DoPI and the Department to occur and agree on a preferred approach to securing offsets". At the time, the department advised Mr Lees that no extension was necessary, given that Ulan Coal Mines Limited had until 30 November 2012 to finalise the conservation mechanisms (letter attached).

Since June 2011, there appears to have been no further communication with the department in relation to registering covenants over the required offset areas, nor any indication of potential delays associated with doing so, until your recent email dated 6 November 2012. Please note that the intent of the approval decision was for the four Offset areas to be secured by no later than 30 November 2012 and given the two years that has been available to do so, the department cannot make a decision to extend this timeframe without first receiving a formal, written request to vary the approval conditions.

Approval conditions are developed in consultation with the proponent and are usually flexible enough to encompass any reasonably foreseeable events. Ulan Coal Mines Limited should note that varying the conditions of approval is not a common process and the decision maker is under no obligation to grant requests for variation, and under no obligation to consider the request within a defined timeframe.

Under s143(c) of the EPBC Act, if a variation to a condition is requested by the approval holder, the approval holder must justify the proposed variation on one of the available grounds. In this case, Ulan Coal Mines Ltd will need to demonstrate that a change to the conditions, specifically conditions 2 and 4 of the approval, is necessary or convenient for:

- protecting a protected matter for which the approval has effect; or
- repairing or mitigating actual or likely damage to a protected matter for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

In requesting a variation to the approval conditions, Ulan Coal Mines Ltd must address at a minimum the following points:

- the details of the proposed variations;
- the reasons for the variations;
- specific dates by which Ulan Coal Mines Ltd will have all associated offset covenants registered; and
- any suggested wording for the varied conditions.

Once we have received the necessary information to make an informed decision on the variation request, the Approvals Monitoring North Section will put together a brief for the consideration of the Minister or his delegate.

In the meantime, to avoid any potential delays in responding to future requests of the department relating to the above project please refer all correspondence to:

Approvals Monitoring North
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Please ensure that you maintain accurate records of all activities associated with, or relevant to the conditions of approval, so that they can be made available to the Department on request. Such

documents may be subject to audit and used to verify compliance. Summaries of results of audits may be published by the Department. Information about the monitoring and audit program can be found on the Department's website at www.environment.gov.au/epbc/compliance/auditing.html.

Officers of the Approvals Monitoring North Section look forward to receiving your advice and will contact you again if any further information is required.

If you would like to discuss this matter further please do not hesitate to contact me.

Regards

s22

s22

Senior Project Officer
Approvals Monitoring North Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

Tel: s22
Fax: (02) 6274 1878



BEFORE PRINTING THIS E-MAIL
please consider the environment

From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Tuesday, 6 November 2012 7:58 AM
To: s22
Subject: Extension for perpetuity arrangements

Hi s22.

Nigel Charnock of Xstrata Coal NSW gave me your email address. I have attached a letter sent to your office today requesting an extension of time to allow for agreement to be reached on the method of establishing conservation for the offset areas described within Ulan Coal Mines Limited 2009/5252 EPBC approval. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333
s22

Email: rstone@xstratacoal.com.au
www.xstratacoal.com

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s47F

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Web www.xstratacoal.com

Address Ulan Complex
4505 Ulan Road
Ulan NSW 2850
PMB 3006
Mudgee NSW 2850
Australia

30 November 2012

Ms s22
Senior Project Officer
Approvals Monitoring North
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Seq No: /12

Dear Ms s22,

Re: Biodiversity Management Plan, Offset Management Program and Offset Perpetuity.

I am writing to provide additional information to Ulan Coal Mines Limited (UCML) letter to the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) on 2 November 2012 and to seek a variation of a condition of approval EPBC 2009/5252 pursuant to section 143 of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth). Specifically, UCML seeks an extension to the requirement to register a legally binding conservation covenant in perpetuity over its offset areas (Bobadeen, Bobadeen East, Brokenback and Spring Gully) by 30 November 2012.

Condition 43, schedule 3 of UCML's Project Approval (PA08_0184) granted by the NSW Minister for Planning also requires UCML to make suitable arrangements to provide appropriate long term security for the offset areas by the end of November 2012. UCML has made concerted efforts to meet this timeframe and, via its parent company Xstrata Coal NSW (XCN), has been consulting with the NSW Department of Planning and Infrastructure (DP&I) on this matter since late 2011 to ascertain the NSW government's preferred process for providing for conservation of offset areas in perpetuity.

Following our detailed consideration of possible conservation options, it is proposed to enter into a Voluntary Conservation Agreement (VCA) under the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) for the relevant XCN operations which are required to implement biodiversity conservation arrangements, including UCML. This will provide for a common approach across XCN to meet both State and Commonwealth (where applicable) conditions of approval.

The attached draft VCA template was prepared by XCN for discussion with the NSW DP&I, NSW Office of Environment and Heritage and SEWPaC. At a meeting with DP&I on 5 October 2012 to present the draft VCA template it was agreed that DP&I would arrange a further meeting with OEH, SEWPAC and XCN to discuss the proposed VCA mechanism and content of the VCA. The DP&I has not yet organised that meeting.

UCML remains strongly committed to registering all required offset covenants as soon as practicable, however before proceeding further has been waiting for the VCA to be formally accepted as an appropriate mechanism and the content of the VCA approved by NSW and Commonwealth Departments. This was intended to occur via the proposed joint agency meeting which was to be organised by the DP&I.



We have discussed the matter further with the DP&I this week (specifically the proposed joint agency meeting) and were advised that the DP&I will prioritise this matter. However, notwithstanding the proposed meeting UCML is available to discuss the attached VCA directly with SEWPaC upon request. In consideration of the above, UCML seeks a variation of the conditions to approval EPBC 2009/5252 which has the effect of extending the timeframe for implementation of the conservation arrangements to 31 May 2013.

The specific variations requested are to replace the words "2 years" with "30 months" in conditions 2 and 4 of approval EPBC 2009/5252.

Further to the matter of offset perpetuity, UCML have undertaken a significant monitoring program to incorporate the additional offset areas required by the decision of the NSW Land and Environment Court of 4 April 2011 (which had the effect of replacing the original Project Approval granted by the NSW Government with a new Project Approval for UCML). UCML submitted a revised Biodiversity Management Plan (BMP) and Offset Management Program (OMP) to the DP&I on 17 August 2012. UCML apologises for the delay, and we now refer the BMP and OMP revised plans for the consideration of the SEWPaC. UCML appreciates your feedback and will address any comments as required. Any changes to the management plans will be re-submitted to DP&I for its consideration. As per the requirements of the UCML Environmental Management Strategy, any changes made within the Management Plans have been made in red text for ease of identification.

Please contact Nigel Charnock at XCN on s47F to discuss matters relating to the draft VCA template. If you have any questions or require any additional information relating to management of offset areas, please don't hesitate to contact Robyn Stoney on s47F.

Yours Sincerely,

s47F

DAN CLIFFORD
General Manager
Ulan Coal Mines Limited



s22

From: s22
Sent: Tuesday, 18 December 2012 3:02 PM
To: s22
Subject: Attachment E - Correspondence dated 02/11/2012 from proponent, forwarded via email dated 8 November 2012 [SEC=UNCLASSIFIED]
Attachments: 20121106 SEWPac Extension for conservation arrangements.pdf

Attachment E

From: s22
Sent: Thursday, 8 November 2012 4:19 PM
To: s22
Cc: s22
Subject: FW: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Hi s22

I am forwarding you a request that has come to me from Ulan Coal (Xstrata) regarding EPBC approval 2009/5252, Ulan Coal Mine. The proposal was approved on 30 November 2010 with a number of conditions including registering a legally binding conservation covenant in perpetuity over the offset areas. Ulan Coal are requesting an extension on the registering of a legally binding conservation covenant, pending discussions with the state and commonwealth on possible perpetuity conservation options. I understand you are the officer responsible for monitoring the approval of this proposal and as such would manage this request and potential discussions on VCA options. It would be great, however, if I could be kept in the loop. One of my roles in the NSW Section is to keep up to date with mining offsets and mechanisms for offsetting that are being used in NSW. In addition I'm on the project team for the Strategic Assessment of coal mining in the s22 of which Xstrata is a participating company – and it will be useful to be part of these ongoing conversations. I will forward the hard copy letter which arrived in the mail today. Give me a call if you have any queries,

Thanks

s22

s22
Senior Adviser (EPBC) NSW
NSW Section | Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
T: s22
E: s22

From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Tuesday, 6 November 2012 7:58 AM
To: s22
Subject: Extension for perpetuity arrangements

Hi s22,

Nigel Charnock of Xstrata Coal NSW gave me your email address. I have attached a letter sent to your office today requesting an extension of time to allow for agreement to be reached on the method of establishing conservation for the offset areas described within Ulan Coal Mines Limited 2009/5252 EPBC approval. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333
s47F

Email: rstoney@xstratacoal.com.au
www.xstratacoal.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender immediately.



s47F

Fax + 61 2 6372 5333
Web www.xstratacoal.com

Address Ulan Coal Mines
4505 Ulan Road
Ulan NSW 2850
Private Mail Bag 3006
Mudgee NSW 2850
Australia

2 November 2012

s22

Senior Advisor (EPBC)
Department of Sustainability, Environment, Water, Population and Communities
Sydney Harbour Federation Trust
PO Box 607
Mosman NSW 2088

Our Ref: 206 /12

Dear s22,

EPBC Approval 2009/5252

I am writing to you in relation to our requirement to register a legally binding conservation covenant in perpetuity over our offset areas (Bobadeen, Bobadeen East, Brokenback and Spring Gully).

Following our detailed consideration of possible perpetuity conservation options, it is proposed to enter into a Conservation Agreement (VCA) under the National Parks & Wildlife Act 1974 to satisfy our EPBC Approval conditions 2 and 4. This will provide a common approach across Xstrata Coal NSW (XCN) to meet both State and Commonwealth conditions of approval.

XCN have prepared a draft Conservation Agreement for discussion with the NSW DP&I, NSW OEH and DSEWPC. On 5 October 2012, XCN met with DP&I to introduce a proposed approach and DP&I undertook to arrange a meeting between XCN, DP&I, OEH and DSEWPC to discuss our approach and the draft VCA document.

Accordingly, XCN (and Ulan Coal Mines) seeks an extension from DSEWPC for the above conditions until 6 months after agreement is reached between the parties on a suitable perpetuity mechanism.

If you require further information please contact Robyn Stoney on s47F

Yours sincerely

s47F

Dan Clifford
General Manager
dclifford@xstratacoal.com.au



F

s22

From: s22
Sent: Tuesday, 18 December 2012 3:04 PM
To: s22
Subject: Attachment F - Correspondence of 22/11/2012 from AMN to proponent [SEC=UNCLASSIFIED]
Attachments: MAS First contact Letter.doc; Protection in perpetuity letter August 2011.doc

Attachment F

From: Post Approval
Sent: Thursday, 22 November 2012 2:58 PM
To: RStoney@xstratacoal.com.au
Cc: s22 ; s22 ; s22 ; dclifford@xstratacoal.com.au
Subject: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Hi Robyn

Ulan Coal Mines Limited, Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

Thank you for your email (below) and the attached letter of 6 November 2012 to s22 from the NSW Assessments Section of the Department of Environment, Water, Population and Communities (the department). As advised in our letter dated 5 April 2011 (attached), your project is now in the post-approval phase and the Approvals Monitoring North Section is the point of contact for all communication with the department. As such, s22 has kindly passed your request on to me for consideration.

I note from the letter attached to your email that Ulan Coal Mines Limited is proposing to enter into a Voluntary Conservation Agreement (VCA) under the National Parks & Wildlife Act 1974 to satisfy both the State and Commonwealth conditions of approval. Further, Ulan Coal Mines Limited is requesting an extension of time to in order to finalise the process for protection in perpetuity of the offsets relating to the approval.

As you are aware, EPBC approval conditions 2 and 4 require that a legally binding conservation covenant must be registered on the four offset sites: Bobadeen; Bobadeen East; Brokenback; and Spring Gully. Covenant conditions must ensure that each of the offset areas is managed in perpetuity for the protection and enhancement of the specified matters of national environmental significance, as identified in the approval conditions. Additionally, both condition 2 and 4 require that all covenants must be registered within two years of the date of the approval, therefore by no later than 30 November 2012.

I note that on 21 June 2011 the department received a similar letter from Mr Jamie Lees, the previous Environment & Community Manager of the Ulan Complex. This letter requested an extension until December 2011 in order to finalise the process for protection in perpetuity of the offsets relating to the approval, noting that this extension of time would "allow for the relevant meetings between DoPI and the Department to occur and agree on a preferred approach to securing offsets". At the time, the department advised Mr Lees that no extension was necessary, given that Ulan Coal Mines Limited had until 30 November 2012 to finalise the conservation mechanisms (letter attached).

Since June 2011, there appears to have been no further communication with the department in relation to registering covenants over the required offset areas, nor any indication of potential delays associated with doing so, until your recent email dated 6 November 2012. Please note that the intent of the approval decision was for the four Offset areas to be secured by no later than 30 November 2012 and given the two years that has been available to do so, the department cannot make a decision to extend this timeframe without first receiving a formal, written request to vary the approval conditions.

Approval conditions are developed in consultation with the proponent and are usually flexible enough to encompass any reasonably foreseeable events. Ulan Coal Mines Limited should note that varying the conditions of approval is not a common process and the decision maker is under no obligation to grant requests for variation, and under no obligation to consider the request within a defined timeframe.

Under s143(c) of the EPBC Act , if a variation to a condition is requested by the approval holder, the approval holder must justify the proposed variation on one of the available grounds. In this case, Ulan Coal Mines Ltd will need to demonstrate that a change to the conditions, specifically conditions 2 and 4 of the approval, is necessary or convenient for:

- protecting a protected matter for which the approval has effect; or
- repairing or mitigating actual or likely damage to a protected matter for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

In requesting a variation to the approval conditions, Ulan Coal Mines Ltd must address at a minimum the following points:

- the details of the proposed variations;
- the reasons for the variations;
- specific dates by which Ulan Coal Mines Ltd will have all associated offset covenants registered; and
- any suggested wording for the varied conditions.

Once we have received the necessary information to make an informed decision on the variation request, the Approvals Monitoring North Section will put together a brief for the consideration of the Minister or his delegate.

In the meantime, to avoid any potential delays in responding to future requests of the department relating to the above project please refer all correspondence to:

Approvals Monitoring North
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Please ensure that you maintain accurate records of all activities associated with, or relevant to the conditions of approval, so that they can be made available to the Department on request. Such documents may be subject to audit and used to verify compliance. Summaries of results of audits may be published by the Department. Information about the monitoring and audit program can be found on the Department's website at www.environment.gov.au/epbc/compliance/auditing.html.

Officers of the Approvals Monitoring North Section look forward to receiving your advice and will contact you again if any further information is required.

If you would like to discuss this matter further please do not hesitate to contact me.

Regards

s22

s22

Senior Project Officer
Approvals Monitoring North Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

s22

Fax: (02) 6274 1878



BEFORE PRINTING THIS E-MAIL
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From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Tuesday, 6 November 2012 7:58 AM

To: s22
Subject: Extension for perpetuity arrangements

Hi s22,

Nigel Charnock of Xstrata Coal NSW gave me your email address. I have attached a letter sent to your office today requesting an extension of time to allow for agreement to be reached on the method of establishing conservation for the offset areas described within Ulan Coal Mines Limited 2009/5252 EPBC approval. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333

s47F

Email: rstoney@xstratacoal.com.au
www.xstratacoal.com

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Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Our reference: **s22**

Contact Officer: **s22**
Telephone: **s22** Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Dan Clifford
General Manager
Western and Southern Operations
Ulan Coal Mines Limited
PMB 3006
MUDGEES NSW 2850

Dear Mr Clifford

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

The Monitoring and Audit Section of the Department of Sustainability, Environment, Water, Population and Communities (the Department) is responsible for managing projects that have received approval under the National Environment Law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

As your project is now in the post-approval phase, the Monitoring and Audit Section is the point of contact for further communication with the Department. To avoid any potential delays in responding to future requests of the Department relating to the above project please refer all correspondence to:

Monitoring and Audit Section
Compliance and Enforcement Branch
Approvals and Wildlife Division
Department of Sustainability, Environment, Water, Population and
Communities
GPO Box 787
CANBERRA ACT 2601

The Department has an active monitoring program which includes monitoring inspections, desk top document reviews and audits. As part of this program we will be undertaking a review of our records to ascertain the present status of this project in relation to its conditions of approval. We will contact you again if we need further information.

Please ensure that you maintain accurate records of all activities associated with, or relevant to the conditions of approval so that they can be made available to the Department on request. Such documents may be subject to audit and used to verify compliance. Summaries of results of audits may be published by the Department. Information about the monitoring and audit program can be found on the Department's website at www.environment.gov.au/epbc/compliance/auditing.html.

We would appreciate if you could advise us of any changes to the contact details for the project (contact officer, company address etc).

You should note that any transfer of this approval to another person must have the consent of the Minister under section 145B of the EPBC Act.

If you have any enquiries please contact me on s22

Yours sincerely

SIGNED

s22

Assistant Director
Monitoring and Audit Section
Compliance & Enforcement Branch
Approvals and Wildlife Division

5 April 2011

CC: Ms s47F
Director
Umwelt (Australia) Pty Ltd
PO Box 838
TORONTO NSW 2283



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Our reference: s22

Contact Officer: s22
Telephone: 02 s22 Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Jamie Lees
Environment & Community Manager – Ulan Complex
Ulan Coal Mines Limited
PMB 3006
MUDGEE NSW 2850

Dear Mr Lees

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

I refer to your letter of 21 June 2011 requesting an extension until December 2011 to finalise the process for protection in perpetuity of offsets related to the above approval. I regret the delay in responding.

Officers have reviewed the conditions attached to your approval and the Biodiversity, Rehabilitation Offset Management Plan (BROMP) and have advised me that no extension is necessary. Notwithstanding your commitment in the BROMP, conditions 2 and 4 of the approval, which relate to offset protection, allow the conservation mechanisms to be finalised within two years of the date of the approval (30 November 2010).

Please ensure that you maintain accurate records of all activities associated with, or relevant to the conditions of approval so that they can be made available to the Department on request. Such documents may be subject to audit and used to verify compliance. Summaries of results of audits may be published by the Department. Information about the monitoring and audit program can be found on the Department's website at www.environment.gov.au/epbc/compliance/auditing.html.

If you have any enquiries regarding this project please contact s22 on s22

Yours sincerely

SIGNED

s22

Director
Monitoring and Audit Section
Compliance & Enforcement Branch
Environmental Assessment & Compliance Division
16 August 2011

s22

From: s22
Sent: Tuesday, 18 December 2012 3:08 PM
To: s22
Subject: Attachment G - Correspondence of 10/12/2012 between AMN & proponent re draft variation [SEC=UNCLASSIFIED]
Attachments: draft variation notice - conditions 2 & 4 - provided for proponents appr....docx

Attachment G

From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Monday, 10 December 2012 4:46 PM
To: Post Approval
Cc: s22; s22; s22; dclifford@xstratacoal.com.au; ncharnock@xstratacoal.com.au
Subject: RE: EPBC 2009/5252 - Extension for perpetuity arrangements - Ulan Coal Mines Limited - Continued Mining Operations and Construction of Associated Infrastructure [SEC=UNCLASSIFIED]

Hi s22,

Thank you for preparing the draft amendment, we agree with the proposed wording and appreciate your progression of the amendment with the delegate.

I will provide the file transfer details as requested this afternoon. Please contact me if you have any questions. Thank you.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333
s47F

Email: rstoney@xstratacoal.com.au
www.xstratacoal.com

From: Post Approval [mailto:PostApproval@environment.gov.au]
Sent: Monday, 10 December 2012 12:06 PM
To: Stoney, Robyn (Ulan - Coal)
Cc: s22; s22; s22; Clifford, Dan (NSW - Coal); Charnock, Nigel (NSW - Coal)
Subject: RE: EPBC 2009/5252 - Extension for perpetuity arrangements - Ulan Coal Mines Limited - Continued Mining Operations and Construction of Associated Infrastructure [SEC=UNCLASSIFIED]

Good morning Robyn

Ulan Coal Mines Limited, Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

Thank you for your email (below) and the attached letter dated 30 November 2012 requesting a variation to conditions 2 and 4 of the EPBC approval. I have attached a draft of the proposed variation notice for your consideration. It would be appreciated if you could please review the attached draft and provide confirmation that Ulan Coal Mines Limited are happy with the proposed wording. Once I have received your agreement I will progress the associated brief for the delegate's consideration of approval.

In the meantime, I note that a later email was received by the department on 3 December 2012 which provided a download link to revised copies of the Biodiversity Management Plan and Offset Management Program previously approved by the department. These revisions have been provided in line with conditions 3 and 5 of the approval which requires that any changes made must be approved by the Minister prior to implementation of the changes. Unfortunately I have been unable to download the files as, when I enter the log in details provided, I get the following error message: "Login Failed. File area not found." While I have since received hard copies of the documents this morning, it would be greatly appreciated if you could also provide new log in details so that I can save copies to our electronic files.

Please do not hesitate to contact me should you wish to discuss any element of the project or the variation process further.

Kind Regards

s22

s22

Senior Project Officer
Approvals Monitoring Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

Tel: s22

Fax: (02) 6274 1878



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From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]
Sent: Friday, 30 November 2012 3:13 PM
To: Post Approval
Cc: s22 ; s22 ; s22 ; dclifford@xstratacoal.com.au;
ncharnock@xstratacoal.com.au
Subject: RE: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Good afternoon s22

As we discussed this morning, I have attached a letter which will be sent to your office today. I will prepare a file transfer for the larger documents that will be attached with the letter. Please contact me if you do not receive these and if you have any questions. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F

Fax: +61 2 6372 5333

s47F

Email: rstone@xstratacoal.com.au
www.xstratacoal.com

From: Post Approval [mailto:PostApproval@environment.gov.au]
Sent: Thursday, 22 November 2012 2:58 PM

To: Stoney, Robyn (Ulan - Coal)

Cc: s22 ; s22 ; s22 ; Clifford, Dan (NSW - Coal)

Subject: Extension for perpetuity arrangements [SEC=UNCLASSIFIED]

Hi Robyn

Ulan Coal Mines Limited, Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

Thank you for your email (below) and the attached letter of 6 November 2012 to s22 from the NSW Assessments Section of the Department of Environment, Water, Population and Communities (the department). As advised in our letter dated 5 April 2011 (attached), your project is now in the post-approval phase and the Approvals Monitoring North Section is the point of contact for all communication with the department. As such, s22 has kindly passed your request on to me for consideration.

I note from the letter attached to your email that Ulan Coal Mines Limited is proposing to enter into a Voluntary Conservation Agreement (VCA) under the National Parks & Wildlife Act 1974 to satisfy both the State and Commonwealth conditions of approval. Further, Ulan Coal Mines Limited is requesting an extension of time to in order to finalise the process for protection in perpetuity of the offsets relating to the approval.

As you are aware, EPBC approval conditions 2 and 4 require that a legally binding conservation covenant must be registered on the four offset sites: Bobadeen; Bobadeen East; Brokenback; and Spring Gully. Covenant conditions must ensure that each of the offset areas is managed in perpetuity for the protection and enhancement of the specified matters of national environmental significance, as identified in the approval conditions. Additionally, both condition 2 and 4 require that all covenants must be registered within two years of the date of the approval, therefore by no later than 30 November 2012.

I note that on 21 June 2011 the department received a similar letter from Mr Jamie Lees, the previous Environment & Community Manager of the Ulan Complex. This letter requested an extension until December 2011 in order to finalise the process for protection in perpetuity of the offsets relating to the approval, noting that this extension of time would "allow for the relevant meetings between DoPI and the Department to occur and agree on a preferred approach to securing offsets". At the time, the department advised Mr Lees that no extension was necessary, given that Ulan Coal Mines Limited had until 30 November 2012 to finalise the conservation mechanisms (letter attached).

Since June 2011, there appears to have been no further communication with the department in relation to registering covenants over the required offset areas, nor any indication of potential delays associated with doing so, until your recent email dated 6 November 2012. Please note that the intent of the approval decision was for the four Offset areas to be secured by no later than 30 November 2012 and given the two years that has been available to do so, the department cannot make a decision to extend this timeframe without first receiving a formal, written request to vary the approval conditions.

Approval conditions are developed in consultation with the proponent and are usually flexible enough to encompass any reasonably foreseeable events. Ulan Coal Mines Limited should note that varying the conditions of approval is not a common process and the decision maker is under no obligation to grant requests for variation, and under no obligation to consider the request within a defined timeframe.

Under s143(c) of the EPBC Act, if a variation to a condition is requested by the approval holder, the approval holder must justify the proposed variation on one of the available grounds. In this case, Ulan Coal Mines Ltd will need to demonstrate that a change to the conditions, specifically conditions 2 and 4 of the approval, is necessary or convenient for:

- protecting a protected matter for which the approval has effect; or
- repairing or mitigating actual or likely damage to a protected matter for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

In requesting a variation to the approval conditions, Ulan Coal Mines Ltd must address at a minimum the following points:

- the details of the proposed variations;
- the reasons for the variations;
- specific dates by which Ulan Coal Mines Ltd will have all associated offset covenants registered; and
- any suggested wording for the varied conditions.

Once we have received the necessary information to make an informed decision on the variation request, the Approvals Monitoring North Section will put together a brief for the consideration of the Minister or his delegate.

In the meantime, to avoid any potential delays in responding to future requests of the department relating to the above project please refer all correspondence to:

Approvals Monitoring North
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Please ensure that you maintain accurate records of all activities associated with, or relevant to the conditions of approval, so that they can be made available to the Department on request. Such documents may be subject to audit and used to verify compliance. Summaries of results of audits may be published by the Department. Information about the monitoring and audit program can be found on the Department's website at www.environment.gov.au/epbc/compliance/auditing.html.

Officers of the Approvals Monitoring North Section look forward to receiving your advice and will contact you again if any further information is required.

If you would like to discuss this matter further please do not hesitate to contact me.

Regards

s22

s22

Senior Project Officer
Approvals Monitoring North Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

s22

Fax: (02) 6274 1878



BEFORE PRINTING THIS E-MAIL
please consider the environment

From: RStoney@xstratacoal.com.au [mailto:RStoney@xstratacoal.com.au]

Sent: Tuesday, 6 November 2012 7:58 AM

To: s22

Subject: Extension for perpetuity arrangements

Hi s22,

Nigel Charnock of Xstrata Coal NSW gave me your email address. I have attached a letter sent to your office today requesting an extension of time to allow for agreement to be reached on the method of establishing conservation for the offset areas described within Ulan Coal Mines Limited 2009/5252 EPBC approval. Thank you for your consideration of this matter.

Regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F

Fax: +61 2 6372 5333

s47F

Email: rstone@xstratacoal.com.au
www.xstratacoal.com

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DRAFT VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW EPBC No 2009/5252

This decision to vary a condition 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	Ulan Coal Mines Limited ACN 000 189 248
--	--

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
-----------------	---

Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and substitute with the conditions specified below.
-------------------------------------	--

Note: All other conditions including the definitions in the approval dated 30 November 2010 remain unchanged.

Date of effect	This variation has effect on the date the instrument is signed
----------------	--

Person authorised to make decision

name and position	Shane Gaddes A/g Assistant Secretary Compliance and Enforcement Branch
-------------------	--

Signature

Date of decision

Condition attached to the approval

2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 May 2013 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 May 2013.

If the conservation mechanism cannot be finalised by 31 May 2013, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.

DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION AND COMMUNITIES

For Decision: Shane Gaddes, A/g AS, CEB
Through: s22 Director, AMN

s22

File No: 2012/14137
Section: AMN
Priority: Medium

Ulan Coal Continued Operations Project, Ulan, NSW - EPBC 2009/5252

Recommendations:

- | | | |
|----|--|--|
| 1. | Approve the variations to Conditions 2 and 4 of the approval for this project at Attachment A . | Approved/Not approved |
| 2. | Sign the letter to the person to whom the approval is granted advising of your decision at Attachment B . | Signed/Not signed
<i>change to letter</i> |

S. Gaddes

Comments:

Shane Gaddes
A/g AS, CEB
22 May 2013

Key Points:

- The Minister has delegated you as decision maker for this matter.
- On 30 November 2010 a delegate of the Minister approved the extension of an open cut coal mine, development of Ulan West underground mine and modification or construction of new infrastructure associated with these operations at Ulan, NSW. **Attachment C**.
- Condition 2 of the EPBC approval for this project requires the person to whom the approval is granted, Ulan Coal Mines Limited (UCML), to register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1 of the EPBC approval. This is to offset impacts on the listed White Box – Yellow Box Blakely’s Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat.
- Additionally, condition 4 of the approval requires UCML to provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1 of the EPBC approval. The conservation mechanism must be agreed to in writing by the department and finalised within 2 years of the date of the approval. These conservation areas are required to offset the impacts on the Large – eared Pied Bat.
- On 24 December 2012 the department approved variations to conditions 2 and 4 to extend the timeframe for implementation of the conservation arrangements to 31 May 2013. **Attachment C**.
- On 30 April 2013 UCML wrote to the department formally requesting a variation to approval conditions 2 and 4 to further extend the timeframe for implementation of the conservation arrangements to 31 December 2013. **Attachment D**.

Background:

- On 6 November 2012 UCML wrote to an out-posted officer from the NSW Assessments Section of the department, proposing to enter into a Voluntary Conservation Agreement (VCA) under the *National Parks & Wildlife Act 1974* to satisfy both the State and Commonwealth conditions of approval. Further, UCML requested an extension of time in order to finalise the process for protection in perpetuity of the offsets relating to the approval. As the project was being actively managed in Approvals Monitoring, this letter was forwarded onto the Approvals Monitoring North Section (AMN) for appropriate action. **Attachment E.**
- On 30 November 2012 a formal request was received from UCML to vary approval conditions 2 and 4. This correspondence noted that UCML remained committed to registering all required offset covenants as soon as practicable but before proceeding further had been waiting for the VCA to be formally accepted as an appropriate mechanism and the content of the VCA approved by NSW and Commonwealth departments. **Attachment F.**
- UCML stated that this had been intended to occur via a joint agency meeting to be organised by the Department of Planning and Infrastructure (DP&I). UCML noted that they had again raised the matter of the proposed joint agency meeting with DP&I, who, last week, had undertaken to prioritise the matter. Therefore, delays in registering all required offset covenants have been attributed to DP&I and do not appear to have been caused by UCML. **Attachment F.**
- A meeting between the NSW Department of Planning and Infrastructure (DP&I), the NSW Office of Environment and Heritage (OEH), UCML's parent company Xstrata Coal NSW (XCN) and the out-posted officer from the department was held in Sydney on 18 December 2012 to discuss options for securing acceptable covenants over offset areas. During the meeting, OEH indicated that they would like XCN to pursue Bio-banking agreements to secure the offsets already in their possession. OEH officers indicated that this process would be likely to take 6 to 12 months to complete. **Attachment G.**
- Based on the above information, a variation to conditions 2 and 4 was approved on 24 December 2012. This variation extended the proposed timeframes for implementation of the conservation arrangements for an additional 6 months to 31 May 2013. **Attachment C.**
- UCML have confirmed that they are continuing to actively manage the offsets associated with the EPBC approval and are undertaking all management activities as specified in the approved Biodiversity, Rehabilitation and Offset Management Plan. **Attachment H.**
- While UCML appear committed to registering all required offset covenants as soon as practicable, they continue to be delayed by negotiations with both the DP&I and OEH as to the most appropriate mechanism. UCML therefore wrote to the department on 30 April 2013 formally requesting a variation to approval conditions 2 and 4 to further extend the timeframe for implementation of the conservation arrangements to 31 December 2013.

This letter noted that on 15 March 2013 DP&I advised UCML that the Director-General had granted an extension for securing the offset areas required under NSW State Project Approval 08_0184 to 31 December 2013. **Attachment D.**
- On 16 May 2013 AMN provided UCML with a copy of the draft variation notice for their consideration. UCML replied the same day, noting their agreement to the proposed wording of the variation notice. **Attachment I.**

- AMN officers have considered the proposed variations and are satisfied that an extension to the timeframe will align the timing of both Federal and State approval requirements and allow UCML to achieve protection of the areas required under the conditions of approval. Accordingly, the variation of conditions is considered necessary and convenient for the protection of the matters of national environmental significance under Section 143(c) (i) of the EPBC Act.
- AMN therefore recommend that you approve the variations to Conditions 2 and 4 of the EPBC approval and sign the Variation Notice at **Attachment A** and the letter to UCML advising of your decision at **Attachment B**.

Reviewed by:

s22

Assistant Director, AMN

s22

Prepared by:

s22

Senior Project Officer

s22

s22

s22

22 May 2013

22 May 2013

Consultation: EACD, NSW

Attachments:

- A:** Notice of Variation (for delegate's signature)
- B:** Letter to UCML advising of your decision (for delegate's signature)
- C:** Signed copy of approval conditions dated 30/11/2010 & variation dated 24/12/2012
- D:** Correspondence of 30/05/2013 from UCML requesting a variation
- E:** Correspondence of 06/11/2012 from UCML
- F:** Correspondence between department & UCML from 06/11/2012 to 30/11/2012
- G:** Copy of email dated 20/01/2013 re meeting of 18/12/2012 from out-posted officer
- H:** Copy of email between AMN & UCML dated 21/05/2013 & 22/05/2013
- I:** Copy of email dated 16/05/2013 between AMN & UCML re draft variation



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW EPBC No 2009/5252

This decision to vary a condition 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 Ulan Coal Mines Limited
ACN 000 189 248

Approved action To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.

Variation

Variation of conditions of approval The variation is:
Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and variation notice dated 24 December 2012 and substitute with the conditions specified below.

Note: All other conditions including the definitions in the approval dated 30 November 2010 remain unchanged.

Date of effect This variation has effect on the date the instrument is signed

Person authorised to make decision

name and position Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch

Signature *S. Gaddes*

Date of decision 22 May 2013

Condition attached to the approval

2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 December 2013 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.

4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 December 2013.

If the conservation mechanism cannot be finalised by 31 December 2013, the proponent must submit for the Minister's approval an alternative offset within 4 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Our reference: 2012/14137

Contact Officer: s22
Telephone: s22 Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Dan Clifford
General Manager
Ulan Coal Mines Limited
PMB 3006
MUDGEE NSW 2850

Dear Mr Clifford

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

I refer to your letter of 30 April 2013 to s22 of the Compliance and Enforcement Branch, requesting a variation to conditions 2 and 4 of the approval dated 30 November 2010 and the subsequent variation to conditions dated 24 December 2012.

Your request has been assessed and as delegate of the Minister for Sustainability, Environment, Water, Population and Communities, I have decided to vary conditions 2 and 4 of the approval in accordance with the provisions of the national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

I note this is the second time a variation to conditions 2 and 4 has been required to extend the timeframe for implementation of the conservation arrangements. The department requests that you prioritise your negotiations with the NSW Department of Planning and Infrastructure and the NSW Office of Environment and Heritage and finalise the Biobanking arrangements for each of the offset areas as soon as possible.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

If you have any enquiries please contact s22 on s22.

Yours sincerely

Shane Gaddes
A/g Assistant Secretary
Compliance & Enforcement Branch
Environment Assessment and Compliance Division

23 May 2013

s22 ; [redacted]

From: s22
Sent: Sunday, 20 January 2013 11:51 AM
To: s22
Cc: s22
Subject: RE: Xstrata Project - Meeting re: Security of Biodiversity Offset Areas [SEC=UNCLASSIFIED]

Hi s22,
Sorry I didn't get back to you after the meeting on the 18th. The time just disappeared and then it was Christmas and I've been on leave since. I'll be in Canberra from tomorrow for four days and will come and speak to you personally. I sent an email to s22 on Friday – with a quick summary but for your purposes see notes below:

Meeting 18th December 2012

- Attendants:
- Nigel Charnock (Xstrata)
 - D O'Brien (Xstrata)
 - s47F (Manager Mining – DP&I)
 - s47F (Manager Biodiversity Conservation – OEH)
 - s22 (SEWPaC)

There were a number of other govt officers from both DP&I and OEH but s47F are the senior managers and were making the decisions.

The meeting was coordinated by DP&I, to talk through the issues that Xstrata (and other mining companies) are having getting secure covenants over offsets in NSW. The Planning Assessment Commission has been recommending in their reports that mining companies use Vegetation Conservation Agreements (VCAs) to secure protection in the long term. OEH does not agree with using VCAs as a mechanism for protecting mining offsets. VCAs were no established to be used in this way and they do not believe they provide security into the longer term.

OEH would like mining companies to pursue Bio-banking agreements to secure offsets already in their possession. In practical terms – OEH, in consultation with the company, will determine an amount of money that would cover the protection and management of the nominated offset over a 20-30 year period. The company pays the money into the Environment Trust up front and an annuity is paid to the landholder to manage the land for conservation. The land is protected under State legislation (for conservation) and there is money to fund the management of the land the long term. Under this scenario the mining companies could actually sell their offset lands to interested third parties who may be keen to manage land for conservation with \$ attached.

Re the Xstrata offsets - it is envisaged it will take 6 -12 months to put this arrangement in place. NSW Govt and Xstrata would like the Aust Govt to consider varying the conditions for securing long-term protection for the Ulan mine offsets (and Ravensworth I presume) to enable the bio-banking arrangements to be put in place. This will involve calculating the costs of managing the land for the long term including any improvements that are required under the approval conditions. Under the biobanking legislation –the landholder is legally responsible for any requirements set out under the agreement including maintaining biodiversity values, improving biodiversity values and reporting annually to govt.

My input was to say that the AG would support mechanisms for protection that are robust and contribute effectively to biodiversity outcomes and are consistent with the EPBC offset policy. I stressed that the proponents would need to speak to the Post Approvals area of the dept (you guys) as a priority and provide more detail for our dept to consider and ensure that all appropriate variation requests are submitted with an eye to relevant due dates (i.e. Ravensworth). I also stressed the importance of NSW Govt communicating their policy position (i.e. preference for bio-banking) to the dept and to provide more detail on how this would work and how it will meet EPBC requirements.

Note: at officer level at least DP&I seem to be supportive of OEHS approach and at this meeting OEH agreed to develop a policy paper on offsets and bio-banking which would guide governments and the Planning Assessment Commission when making determinations. The timing for this is likely to be about 6 months. It is unlikely there will be minutes for this meeting but if there are I'll forward them.

Let me know when is a good time to talk with you this week and we can book a meeting. Apologies again for the delay in communicating – the meeting happened at the worst time.

thanks
s22

s22

Senior Adviser (EPBC) NSW

NSW Section | Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

s22

s22

From: s22

Sent: Wednesday, 16 January 2013 2:05 PM

To: s22

Subject: Xstrata Project - Meeting re: Security of Biodiversity Offset Areas [SEC=UNCLASSIFIED]

Dear s22,

I am emailing in relation to the Xstrata Project above and a meeting held on the 18 December 2012. Approvals Monitoring North (AMN) have received a request for an extension in relation to securing the Biodiversity Offset Areas. In their letter they refer to a meeting held on the 18 December 2012 with SEWPaC, OEH and DoPI regarding the security of Biodiversity Offset Areas for relevant Xstrata projects.

I was told by s22 that you attended the above meeting on behalf of SEWPaC. Therefore I was just checking if you could please provide me with some information relating to the outcomes of this meeting or the minutes from the meeting would be much appreciated.

I can be contacted on s22

Thank you and Regards,

s22

Approvals Monitoring North Section
Environmental Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787 Canberra ACT 2601 | s22
Post approvals@environment.gov.au



Please consider the Environment before printing this email.

s22

From: RStoney@xstratacoal.com.au
Sent: Wednesday, 22 May 2013 8:58 AM
To: Post Approval
Subject: RE: EPBC 2009/5252 - Ulan Coal Continued Operations Project, Ulan, NSW [SEC=UNCLASSIFIED]

Hi s22,

Ulan Coal Mines Limited (UCML) actively manage and monitor the offset areas as described in the Biodiversity Management Plan and Offset Management Program and the 2012 EPBC Compliance Report, which was submitted on 14 February 2013. The following activities are in progress:

- Ground preparation works for tree planting has commenced, fourteen thousand seedlings are now 1 year old and ready for planting and a further thirteen thousand seedlings are in propagation for planting this year;
- Collection of local provenance seed for future offset propagation is an ongoing activity, 189kg of local provenance seed is in stock;
- Fencing of boundaries and erection of signage on boundaries is significantly complete, with work still in progress;
- Weed spraying and baiting of feral animal controls is conducted seasonally on an on-going basis;
- Erosion management structures are designed, and will be implemented this year;
- Nest boxes are designed. The first consignment of 23 boxes was fabricated and delivered in 2012, they will be installed this year; and
- The biodiversity monitoring program is continuing as described in the compliance report.

Thank you.

Best regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333

s47F

Email: rstone@xstratacoal.com.au
www.xstratacoal.com

From: s22 [mailto:s22@environment.gov.au]
Sent: Tuesday, 21 May 2013 2:02 PM
To: Stoney, Robyn (Ulan - Coal)
Subject: RE: EPBC 2009/5252 - Ulan Coal Continued Operations Project, Ulan, NSW [SEC=UNCLASSIFIED]

Hi Robyn

The delegate has requested confirmation that Ulan Coal Mines Limited are currently actively managing the offsets associated with the EPBC approval and are undertaking all management activities as specified in the Biodiversity Management Plan and Offset Management Program . If you could please provide this advice, I will add the requested information to the brief for the delegate's consideration.

Kind Regards

s22

s22

Senior Project Officer
Approvals Monitoring Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

Tel: s22
Fax: (02) 6274 1878



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s22

From: RStoney@xstratacoal.com.au
Sent: Thursday, 16 May 2013 1:40 PM
To: s22
Subject: RE: EPBC 2009/5252 - Ulan Coal Continued Operations Project, Ulan, NSW [SEC=UNCLASSIFIED]

Hi s22

Thank you very much, yes we agree to the conditions as drafted.

Best regards,
Robyn

Robyn Stoney
Environment & Community Manager
Xstrata Coal
Ulan Coal Mines Limited

s47F
Fax: +61 2 6372 5333
s47F

Email: rstoney@xstratacoal.com.au
www.xstratacoal.com

From: s22 [mailto:s22@environment.gov.au]
Sent: Thursday, 16 May 2013 11:35 AM
To: Stoney, Robyn (Ulan - Coal)
Subject: RE: EPBC 2009/5252 - Ulan Coal Continued Operations Project, Ulan, NSW [SEC=UNCLASSIFIED]
Importance: High

Hi Robyn

In response to your letter of 30 April 2013 requesting a variation to conditions 2 and 4 of the EPBC approval, please find attached a draft of the proposed variation notice for your consideration. It would be appreciated if you could please review the attached draft and provide confirmation that Ulan Coal Mines Limited are happy with the proposed wording. Once I have received your agreement I will progress the associated brief for the delegate's consideration of approval.

Please do not hesitate to contact me should you wish to discuss any element of the project or the variation process further.

Kind Regards

s22

s22
Senior Project Officer
Approvals Monitoring Section (QLD, NSW, Territories and Mining)
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities

Tel: s22
Fax: (02) 6274 1878



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DEPARTMENT OF THE ENVIRONMENT

For Decision: Shane Gaddes, AS, CEB
Through: s22, Director, AMN

File No: 2012/14137
Section: AMN
Timing: Medium

s22

Ulan Coal Continued Operations Project, Ulan, NSW - EPBC 2009/5252

Recommendations:

- | | | |
|----|--|-----------------------|
| 1. | Approve the variations to Conditions 2 and 4 of the approval for this project at Attachment A . | Approved/Not approved |
| 2. | Sign the letter to the person to whom the approval is granted advising of your decision at Attachment B . | Signed/Not signed |

..... S. Gaddes
Shane Gaddes
AS, CEB Jan
6 December 2012

Comments:

Key Points:

- The Minister has delegated you as decision maker for this matter under section 515 of the *Environment Protection and Biodiversity Conservation Act 1999*.
- On 30 November 2010 a delegate of the Minister approved the extension of an open cut coal mine, development of Ulan West underground mine and modification or construction of new infrastructure associated with these operations at Ulan, NSW. **Attachment C**.
- Condition 2 of the approval for this project requires the person to whom the approval is granted, Ulan Coal Mines Limited (UCML), to register a legally binding conservation covenant in perpetuity over the Bobadeen and Bobadeen East Offset Areas, as described in Appendix 1 of the approval. This is to offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat.
- Additionally, condition 4 of the approval requires UCML to provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1 of the approval. The conservation mechanism must be agreed to in writing by the department and finalised within 2 years of the date of the approval. These conservation areas are required to offset the impacts on the Large – eared Pied Bat.

On 2 November 2012 UCML wrote to an out-posted officer of the NSW Assessments Section of the department, proposing to enter into a Voluntary Conservation Agreement (VCA) under the *National Parks & Wildlife Act 1974* to satisfy both the State and Commonwealth conditions of approval. Further, UCML requested an extension of time in order to finalise the process for protection in perpetuity of the offsets relating to the approval. **Attachment D**.

- On 30 November 2012 a formal request was received from UCML to vary approval conditions 2 and 4. This correspondence noted that UCML remained committed to registering all required offset covenants as soon as practicable but was awaiting the VCA to be formally accepted as an appropriate mechanism and for the content of the VCA to be approved by NSW and Commonwealth departments. **Attachment E**.
- A meeting between the NSW Department of Planning and Infrastructure (DP&I), the NSW Office of Environment and Heritage (OEH), UCML's parent company Xstrata Coal NSW (XCN) and the out-posted departmental officer was held in Sydney on 18 December 2012 to discuss options for securing acceptable covenants over offset areas. During the meeting, OEH indicated that they would like XCN to pursue a Bio-banking agreement over the offsets already in their possession. OEH officers indicated that this process would likely take 6 to 12 months to complete. **Attachment F**.
- Based on the above information, on 24 December 2012 you approved a variation to conditions 2 and 4. This variation extended the proposed timeframes for implementation of the conservation arrangements for an additional 6 months to 31 May 2013. **Attachment G**
- While UCML claim to be committed to registering all required offset covenants as soon as practicable, they continue to be delayed by negotiations with both the DP&I and OEH as to the bio-banking mechanism. UCML wrote to the department on 30 April 2013 formally requesting a variation to approval conditions 2 and 4 to further extend the timeframe for implementation of the conservation arrangements to 31 December 2013. **Attachment H**.
- On 22 May 2013 you approved variations to conditions 2 and 4 to further extend the timeframe for implementation of the conservation arrangements to 31 December 2013. **Attachment I**
- On 3 December 2013, DP&I wrote to Glencore Coal Assets Australia (GCAA – Glencore being a subsidiary of XCN) in response to GCAA's request to extend further, the timing of several approval conditions relating the biodiversity offset areas for a number of Glencore's NSW mining operations. DP&I advised GCAA of extensions in this regard until 30 June 2014. **Attachment J**.
- Following the above, on 6 December 2013 the department received a formal request from UCML to vary approval conditions 2 and 4 for the third time on the basis of extended delay in establishing the bio-banking mechanism with the NSW Government. **Attachment K**.
- On 13 December 2013 AMN provided UCML with a copy of the draft variation notice for their consideration. UCML replied the same day, noting their agreement to the proposed wording of the variation notice. **Attachment L**
- AMN officers have considered the proposed variations and are satisfied that an extension to the timeframe is necessary to ensure alignment of both Commonwealth and State approval conditions. AMN therefore recommends that you please approve the variations to Conditions 2 and 4 of the EPBC approval at **Attachment A** and the letter to UCML advising of your decision at **Attachment B**. Your approval will not result in a lesser protection of the protected matters and will provide regulatory efficiency by aligning state and commonwealth reporting requirements.

Prepared by:

s22

Senior, AMN

s22

Reviewed by:

s22

Assistant Director

s22

s22

013

Attachments:

- A: Notice of Variation (for delegate's signature)
- B: Letter to UCML advising of your decision (for delegate's signature)
- C: Signed copy of approval conditions dated 30/11/2010 & variation dated 24/12/2012
- D: Correspondence of 02/11/2013 from UCML requesting a variation
- E: Correspondence of 30/11/2012 from UCML
- F: Copy of email dated 20/01/2013 re meeting of 18/12/2012 from out-posted officer
- G: Copy of variation approval 24 December 2012
- H: Copy of letter dated from UCML requesting a variation – 30/04/2013
- I: Copy of letter approving variation – 23/05/2013
- J: Letter from DP&I agreeing to extension to 30/06/2014
- K: Letter from UCLM seeking extension – 06/12/2013
- L: Copy of the draft variation notice



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW, EPBC No 2009/5252

This decision to vary a condition 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	Ulan Coal Mines Limited ACN 000 189 248
--	--

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
-----------------	---

Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and variation notice dated 22 May 2013 and substitute with the conditions specified below.
-------------------------------------	---

Note: All other conditions including the definitions in the approval dated 30 November 2010 remain unchanged.

Date of effect	This variation has effect on the date the instrument is signed
----------------	--

Person authorised to make decision

name and position	Shane Gaddes Assistant Secretary Compliance & Enforcement Branch
-------------------	--

Signature	<i>S. Gaddes</i>
-----------	------------------

Date of decision	6 January 2014
------------------	----------------

Conditions attached to the approval

2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than **30 June 2014** and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than **30 June 2014**

If the conservation mechanism cannot be finalised by **30 June 2014**, the proponent must submit for the Minister's approval an alternative offset within 4 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



Contact Officer: s22
Telephone: s22 Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Dan Clifford
General Manager
Ulan Coal Mines Limited
PMB 3006
MUDGEES NSW 2850

Dear Mr Clifford

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

I refer to your letter of 6 December 2013 to s22 of the Compliance and Enforcement Branch, requesting a variation to conditions 2 and 4 of the approval dated 30 November 2010 and the subsequent variation to conditions dated 22 May 2013.

Your request has been assessed and as delegate of Department of the Environment, I have decided to vary conditions 2 and 4 of the approval in accordance with the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

I note this is the third time a variation to conditions 2 and 4 has been requested to extend the timeframe for implementation of the conservation arrangements, and that this current variation is necessary to provide alignment of timings with your State approval. I encourage you to continue your efforts towards finalising with the NSW Government a legally binding conservation covenant over the offset, conservation and management areas, as provided in the conditions of approval.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

If you have any enquiries please contact s22 on s22.

Yours sincerely

A handwritten signature in cursive script that reads "S. Gaddes".

Shane Gaddes
Assistant Secretary
Compliance & Enforcement Branch
Environment Assessment and Compliance Division

6 January 2014



Planning &
Infrastructure

Development Assessment Systems and Approvals
Mining Projects

Contact: s47F
Phone: s47F
Fax: (02) 9228 6466
Email: s47F

Nigel Charnock
Manager – Land and property
Glencore Coal Assets Australia
Private Mail Bag 8
SINGLETON NSW 2330

Dear Nigel,

**Glencore Coal Assets Australia
Security of Biodiversity Offset Areas for NSW Mining Operations**

I refer to your letter dated 31 October 2013 requesting an extension of timing for several approval conditions relating to the long term security of biodiversity offset areas for a number of Glencore's NSW mining operations.

I understand that this extension has been sought to enable Glencore to choose an appropriate mechanism, consistent with NSW Government's preferred approach for securing the long term conservation of biodiversity offset areas.

Given the above, I would like to advise you that the Director-General has granted an extension until **30 June 2014** for the following project approval conditions:

- s22 [redacted]
- s22 [redacted]
- s22 [redacted]
- Ulan (MP 08 0184) – Condition 43 of Schedule 3; and
- s22 [redacted]

s47F

3.12.13

**Manager
Mining Projects**
As nominee for the Director-General



s47F
Fax + 61 2 4372 5333
Web www.xstrata.co.au

30 April 2013

s22

Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Address Ulan Complex
4505 Ulan Road
Ulan NSW 2850
PMB 300E
Mudgee NSW 2850
Australia

Seq No: 7413

Dear s22

Re: Resubmission of Biodiversity Management Plan/Offset Management Plan and Extension of Perpetuity Arrangements

As per our previous correspondence of 15 February 2013, minor changes to the boundaries of the Ulan Coal Mines Limited (UCML) Bobadeen Vegetation Offset Area were required to allow for infrastructure associated with the Ulan West dewatering station at Longwall 1.

In accordance with Condition 3 of EPBC Approval No2009/5252 and your correspondence dated 26 March 2013, please find enclosed a copy of the revised Biodiversity Management Plan (BMP) and associated Offset Management Plan (OMP) for the Minister's consideration. For your convenience, updates to the BMP and OMP have been made in blue text.

Furthermore, discussions held with the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC), the NSW Department of Planning and Infrastructure (DP&I) and the NSW Office of Environment and Heritage (OEH) on 20 December 2012 resulted in development of an action plan which would see the parties working jointly develop government policy on security of biodiversity offsets areas during 2013.

UCML's parent company Xstrata Coal NSW (XCN), attended the meeting with SEWPaC, DP&I and OEH to ascertain the NSW government's preferred process for providing for conservation of offset areas in perpetuity. The proposal to enter into a Voluntary Conservation Agreement (VCA) under the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) for the relevant XCN operations which are required to implement biodiversity conservation arrangements, including UCML, was not endorsed by OEH, who proposed instead, payments into the Biobanking Trust fund for each offset area.

UCML remains strongly committed to registering all required offset covenants as soon as practicable, when an appropriate mechanism and the content of such a mechanism is approved by NSW and Commonwealth Departments.

In consideration of the above, UCML seeks a variation of the conditions to approval EPBC 2009/5252 which has the effect of extending the timeframe for implementation of the conservation arrangements. In correspondence dated 15 March 2013, DP&I advised that the Director-General granted an extension to 31 December 2013 for the securing of offset areas required under Project Approval 08_0184.



UCML consider the extension granted by DP&I acceptable and requests the conditions of EPBC 2009/5252 be amended to align with the extension granted by DP&I.

Please contact Robyn Stoney on **s47F** if you have any questions.

Yours Sincerely,

s47F

DAN CLIFFORD
General Manager
Ulan Coal Mines Limited

GLENCORE

RECEIVED
11/12/13
for action

6 December 2013

s22

Approvals Monitoring North
Compliance and Enforcement Branch
Environment Assessment and Compliance Division
Department of Environment
GPO Box 787
CANBERRA ACT 2601

Seq No: 261 /13

Dear Mr s22

Re: Ulan Coal Mines Limited: Further Extension for Offset Perpetuity Arrangements

I refer to the letter dated the 23 May 2013 from Shane Gaddes (A/g Assistant Secretary, Compliance & Enforcement Branch, Environmental Assessment & Compliance Division, [then] Department of Sustainability, Environment, Water, Population and Communities in which Ulan Coal Mines Limited was granted a variation to conditions 2 and 4 of the approval granted 30 November 2010 and subsequently varied 24 December 2012.

As per the department's request, we have prioritised our negotiations with the NSW Department of Planning (DPI) and the NSW Office of Environment & Heritage (OEH) in order to finalise long term security arrangements for each of Ulan's offset areas. We understand that whilst the DPI, OEH and the Department of the Environment have continued to hold discussions on a preferred approach to securing the long term conservation of biodiversity offset areas, a policy position has not been finalised.

On 3 December 2013, the DPI provided an extension to the project approval requirement for the security of long term conservation of biodiversity offset areas to 30 June 2014. Accordingly, we now seek a further extension from the Department of Environment for conditions 2 and 4 of the approval until the issue of long term security of offset areas is resolved by the relevant NSW Departments.

UCML remains strongly committed to registering all required offset covenants as soon as practicable after an appropriate mechanism (and the content of such a mechanism) is approved by NSW and Commonwealth Departments.

We look forward to your reply and please contact Nigel Charnock at (Manager - Land and Property, Coal Assets Australia) on s47F if you have any questions or require any additional information.

Yours Sincerely,

s47F

DAN CLIFFORD
General Manager
Ulan Coal Mines Limited

Private Mail Bag 3006, Mudgee, NSW 2850
4505 Ulan Road, Ulan, NSW 2850

s47F F + 61 2 6372 5208 www.glencore.com

Glencore Coal Assets Australia Pty Limited ACN 163 821 298

To: Assistant Secretary Shane Gaddes (for decision)

ULAN COAL MINES LIMITED (EPBC 2009/5252): VARIATION TO CONDITIONS 2 AND 4 TO EXTEND TIMEFRAME TO SECURE AN OFFSET SITE

Timing: As soon as possible to allow the approval holder to become compliant with conditions 2 and 4 of its approval.

Recommendation/s:

1. That you agree to vary conditions 2 and 4 of EPBC Approval 2009/5252 to extend the timeframe for Ulan Coal Mines to secure their offset sites.

Agreed / Not agreed

2. That you sign the variation decision instrument at **Attachment A** for publication.

Signed / Not signed

3. That you sign the letter at **Attachment B** advising Ulan Coal Mines of your decision.

Signed / Not signed

Assistant Secretary Shane Gaddes:

Date 23/7/14

Comments:

S. Gaddes

Key Points:

1. The Minister has delegated you as decision maker for this matter under section 515 of the *Environment Protection and Biodiversity Conservation Act 1999*.
2. On 30 November 2010, a delegate of the Minister approved the extension of an open cut coal mine, development of Ulan West underground mine and modification or construction of new infrastructure associated with these operations at Ulan, NSW (**Attachment C**).
3. Condition 2 of the approval for this project requires the person to whom the approval is granted, Ulan Coal Mines Limited (UCML), to register a legally binding conservation covenant in perpetuity over the Bobadeen and Bobadeen East Offset Areas, as described in Appendix 1 of the approval. This is to offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat.
4. Additionally, condition 4 of the approval requires UCML to provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1 of the approval. Under the conditions the conservation mechanism must be agreed to in writing by the Department and finalised within 2 years of the date of the approval. These conservation areas are required to offset the impacts on the Large – eared Pied Bat.

5. Conditions 2 and 4 of EPBC Approval 2009/5252 have been varied on three previous occasions. The latest variation, approved on 6 January 2014, was required to provide alignment of timing between Commonwealth and State approval conditions and granted an extension to implement the conservation arrangements to 30 June 2014. The brief, which provides further background information, is provided at **Attachment D**.
6. On 17 June 2014, UCML wrote to the Department seeking a further timeframe extension to secure their offset sites to 30 June 2015 (**Attachment E**). The reason for the delay is that the conservation mechanism has not yet been approved by state agencies. This correspondence also noted that UCML remains committed to registering all required offset covenants as soon as practicable after a mechanism is approved by Commonwealth and State departments.
7. The NSW Department of Planning and Environment has agreed to UCML's variation request to extend the timeframe to secure their offset sites to 30 June 2015. The revised timeframe was granted to allow both finalisation of the NSW Biodiversity Offset Policy and then to allow UCML to make the necessary arrangements to provide appropriate long term security for older offsets under the new policy.
8. The Department has considered the proposed variations and is satisfied that an extension to timeframes is necessary to align timing of Commonwealth and State offset deadlines. A proposed condition variation prepared by the Department was agreed to by UCML on 2 July 2014 (**Attachment F**).
9. **Bobadeen and Bobadeen East Offset Areas**. In support of the proposed timeframe extension for securing an offset area, UCML is implementing the Biodiversity Management Plan, for the already purchased Bobadeen and Bobadeen East offset areas. The plan was approved by the Department on 22 March 2012. Regeneration activities, as defined in the Biodiversity Management Plan have commenced and this includes, but is not limited to, seed collection, propagation of tube stock and revegetation; boundary fencing and signage of the offset area; erosion management, and weed and feral animal control.
10. **Brokenback Conservation Area and Spring Gully Cliff Line Management Area**. In addition, UCML is also liaising with landholders to purchase further offset sites in the Brokenback conservation area.
11. Although UCML is currently non-compliant with conditions 2 and 4 of EPBC Approval 2009/5252, the request to extend the timeframe was made prior to the deadline. The Compliance Section has been notified of UCML's non-compliance. The Compliance Section considers that no contravention or compliance action should be taken on this matter (**Attachment G**).
12. The Act provides for the variation, revocation or addition to existing approvals where certain conditions are met in accordance with section 143. Subsection 143(1)(c) provides that the Minister (or delegate) may add to any conditions attached to an approval if:
 - a. the approval holder agrees to the addition, and
 - b. the Minister is satisfied that the conditions attached to an approval after the proposed addition, are necessary or convenient for protecting a matter of national environmental significance or repairing or mitigating damage to a such a matter
13. The proposed variation would allow UCML to become compliant with their approval. The Department recommends that you approve the variations to conditions 2 and 4 of the EPBC Approval at **Attachment A** and the letter to UCML advising of your decision at **Attachment B**.

14. The proposed variation has been processed in accordance with the approval monitoring standard operating procedures – 5.6 Variation of approval conditions.

s22

s22
Director
Approvals Monitoring
s22

[17/7/2014]

s22

Contact Officer: s22
Approvals Monitoring
s22

ATTACHMENTS

- A: Notice of Variation (for delegate's signature)
- B: Letter to UCML advising of your decision (for delegates signature)
- C: Signed copy of approval conditions dated 30 November 2010 (for information)
- D: Signed brief to vary EPBC 2009/5252 approval condition 2 and 4 on 6 January 2014 (for information)
- E: Correspondence of 17 June 2014 from UCML requesting a variation (for information)
- F: Correspondence of 2 July 2014 from UCML agreeing to the extension (for information)
- G: Correspondence of 4 July 2014 from the Compliance Section stating that no compliance action should be taken (for information)



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW, EPBC No 2009/5252

This decision to vary a condition 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	Ulan Coal Mines Limited ACN 000 189 248
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Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan. No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
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Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and variation notices dated 24 December 2012, 22 May 2013 and 6 January 2014 and substitute with the conditions specified below. Note: All other conditions including the definitions in the approval dated 30 November 2010 remain unchanged.
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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	Shane Gaddes Assistant Secretary Compliance & Enforcement Branch
-------------------	--

Signature	<i>S. Gaddes</i>
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Date of decision	23 July 2014
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Conditions attached to the approval

2. To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than **30 June 2015** and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than **30 June 2015**.

If the conservation mechanism cannot be finalised by **30 June 2015**, the proponent must submit for the Minister's approval an alternative offset within 5 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



Mr Charlie Allan
General Manager
Ulan Coal Mines Limited
PMB 3006
MUDGEE NSW 2850

Dear Mr Allan

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252).

I refer to your letter of 17 June 2014 to Ms s22 of the Compliance and Enforcement Branch, requesting a variation to conditions 2 and 4 of the approval dated 30 November 2010 and the subsequent variations to conditions dated 24 December 2012, 22 May 2013 and 6 January 2014.

As delegate of the Minister, I have varied conditions 2 and 4 of EPBC Approval 2009/5252 under section 143(1)(c) of the *Environment Protection and Biodiversity Conservation Act 1999* to provide a timeframe extension to secure offset sites from 30 June 2014 to 30 June 2015. Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

I note that this is the fourth time a variation to conditions 2 and 4 has been requested to extend the timeframe for implementation of the conservation arrangements, and that the current variation is necessary to ensure an alignment of both Commonwealth and State approval conditions. I note that the reason for the delay relates to the conservation mechanism not yet being agreed with state agencies. In addition, I note that Ulan Coal Mines Limited remains committed to registering all required offset covenants as soon as practicable after a mechanism is approved by Commonwealth and State departments.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

Should you require any further information please contact Ms s22, Senior Project Officer, Post Approvals Section, on s22 or by email: s22@environment.gov.au.

Yours sincerely

Shane Gaddes
Assistant Secretary
Compliance & Enforcement Branch
24 July 2014

B

GLENCORE

17 June 2014

Ms s22
Approvals Monitoring
Compliance and Enforcement Branch
Department of Environment
GPO Box 787
CANBERRA ACT 2601

Seq No: 122 /14

Dear Ms s22

Re: Ulan Coal Mines Limited: Further Extension for Offset Perpetuity Arrangements EPBC
2009/5252

Ulan Coal Mines Limited was granted a variation for an extension of time to meet conditions 2 and 4 of EPBC 2009/5252, granted 30 November 2010, on 24 December 2012, 22 May 2013 and 6 January 2014. Regrettably, the resolution of the conservation offset mechanism is not yet agreed with the NSW agencies. A letter from the Department of Planning and Environment approving a further extension of time to 30 June 2015 and explaining the position of the agencies with respect to the development of a NSW Biodiversity Offset Policy is attached.

Glencore continues to participate where appropriate to support the development of the policy with the NSW Departments. UCML remains strongly committed to registering all required offset covenants as soon as practicable after an appropriate mechanism (and the content of such a mechanism) is approved by NSW and Commonwealth Departments. The delay to implementation of a security mechanism has not delayed the practical implementation of the Biodiversity offsets and the areas are protected and managed in accordance with the approval.

Accordingly, we now seek a further extension from the Department of Environment for conditions 2 and 4 of EPBC 2009/5252 to amend the date for completion of the condition to 30 June 2015. Further, with respect to condition 4, the reason for the delay being agreement of the mechanism, not suitability or access to identified offset areas, UCML seeks your confirmation that an alternative offset will not be necessary, although the extended timeframe will be later than four years since the date of the approval. Thank you.

For further information please contact Robyn Stoney on Robyn.Stoney@glencore.com.au or 02 s47F

Yours sincerely,

s47F

CHARLIE ALLAN
General Manager
Ulan Coal Mines Limited

From: Robyn.Stoney@glencore.com.au
Sent: Wednesday, 2 July 2014 10:38 AM
To: s22
Cc: Charlie.Allan@glencore.com.au
Subject: RE: Application for variation [SEC=UNCLASSIFIED]

F ~~12~~

Hi s22

Thank you, Ulan Coal Mines Limited agrees to the variation to conditions 2 and 4 as proposed.

Regards,
Robyn

Robyn Stoney
Environment and Community Manager
Glencore Coal Assets Australia - Ulan Coal Mine

s47F

E: robyn.stoney@glencore.com.au
www.ulancoal.com.au

From: s22 [mailto:s22@environment.gov.au]
Sent: Wednesday, 2 July 2014 9:41 AM
To: Stoney, Robyn (Ulan - Coal)
Subject: FW: Application for variation [SEC=UNCLASSIFIED]

Hi Robyn

I am writing concerning your request to vary EPBC 2009/5252 Approval conditions 2 and 4 to provide a timeframe extension to secure offset sites from 30 June 2014 to 30 June 2015. I note that the reason for the delay relates to the conservation mechanism not yet being agreed with state agencies, not suitability or access to the identified offset areas. In addition, I note that Ulan Coal Mines Limited remains committed to registering all required offset covenants as soon as practicable after a mechanism is approved by Commonwealth and State departments.

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the variation, revocation or addition to existing approvals where certain conditions are met in accordance with section 143. Subsection 143(1)(c) provides that the Minister (or delegate) may add to any conditions attached to an approval if:

- a) the approval holder agrees to the addition; and
- b) the Minister is satisfied that the conditions attached to an approval after the proposed addition, are necessary or convenient for protecting a matter of national environmental significance or repairing or mitigating damage to a such a matter.

The Department is proposing to brief the delegate in relation to this matter, recommending that EPBC 2009/5252 Approval conditions 2 and 4 be varied as follows (and in the attached document) in accordance with subsection 143(1)(c). The proposed variation is:

- Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and variation notices dated 24 December 2012, 22 May 2013 and 6 January 2014 and substitute with the conditions:
'Condition 2: To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later

than **30 June 2015** and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.

Condition 4: To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than **30 June 2015**.

If the conservation mechanism cannot be finalised by **30 June 2015**, the proponent must submit for the Minister's approval an alternative offset within 5 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.'

This variation would mean the implementation date for the conservation arrangements would be extended by 12 months, from 30 June 2014 to 30 June 2015.

I would be grateful if after considering the proposed variation you could advise by return email if Ulan Coal Mines Limited agrees to the variation to conditions 2 and 4. Should you agree to the proposed variation, the Department will brief the delegate on this matter for his consideration and decision. In the meantime, please let me know if you have any questions.

Kind regards

s22

From: Robyn.Stoney@glencore.com.au [mailto:Robyn.Stoney@glencore.com.au]

Sent: Tuesday, 17 June 2014 9:25 AM

To: s22

Subject: Application for variation

Hi s22

I have attached a letter requesting an extension for conditions in our approval which is sent to your office today. Thank you for your consideration of this matter.

Best regards,
Robyn

Robyn Stoney
Environment and Community Manager
Glencore Xstrata - Ulan Coal Mine

s47F

Email: robyn.stoney@glencore.com.au
www.ulancoal.com.au

.....
This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender immediately.
.....

s22

From: s22
Sent: Friday, 4 July 2014 3:43 PM
To: s22
Subject: RE: Ulan Coal Mines (EPBC 2009/5252) [SEC=UNCLASSIFIED]

G

s22

In relation to your query regarding EPBC 2009/5252 (conditions 2 and 4).

These conditions require the approval holder to:

C2 To offset impacts on the listed White Box – Yellow Box Blakely’s Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large – eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered within 2 years of the date of this approval and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.

And

C5 To offset the impacts on Large – eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised within 2 years of the date of this approval.

If the conservation mechanism cannot be finalised within 2 years of the date of this approval, the proponent must submit for the Minister’s approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.

I note a request to vary those conditions was received by the department prior to the requirement falling due and I understand that the request is still being considered by the Department. I note that, in the absence of a decision by the delegate to this request, the proponent is now outside the conditioned timeframe. Notwithstanding this there would be no contravention in this case and no compliance action would be taken on the basis that the request was made prior to the requirement falling due.

The requested variation may be made (subject to the delegates approval) pursuant to s143(1)(c).

Regards

s22 | Assistant Director
EPBC Act Compliance Section
Compliance & Enforcement Branch |
Department of Environment
GPO Box 787 Canberra ACT 2601
T: s22 M: s22

s22

From: s22
Sent: Friday, 4 July 2014 3:11 PM
To: s22
Subject: Ulan Coal Mines (EPBC 2009/5252) [SEC=UNCLASSIFIED]

Hi s22

Ulan Coal Mines Limited (EPBC 2009/5252) have an offset requirement which was due on 30 June 2014. On 17 June 2014 Ulan Coal Mines wrote to the Department seeking an extension to secure their offset site to 30 June 2015. Could you please confirm in writing that the Department will not take compliance action as the request was made prior to the 30 June 2014 deadline?

Many thanks,

s22

s22

Project Officer, Approvals Monitoring - Coal Seam Gas
Environment Assessment and Compliance Division
Department of the Environment
Phone (02) s22



BEFORE PRINTING THIS E-MAIL
Please do not print this e-mail unless you are authorised to do so.

To: Shane Gaddes, AS, CEB [for decision]
Through: s22 [redacted], Director, PAS

.....

**EPBC 2009/5252 Ulan Coal Continued Operations Project, NSW –
Variations to conditions 2 and 4 in accordance with Section 143(1)(c) of the EPBC Act**

Timing: Tuesday 30 June 2015 – conditions 2 and 4 require conservation covenants to be registered by no later than 30 June 2015 (the approval holder will become non-compliant with conditions if variations are not approved by that date).

<p>Recommendation/s:</p> <ol style="list-style-type: none">1. Approve variations to conditions 2 and 4 of the approval for this project in accordance with Section 143(1)(c) of the EPBC Act. <p style="text-align: right;">Approved / Not approved</p>2. Sign the Notice of Variation in accordance with Section 143(1)(c) of the EPBC Act at <u>Attachment A</u>. <p style="text-align: right;">Signed / Not signed</p>3. Sign the letter to the approval holder advising of your decision at <u>Attachment B</u>. <p style="text-align: right;">Signed / Not signed</p> <p>Signatory: Shane Gaddes, AS, CEB Date:</p> <p>Comments:</p>
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Key Points:

1. The Minister has delegated you as decision maker for this matter pursuant to section 515 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the EPBC Act).
2. On 30 November 2010, a delegate of the Minister approved with conditions the extension of an open cut coal mine, development of Ulan West underground mine and modification or construction of new infrastructure associated with these operations and the Ulan No 3 underground operations at Ulan in New South Wales. These conditions were subsequently varied on 24 December 2012, 22 May 2013, 6 January 2014 and 23 July 2014 (refer to Attachment C).

3. The varied Condition 2 requires that to offset impacts on the listed White Box-Yellow Box-Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area. The covenants must be registered by no later than 30 June 2015 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance (refer to [Attachment C](#)).
4. The varied Condition 4 requires that to offset the impacts on Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 30 June 2015 (refer to [Attachment C](#)).
5. On 20 April 2015, the approval holder (Ulan Coal Mines Ltd) wrote to the Department requesting variations to Conditions 2 and 4 in accordance with Section 143(1)(c) of the EPBC Act. Specifically, the approval holder has proposed variations to extend the timeframes for agreement and securing the offsets by ten months (from 30 June to 30 April 2016) (refer to [Attachment D](#)).
6. The approval holder has advised that these variations are necessary and convenient in order to finalise negotiations regarding conservation mechanisms with the New South Wales Department of Planning and Environment (NSW DPE) along with the New South Wales Office of Environment and Heritage (refer to [Attachment D](#)).
7. The Department sought advice from the NSW DPE regarding the status including anticipated timeframe for conclusion of negotiations regarding conservation mechanisms. NSW DPE advised that the approval holder had requested a 'strategic approach' be considered in relation to securing offsets across a number of its operations in NSW. Additionally, NSW DPE advised that the approval holder was currently discussing its options regarding approach and conservation mechanisms with NSW OEH (refer to [Attachment E](#)).
8. The Department sought advice from the NSW OEH, including s47F of NSW OEH, regarding the status of negotiations for conservation mechanisms. NSW OEH advised that the approval holder had been delayed in finalising agreement of its conservation mechanisms because the NSW Biodiversity Offsets Policy for Major Projects was not finalised until October/November 2014. Until release of the policy, NSW OEH's preferred conservation mechanism was a biobanking agreement under the *Threatened Species Conservation Act 1995 (NSW)* whereas the approval holder's preferred mechanism was a conservation agreement under the *National Parks and Wildlife Act 1974 (Cth)*. Following release of this policy, NSW OEH has agreed that conservation agreements may be an option for projects approved prior to commencement of the policy (such as the Ulan Coal Mine). Accordingly, the approval holder has recommenced negotiations with NSW OEH regarding conservation agreements for this project however these negotiations are likely to take some time to finalise (refer to [Attachment F](#)).

9. NSW OEH has advised that finalisation of negotiations with the approval holder regarding the conservation mechanism is likely to take 12 to 18 months (refer to Attachment F). The approval holder has agreed to a timeframe of 10 months in order to agree and register the conservation mechanisms (refer to Attachment A). The Department is of the view that this approach balances the approval holder's acting in good faith to negotiate the conservation mechanism, NSW OEH's anticipated timeframes for finalisation of negotiations and the fact that Conditions 2 and 4 have been varied four times by a delegate of the Minister to date.
10. The approval holder has agreed to the proposed variation in accordance with Section 143(1)(c) of the EPBC Act on 19 June 2015 (refer to Attachment G).
11. The Department has considered the proposed variations to Conditions 2 and 4 and is satisfied that these variations are necessary and convenient for the protection of the matters of national environmental significance. On this basis, the Department recommends that you approve these variations in accordance with Section 143(1)(c) of the EPBC Act.
12. This package has been prepared in accordance with *Standard Operating Procedure 5.6 – Variation to Approval Conditions*.

Reviewed by:

s22
 Assistant Director
 Post Approvals Section
 s22

Prepared by:

s22
 Project Officer
 Post Approvals Section
 s22

.....

.....

ATTACHMENTS

- A: Notice of Variation
- B: Letter to the approval holder advising of your decision
- C: Conditions of approval
- D: Request from Ulan Coal for variation to conditions 2 and 4
- E: Advice from NSW DPE
- F: Advice from NSW OEH
- G: Ulan Coal agreement to the proposed Notice of Variation



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC2009/5252)

This decision to vary a condition 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	Ulan Coal Mines Limited ACN 000 189 248
--	--

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No. 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
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Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and substitute the conditions specified 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	Shane Gaddes Assistant Secretary Compliance and Enforcement Branch
-------------------	--

Signature

S. Gaddes

Date of decision

7 July 2015

Condition attached to the approval

2. To offset impacts on the listed White Box-Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 30 April 2016 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 30 April 2016.

If the conservation mechanism cannot be finalised by 30 April 2016, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



Australian Government
Department of the Environment

Our reference: 2009/5252

Contact Officer: s22
Telephone: s22 Facsimile: (02) 6274 1878
Email: post.approvals@environment.gov.au

Mr Charlie Allan
General Manager
Ulan Coal Mines Limited
Private Mail Bag 3006
MUDGEES NSW 2850

Dear Mr Allan

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC2009/5252)

I refer to your letter of 20 April 2015 to the Department requesting approval from a delegate of the Minister for proposed variations to conditions 2 and 4 of the approval for this project.

Officers of this Department have considered your request and are satisfied that the proposed variations to conditions 2 and 4 are necessary and convenient for the protection of the matters of national environmental significance. On this basis, as a delegate of the Minister for the Environment, I have decided to approve your request in accordance with the provisions of the national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

I note that this is the fourth time variations to conditions 2 and 4 have been requested to extend the timeframe for agreement and registration of the conservation mechanisms for this project. Additionally, I note that the reason for this delay relates to the conservation mechanisms not being agreed with state agencies as yet. While I note that your organisation remains committed to agreement and registration of the conservation mechanisms for this project, I advise that another timeframe extension request is not likely to be viewed favourably by the Department.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

If you have any questions, or require further information, please contact s22 on s22.

Yours sincerely

A handwritten signature in blue ink that reads 'S. Gaddes'.

Shane Gaddes
Assistant Secretary
Compliance & Enforcement Branch
Environment Assessment and Compliance Division

9 July 2015

To: Monica Collins, AS, CEB [for decision]

Through:  PAS

Ulan Coal Continued Operations Project EPBC 2009/5252 Variation to Conditions 2 and 4

Timing: There is no specific deadline however the request was initiated on 5 February 2016.

Recommendation/s:

1. Approve the variation to conditions 2 and 4 pursuant to section 143(1)(c) of the EPBC Act.
Approved / Please discuss
2. Sign the Notice of Variation to conditions 2 and 4 pursuant to section 143(1)(c) of the EPBC Act at **Attachment A**.
Signed / Not signed
3. Sign the letter to the approval holder advising of your decision at **Attachment B**.
Signed / Not signed

Signatory: Monica Collins, AS, CEB *Monica* **Date:** 11 Nov 2016.

Comments:

Key Points:

1. The Minister has delegated you as decision maker for this matter pursuant to section 515 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act).
2. On 30 November 2010, a delegate of the Minister approved with conditions the extension of the open cut coal mine and the development of Ulan West underground mine, as well as the modification or construction of new infrastructure associated with these operations and the Ulan No 3 underground operations at Ulan in New South Wales. These conditions were subsequently varied on 24 December 2012, 22 May 2013, 6 January 2014, 23 July 2014 and 7 July 2015 (refer to **Attachment C**). The approval holder is Ulan Coal Mines Limited (UCML) a subsidiary of Glencore.
3. The varied condition 2 requires that to offset impacts on the listed White Box-Yellow Box-Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1 of the approval. The covenants must be registered by no later than 30 April 2016 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.

4. The varied condition 4 requires that to offset the impacts on Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed in writing by the Department and must be finalised by no later than 30 April 2016. Condition 4 requires that if the conservation mechanism cannot be finalised by 30 April 2016, the proponent must submit for the Minister's approval an alternative offset within three years of the date of this notice (before 7 July 2018). The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.
5. On 5 February 2016, the approval holder wrote to the Department requesting a variation to conditions 2 and 4 for approval by a delegate of the Minister pursuant to section 143(1)(c) of the EPBC Act (**Attachment D**). Specifically, the approval holder has proposed variations in order to extend the timeframes for agreement and securing the offsets by 14 months (from 30 April 2016 to 30 June 2017) (refer to **Attachment A**).
6. In approving the previous variation on 9 July 2015, a delegate of the Minister advised the approval holder that 'While I note that your organisation remains committed to agreement and registration of the conservation mechanisms for this project, I advise that another timeframe extension request is not likely to be viewed favourably by the Department (refer to **Attachment E**).
7. The approval holder has advised that these variations are necessary and convenient in order to finalise negotiations regarding conservation mechanisms with the New South Wales Department of Planning and Environment (NSW DPE) along with the New South Wales Office of the Environment and Heritage (refer to **Attachment A**).
8. The Department sought advice from the NSW DPE regarding the status including anticipated timeframe for conclusion of negotiations regarding conservation mechanisms. NSW DPE has advised that they have provided an extension to secure the offset areas until 31 December 2016 (**Attachment F**).
9. The Department sought further information regarding a schedule of actions to be undertaken by UCML to achieve key milestones to evidence progression towards the final goal of securing formal conservation agreements over the relevant offset areas. This information was provided on 16 May 2016 (**Attachment G**).
10. Following confirmation that DPE would be granting the approval holder a timeframe extension, the Department proposed a new extension date of 31 December 2016 to secure the offset areas.

s22

12. The Department has considered the proposed variations to conditions 2 and 4 and is of the view that allowing an extension of time until 30 June 2017 to secure offset sites to align with other Glencore approvals is consistent under section 143(1)(c), that the justification makes the case that the variation is necessary and convenient for the protection of a matter of NES.

13. On the above basis, PAS recommends that you approve the variation to condition 2 and condition 4 of the **s22** at **Attachment A** and sign the letter to the approval holder advising of your decision at **Attachment B**.

14. This brief has been prepared in accordance with SOP 5.6 variation to conditions.

Reviewed by:

s22

Director

Post Approvals Section

s22

Prepared by:

s22

Project Officer

Post Approvals Section

s22

ATTACHMENTS

- A: Notice of Variation to approval conditions (for signature)
- B: Letter to UCML advising of your decision (for signature)
- C: Approval conditions of EPBC 2009/5252 and subsequent variations (for information)
- D: Letter of 5 February 2016 from UCML requesting variation to conditions (for information)
- E: Letter of 9 July 2015 from the Department approving previous variation request (for information)
- F: Advice from the NSW DPE (for information)
- G: Further information from UCML (for information)
- H: Letter from UCML requesting 30 June 2017 extension (for information)

s22



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC2009/5252)

This decision to vary a condition 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	Ulan Coal Mines Limited ACN 000 189 248
--	--

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No. 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
------------------------	---

Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and subsequent variation notices and substitute the conditions specified 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	Monica Collins Assistant Secretary Compliance and Enforcement Branch
--------------------------	--

Signature

Date of decision	11 November 2016
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Condition attached to the approval

2. To offset impacts on the listed White Box-Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 30 June 2017 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 30 June 2017.

If the conservation mechanism cannot be finalised by 30 June 2017, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.



Mr Charlie Allan
General Manager
Ulan Coal Mines Limited
Private Mail Bag 3006
MUDGEES NSW 2850

Dear Mr Allan

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC2009/5252)

I refer to your letter of 5 February 2016 to the Department requesting approval from a delegate of the Minister for proposed variations to conditions 2 and 4 of the approval for this project.

Officers of this Department have considered your request and are satisfied that the proposed variations to conditions 2 and 4 are necessary and convenient for the protection of the matters of national environmental significance. On this basis, as a delegate of the Minister for the Environment and Energy, I have decided to approve your request in accordance with the provisions of the national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Conditions 2 and 4 must now be undertaken in accordance with the varied conditions specified in the variation notification, which has been attached for your information.

I note that this is the fifth time variations to conditions 2 and 4 have been requested to extend the timeframe for agreement and registration of the conservation mechanisms for this project. Additionally, I note that the reason for this delay relates to the conservation mechanisms not being agreed with state agencies as yet. While I note that your organisation remains committed to agreement and registration of the conservation mechanisms for this project, I advise that another timeframe extension request is not likely to be viewed favourably by the Department.

The variation of conditions of approval does not relieve the person to whom it has been granted from an obligation to comply with any other law of the Commonwealth, state or territory that is applicable to do the action and to have any right, title or interest that is required to access land or waters and to do the action.

If you have any questions, or require further information, please contact s22 on s22

Yours sincerely

Monica Collins
Assistant Secretary
Compliance & Enforcement Branch
Environment Assessment and Compliance Division

11 Nov. 2016

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5 February 2016

Seq No: 7 /16

Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch
Environmental Assessment and Compliance Division
Department of Environment



Dear Shane,

Re: Ulan Coal Security of Biodiversity Offset Areas

I refer to our most recent correspondence to the Department of Environment (DoE) dated 20 April 2015 regarding the long term conservation of biodiversity offset areas for Ulan Coal Mines Limited (UCML).

As outlined in our previous written correspondence on this matter, in accordance with conditions 2 and 4 of EPBC Approval EPBC 2009/5252, we are required to make suitable arrangements to provide for the long term security of the Bobadeen and Brokenback offset areas to the satisfaction of the DoE.

On 9 July 2015, UCML received a letter from DoE granting an extension until 30 April 2016 to secure the offset areas. Separate approval granting an extension until 31 December 2016 was provided by the NSW Department of Planning and Environment (DPE).

Conscious of the need to finalise security mechanisms to satisfy State and Commonwealth conditions of approval, UCML has consistently and repeatedly (over a period spanning 2011 to 2015) sought guidance and assistance from the NSW Office of Environment and Heritage (OEH) regarding the form of security that would be considered acceptable by the NSW Government.

A summary of these discussions (including written correspondence and face to face meetings) is provided below:

- Initial meeting with DPE in September 2011;
- Joint meeting with DPE, OEH and DoE in December 2012;
- Separate meeting with DPE in August 2013;
- Joint meeting with DPE, OEH, NSW Minerals Council and its member companies in June 2014;
- Separate meetings with OEH in March and August 2015;
- Letters to the NSW DPE in October 2011, February 2012, July 2012, December 2012, October 2013, June 2014 and April 2015; and
- Provision of specific information to OEH on Glencore Coal Assets Australia (including UCML) offset areas in April and August 2015.

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Ulan Coal Mines Ltd ABN 90 000 789 248
Manager of the Ulan Joint Venture

In December 2015, UCML received correspondence from OEH summarising the required mechanism to secure its existing offset areas and seeking to meet to discuss a program of works. UCML will be looking to meet with OEH in early 2016 to obtain further specific details on process to enable security arrangements to be put in place as soon as practicable.

The process for securing offset areas under the OEH Voluntary Conservation Agreement (VCA) process is as follows:

1. Assessment
 - Desktop assessment of conservation value
 - Site visit
 - Confirmation of tenure
2. Option agreed by landholder & OEH
 - Most suitable option for conservation is agreed upon
3. Negotiation & preparation of documents
 - Conservation Area is identified
 - Agreement is prepared
4. Signatures & Registration
 - Agreement is signed & registered on land title

Based on previous VCA processes undertaken by UCML, it is likely to take approximately 18 months to complete. Accordingly, we propose the following amendment to conditions 2 and 4 of EPBC Approval EPBC 2009/5252 as follows:

2. *To offset impacts on the listed White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 30 June 2017 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.*
4. *To offset the impacts on Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as described in Appendix 1. The conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 30 June 2017*

If the conservation mechanism cannot be finalised by 30 June 2017, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval. The alternative offset must provide at least an equivalent environmental outcome to those specified under condition 5.

The requested extension will allow the proper process to be mandated by the NSW Government and negate further variations of approval conditions or the timeframe by which offsets are required to be secured. It is a legal requirement through our NSW and EPBC approval conditions and associated management plans to manage and protect existing offset areas. Therefore, whether a formal legal agreement requiring protection of the offsets is currently registered on title does not change the site's commitment to management of the offset areas.

As outlined in our previous correspondence on this matter, we would like to reinforce our strong desire to put in place conservation mechanisms for existing UCML biodiversity offsets as soon as practicable given the prolonged nature of discussions with NSW and Commonwealth Governments on this matter. We will continue to engage with all departments so that security arrangements can be put in place as soon as practicable.

We look forward to your reply and please contact Robyn Stoney on s47F if you have any questions regarding this matter. Thank you.

Yours sincerely

s47F

Charlie Allan
General Manager
Ulan Coal Mines Ltd

s22

From: s47F @planning.nsw.gov.au
Sent: Friday, 1 April 2016 4:49 PM
To: s22
Subject: Timing of Glencore Biodiversity Offsets
Attachments: Ltr to Glencore - Offset Security Ext of Time - Dec 2016.pdf



Hi s22

I understand that the Commonwealth is considering a request by Glencore for an extension of time for securing the biodiversity offsets associated with its s22.

Please find attached, for your information, a letter from the Department approving an extension to 31 December 2016 to secure a number of biodiversity offsets required for Glencore's NSW operations.

If you have any questions regarding the attached, please do not hesitate to contact me.

Regards,
s47F

s47F
Team Leader - Assessments
Resource Assessments & Compliance Division
Department of Planning & Environment
23-33 Bridge Street SYDNEY 2000 | GPO Box 39 SYDNEY 2001
ph: s47F e: s47F



Mr Nigel Charnock
Manager - Land and Property
Glencore Coal Assets Australia
Private Mail Bag 1
SINGLETON NSW 2330

Dear Mr Charnock

Glencore Coal Assets Australia - Extension to Security of Offset Areas

I refer to your letter dated 26 November 2015, seeking a further extension of time to make suitable arrangements for the long term security for biodiversity offset areas required for the s22 [redacted], Ulan and s22 [redacted].

While I appreciate that Glencore has sought previous extensions of time to ensure that its offset areas are secured under appropriate mechanisms that align with NSW Government policies, I must note that Glencore has had a significant period of time to resolve these matters. In particular, I note:

- the NSW Government has clearly identified biobanking agreements as its preferred mechanism for securing biodiversity offset areas since the release of the *NSW Biodiversity Policy for Major Projects* on 1 October 2014;
- where biobanking agreements cannot be achieved, the *NSW Biodiversity Policy for Major Projects* provides a range of criteria for establishing suitable offset mechanisms;
- OEH wrote to the NSW Minerals Council in December 2014, detailing several transitional options for the long term protection of existing, unsecured offset sites; and
- Glencore and OEH have been engaged in direct negotiations over the past few years to identify appropriate mechanisms for each of Glencore's offset sites.

I also understand that in a letter to Glencore dated 1 December 2015, OEH has provided a detailed description of the NSW Government's policy position on securing offsets and confirmed a range of specific conservation measures (including biobanking and conservation agreements) that it would consider establishing for the biodiversity offset areas required under Glencore's existing approvals.

Given the NSW Government's policy position on this matter has been established for at least 12 months, the Department is of the view that a final 12 month extension should provide sufficient time for Glencore to finalise any outstanding arrangements and provide for the long term security for its offset areas.

Accordingly, the Secretary has granted an extension to the relevant completion dates until 31 December 2016, for Glencore to reach agreement with OEH and formalise its outstanding conservation obligations.

The Department advises that it will be reluctant to grant any further extension unless Glencore can provide sufficient and convincing evidence that it has undertaken every reasonable effort to formalise appropriate security mechanisms with OEH.

Should you have any further enquiries, please contact Mr s47F [redacted] on s47F [redacted].

Yours sincerely

s47F [redacted]

9/12/15

Executive Director
Resource Assessments and Compliance
as the Secretary's nominee

ULAN
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13 May 2016

Seq: 35/16

s22

Post Approvals Section
Compliance and Enforcement Branch, ESD
Department of the Environment
GPO Box 787, Canberra City, ACT 2601



Dear Mr s22

Re: EPBC 2009/5252 - Variation request to condition 2 and 4

I write to you regarding EPBC 2009/5252 conditions 2 and 4. Ulan Coal Mines Limited (UCML) is required under these conditions to register a legally binding conservation mechanism over the Bobadeen Offset Area, Bobadeen East Offset Area, Brokenback Conservation Area and Spring Gully Cliff Line Management Area by no later than 30 April 2016.

On 11 February 2016 UCML lodged a request with Department of Environment (DoE) to make a variation to approval conditions 2 and 4 to allow until 30 June 2017 to secure offset sites.

DoE provided a response via email on 3 May 2016 and requested UCML provide a schedule of the specific actions being undertaken to achieve key milestones to evidence progression towards the final goal of securing formal conservation agreements by 31 December 2016.

In response to your request for a schedule of the specific actions being undertaken, the Table included in Attachment 1 details actions towards formal conservation agreements.

Glencore representatives Mr David O'Brien and Mr Nigel Charnock met with Mr Shane Gaddes and Mr s22 from the Department of Environment (DoE) in Canberra on 29 February 2016. At the meeting, Glencore and the DoE discussed the issue of long term security of existing Glencore biodiversity offset areas (including UCML) at some length. As an outcome of that meeting Glencore understood that the DoE were providing UCML with the option to accept a similar EPBC condition to the variation recently granted for Glencore's s22. This condition requires s22 to finalise offset security arrangements by 30 June 2017 or by another date agreed in writing with the Minister. Following the meeting on 29 February, Mr O'Brien sent an email to s22 on 4 March 2016 confirming that UCML would accept the Department's proposal as part of the proposed variation to EPBC 2009/5252.

As shown by the attached Schedule, Glencore are working towards submission of the signed Conservation Agreement for the Bobadeen Offset Area, Bobadeen East Offset Area, Brokenback Conservation Area and Spring Gully Cliff Line Management Area to the NSW Government by mid-December 2016.

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

However, should delays beyond our control be experienced, a condition similar to that granted to s22 would avoid the need for a further formal variation of EPBC 2009/5252 and unnecessary administrative burden on the DoE and Glencore.

Landholder approval will also be required for the Brokenback Conservation Area and Spring Gully Cliff Line Management Area which are partially located on land administered by Crown Lands, with the Brokenback Conservation Area also having a small portion of privately held land. Consultation is underway to secure approval of the Conservation Agreements from these parties before submission OEH.

We look forward to your reply and please contact Robyn Stoney, on (02) s47F if you have any questions regarding this matter.

Yours Sincerely

s47F

Charne Allan
General Manager
Ulan Coal Mines Limited

- Attachment: Actions for Securing Formal Conservation Agreements

Cc.

Mr. Shane Gaddes, Department of the Environment
Mr. s22 Department of the Environment
Dave O'Brien, Glencore Coal Assets Australia
Nigel Chamock, Glencore Coal Assets Australia

Attachment: Actions for Securing Formal Conservation Agreements

Action No.	Action	Responsibility	Target Date (Glencore)	Status
1	Glencore hold initial meeting with OEH to discuss process for securing existing biodiversity offset areas for Glencore mine sites using Conservation Agreement (CA) mechanism.	Glencore	28 February 2016	Complete Meeting held on 10 February 2016 and action list developed.
2	Complete field inspection of Glencore biodiversity offset areas with OEH.	Glencore / OEH	30 June 2016	In Progress s22 [Redacted] [Redacted] [Redacted]. Dates for inspections of Ulan Mine, s22 [Redacted] to be scheduled with OEH after CA pro-forma template is finalised.
3	Glencore meet with Crown Lands to discuss Conservation Areas and CA process for the Ulan Coal Mine Complex	Glencore	21 April 2016	Complete Discussions with Crown Lands are ongoing
4	Following initial field inspections of biodiversity offset areas, Glencore to provide OEH with information on biodiversity offset areas for s22 [Redacted] to enable OEH's generic CA template to be populated.	Glencore	30 April 2016	Complete Meeting held with OEH to discuss their generic CA template on 14 April 2016. s22 [Redacted]
5	OEH populate their generic CA template using the s22 [Redacted] information provided by Glencore. OEH to consider management actions and monitoring schedule in the CA's for Glencore offset areas to allow these to be streamlined with existing approved State and EPBC Approval conditions and Management Plans.	OEH	31 May 2016	In Progress Further meeting to be held with OEH once they have populated the s22 [Redacted].
6	Glencore meet with OEH to discuss the draft s22 [Redacted] and agree on final format and content of the CA for all other	Glencore	14 June 2016	YTC Meeting to be organised for as soon as

Action No.	Action	Responsibility	Target Date (Glencore)	Status
	Glencore biodiversity offset areas.			practicable after OEH finalise the s22 CA template
7	OEH to confirm survey requirements for CAs.	OEH	14 June 2016	YTC
8	Glencore complete field survey work for each biodiversity offset area (using Registered Surveyor) to accurately define boundaries off offset areas and survey location of infrastructure within biodiversity offset areas in accordance with OEH's CA survey requirements.	Glencore	14 September 2016	YTC
9	Glencore to prepare and lodge with Crown Lands and private Landholder for review, draft CAs for the UCML biodiversity offset areas. Note this action will be undertaken concurrently with Action 8 and 10 commencing after final format and content of the CA is agreed.	Glencore	31 September 2016	YTC
10	Glencore to prepare and lodge with OEH for review, draft CAs for all the remaining Glencore biodiversity offset areas. Glencore and OEH to agree on number of CAs to be established, noting that consolidation of some offset areas under a single CA is possible. Note this action will be undertaken concurrently with Action 7 above commencing after final format and content of the CA is agreed.	Glencore	31 September 2016	YTC
11	OEH issue Final CA's to Glencore sites for execution.	OEH	31 November 2016	YTC
12	Signed copies returned to OEH for Ministerial Signoff.	Glencore	14 December 2016	YTC

To: Greg Manning, Assistant Secretary
Through: s22 Acting Director, Post Approvals Section

/ 2 / 2018

**Ulan Continued Operations Project, Ulan, NSW – Variation to Conditions 2 & 4
(EPBC 2009/5252)**

Timing: 16 February 2018.

Recommendations:

1. That you note the revised Bobadeen East Vegetation Offset Area.

consider
Noted/Please discuss

2. That you agree to (a) extend from 30 June 2017 to 31 August 2018 the period to secure the offset properties specified in conditions 2 and 4 of the approval for EPBC 2009/5252 and (b) trigger the requirement for alternative offsets, as specified in condition 4, if the conservation agreements are not finalised by 31 August 2018.

Agreed/Please discuss

3. If you agree to Recommendation 2, that you sign the Variation to Conditions Attached to Approval notice at **Attachment A**.

Signed / Not signed

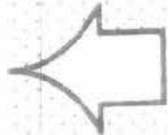
4. That you sign the letter at **Attachment B** advising Ulan Coal Mines Limited of your decision.

Signed / Not signed

[Signature]
Greg Manning, Assistant Secretary
Assessments (WA, SA, NT) & Post Approvals Branch

Date: 16 January 2018

Comments: *Agreement to trigger the alternative offsets should be made clear to 31 Aug, and a list of development of that time forwarded.*



Key Points:

1. On 30 November 2010, a delegate of the Minister approved with conditions the Ulan Coal Continued Operations Project, Ulan, NSW (at **Attachment C**), which includes the extension of the open cut mine, development of the underground mine and to modify or construct new infrastructure associated with these operations.
2. The approval conditions have been varied on 24 December 2012, 22 May 2013, 6 January 2014, 23 July 2014, 7 July 2015 and 11 November 2016. Conditions 2 and 4 have been varied on five occasions
3. **Condition 2** of the approval requires the approval holder to offset impacts to the EPBC Act listed *White Box-Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands* (Box Gum Woodland) and foraging habitat for the Swift Parrot, Regent Honeyeater and Large-eared Pied Bat by registering, by 30 June 2017, conservation covenants over the Bobadeen Offset Area and Bobadeen East Vegetation Offset Area.

4. **Condition 4** of the approval requires the approval holder to offset impacts to the EPBC Act listed Large-eared Pied Bat by providing a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area. The conservation mechanism must be agreed in writing by the Department and finalised by 30 June 2017.

Variation to Conditions 2 and 4

5. On 19 June 2017 the approval holder, Ulan Coal Mines Limited (Ulan), requested an extension to the timeframe to meet the requirements of Condition 2 and 4, and for Condition 2 to be consistent with state conditions requiring only evidence of application for a Voluntary Conservation Agreement to the Office of Environment and Heritage (OEH) (**Attachment D**).
 - Delays to securing the offset properties are due to negotiating the content of the conservation covenants/agreements with landowners, and the number of conservation agreement applications with NSW OEH. Ulan, for example, are currently negotiating 27 conservation agreements with NSW OEH.
 - The Department advised Ulan that evidence of an application would not meet the approval conditions.
6. **Condition 4** specifies that if the conservation mechanism cannot be finalised by 30 June 2017, the proponent must submit for the Minister's approval an alternative offset within 3 years of the date of this approval (ie within 3 years from 30 June 2017).
 - Given the need for an alternative site has not been triggered since the original approval, and that there is progress towards a legally binding mechanism for the Brokenback Conservation and Spring Gully Cliff Line Management Areas, the Department recommends that these offset sites should be secured by 31 August 2018. If the offset sites cannot be secured by this date, the requirement for an alternative offset site will be triggered under condition 4.
7. To evaluate the 2016 variation request, the Post Approval Sections requested a schedule of actions to secure the offset properties (see **Attachment E**). Significant progress has been made since late 2016, including finalising field surveys of biodiversity offset areas, and land owner consultation on draft agreements.
8. DPE has granted Ulan an extension to 28 February 2018 to secure the offsets, and advised that they would be reticent to approving further time extensions. DPE provided the timetable of conservation agreements being assessed by NSW OEH and encouraged Ulan to respond promptly to OEH comments (see **Attachment F**).
9. OEH has advised the Department it is satisfied with progress and commitments from Ulan, however tenure issues related to the Bobadeen East Vegetation Offset Area (BEVOA) must be resolved before the conservation agreements can be finalised.

Revised Bobadeen East Vegetation Offset Area

10. On 9 May 2016, the proponent for the s22 [redacted] s22 [redacted] informed the Post Approvals Section of negotiations with neighbouring landowners to construct a power transmission line traversing the BEVOA. The BEVOA adjoins the windfarm, with the transmission line impacting a portion of the vegetation on BEVOA's eastern boundary.
 - This matter was initially referred to the NSW North Assessments section as the project is being assessed under a bilateral assessment. The Department advised that s22 [redacted] should offset the impact or negotiate alternative offsets with Ulan. Correspondence between Post Approvals and Assessments is at **Attachment G**.
11. The transmission line will directly impact 13.13 ha of vegetation within the BEVOA. A further 4.97 ha will be fragmented by the transmission line. s22 [redacted] propose an 18.18ha replacement site that borders the western boundary of the BEVOA. **Attachment H** shows the original and revised BEVOA. The BEVOA will not be fragmented as a result of the revised boundary.

12. The proposed transmission line has created further delays resulting in Ulan submitting a revised conservation agreement to address boundary and demarcation issues.
 - Based on its experience with delays to similar offset securing processes, the Department considers the period to finalising the offset arrangements under conditions 2 and 4 of the approval should be extended to 31 August 2018.
13. The Department received further information from Ulan, NSW DPE and NSW OEH that indicates the proposed alterations will not result in a reduced offset area, or reduced quality of Box Gum Woodland, and that the requirements of approval conditions 2 and 4 will be met (see **Attachment I**). This includes.
 - NSW OEH advised it is satisfied that the revised BEVOA meets state consent condition requirements; and
 - under the NSW DPE approval, the revised BEVOA is of sufficient size and quality to meet the NSW biodiversity offset obligations.
14. Given the above, the Department requested Ulan provide a summary of the final offset arrangements with **s22** - see request and response at **Attachment J**.
15. The Department considers the alterations to BEVOA will provide the same level of protection to matters of national environmental significance.
16. In accordance with Section 143(1) of the EPBC Act, the conditions as varied are necessary and convenient because:
 - the revised BEVOA will provide the same level of protection to matters of national environmental significance.
 - the replacement area provides contiguous landscape, and does not fragment the offset area; and
 - the requirements of approval Conditions 2 and 4 otherwise remain, and provide a suitable timeframe for securing the offsets.

Recommendations

17. Ulan is currently non-compliant with conditions 2 and 4 of EPBC Approval 2009/5252, however, the request to extend the timeframe was made prior to 30 June 2017. The proposed variation allows Ulan to be compliant with their approval. The Department's Environmental Audit Section has been notified of the potential non-compliance, and the Department's Compliance Section considers that no contravention or compliance action should be taken on this matter.
18. Ulan agreed to the proposed variation, including a revised date of 31 August 2018 to secure the offset areas (**Attachment K**).
19. The Department recommends that you:
 - note the revised Bobadeen East Vegetation Offset Area (**Attachment H**);
 - agree to (a) to trigger the requirement of alternative offsets if the conservation agreements are not finalised by 31 August 2018, as specified in Condition 4, and (b) extend from 30 June 2017 to 31 August 2018 the period to secure the offset properties specified in conditions 2 and 4;
 - sign the Variation to Conditions Attached to Approval notice (**Attachment A**); and
 - sign the letter to advising Ulan of your decision (**Attachment B**).
20. The proposed variation has been processed in accordance with the approval monitoring standard operating procedures – 1.1 Variation of approval conditions.

Project Officer: **s22**

ATTACHMENTS

- A: Notice of variation (**for signature**).
- B: Letter to the person taking the action advising of your decision (**for signature**).
- C: Conditions of EPBC 2009/5252 approval and 2016 variation (for information).
- D: Correspondence from Ulan Coal requesting variation.
- E: Timetable of commitments from 2016.
- F: Schedule of conservation agreements currently with NSW OEH (for information).
- G: Correspondence with the Department's NSW Assessments Section.
- H: Original and revised BEVOA.
- I: Approval letters from NSW DPE and NSW OEH.
- J: Department's request for further information and response from Ulan Coal.
- K: Ulan agreement to proposed conditions 2 and 4, and date for securing BEVOA.



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Operations Project, Ulan, NSW (EPBC 2009/5252)

This decision to vary a condition 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	Ulan Coal Mines Limited ACN: 000 189 248
--	---

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No. 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
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Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and subsequent variation notices and substitute the conditions specified below. Replace Appendix 1 with the attached map. Note: All other conditions including the definitions in the approval remain unchanged.
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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	Greg Manning Assistant Secretary Assessments (WA, SA, NT) and Post Approvals Branch
-------------------	---

Signature		
Date of decision	10/2/2018	

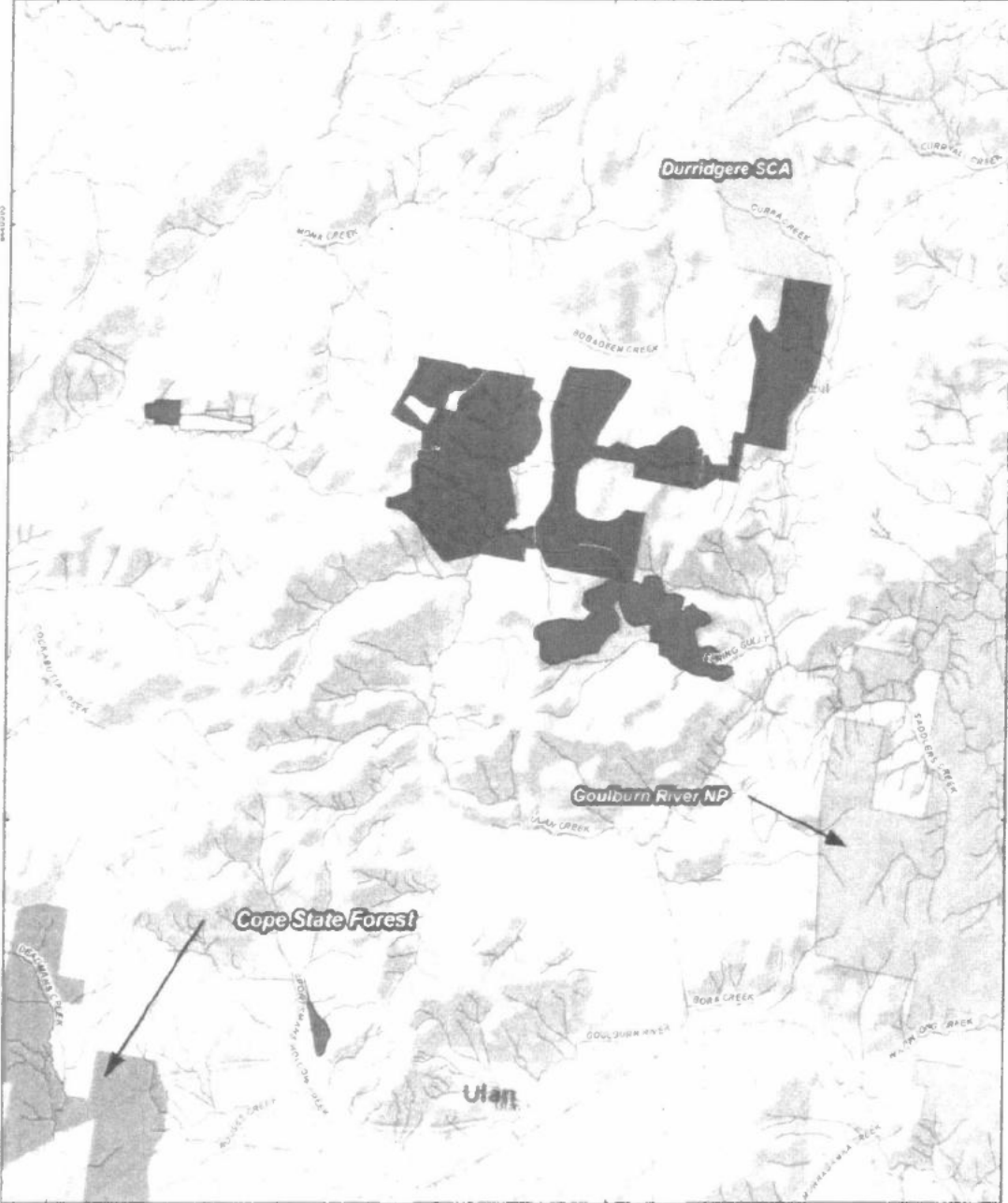
Conditions attached to the approval

- 2 To offset impacts on the listed White Box-Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over the Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 August 2018 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
- 4 To offset the impacts on the Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as Described in Appendix 1. The Conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 August 2018.

If the conservation mechanism cannot be finalised by 31 August 2018, the proponent must submit for the Minister's approval an alternate offset within 3 years of the date of this approval. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.

Ulan Coal Mines Limited - Conservation and Offset Areas
 REGIONAL LOCATION OF PROPERTIES

GLENCORE
 Ulan Coal Mines Limited
 Ulan, Queensland



<p>Legend</p> <ul style="list-style-type: none"> ■ Roaddean Vegetation Offset Area ■ Brokenback Conservation Area - Area 1 ■ Brokenback Conservation Area - Area 2 ■ Brokenback Conservation Area - Area 3 ■ Highest Road Access outside Management Area ■ Spring Gully Gullyline Management Area ○ State Forests ■ NPWS Estate — Watercourses 	<p>Brokenback Conservation Area - Area 3</p> <p>Highest Road Access outside Management Area</p> <p>Spring Gully Gullyline Management Area</p> <p>State Forests</p> <p>NPWS Estate</p> <p>Watercourses</p>		<p>Scale 1:100,000</p> <p>0 1 2 3 4 5 Kilometres</p> <p>Ulan Coal Mines Limited Queensland 2014 All Rights Reserved</p> <p>DATA SOURCE Queensland Department of Environment and Heritage Queensland Department of Natural Resources Queensland Department of Planning Queensland Department of Transport and Main Roads Queensland Department of Water</p>	<p>DISCLAIMER Ulan Coal Mines Limited Ulan, Queensland</p> <p>General Users of this map should ensure the accuracy of the information displayed on this map before using it for navigation or other purposes. The information on this map is provided for general information only and should not be used for any purpose without the appropriate professional advice. The map is not intended to be used for any purpose other than that for which it was designed. The map is not intended to be used for any purpose other than that for which it was designed. The map is not intended to be used for any purpose other than that for which it was designed.</p>
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PREP

Mr Charlie Allan
General Manager
Ulan Coal Mines Limited
Private Mail Bag 3006
MUDGEE NSW 2850

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

Dear Mr Allan

Thank you for your letter dated 19 June 2017 to the Department, requesting variation to conditions 2 and 4 of the approval decision dated 30 November 2010.

Officers of this Department have reviewed the variation request. On the advice of the Department, and as a delegate of the Minister for the Environment and Energy, I have, in accordance with section 143(1)(c) of the *Environment Protection and Biodiversity Conservation Act 1999*, varied conditions 2 and 4 of the approval for EPBC 2009/5252. The variation extends the timeframe to finalise conservation agreements with the NSW Office of Environment and Heritage, and removes the requirement for an alternative offset as specified in Condition 4.

Conditions 2 and 4 must now be undertaken in accordance with the varied conditions, as specified in the variation notification, and which is attached for your information.

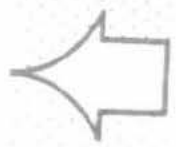
I note the need for this variation is due to factors that are beyond Ulan Coal Mines Limited's control. I also note the revised Bobadeen East Vegetation Offset Area required as a result of impacts from an adjacent wind farm. However I note the length of time to secure the offsets and I strongly encourage you to continue to work closely with the relevant authorities and land owners to meet your environmental offset obligations. If you are unable to secure the offset sites as per condition 4 by 31 August 2018, you must submit an alternative offset proposal that is consistent with the current EPBC Offsets policy.

As you are aware, the Department has an active monitoring program which includes monitoring inspections, desk top document reviews and audits. Please ensure that you maintain accurate records of all activities associated with, or relevant to, the conditions of approval so that they can be made available to the Department on request.

Should you require any further information please contact s22 [redacted] on s22 [redacted] or by email, post.approvals@environment.gov.au

Yours sincerely

Greg Manning
Assistant Secretary
Assessments (WA, SA, NT) & Post Approvals Branch
Environment Standards Division



2018

Attachment: Variation to conditions attached of approval

ULAN
COAL

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19 June 2017

Seq No: 24 /17

Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch
Environmental Assessment and Compliance Division
Department of Environment and Energy

Dear Shane,

Re: Ulan Coal Security of Biodiversity Offset Areas

I refer to your most recent letter dated 11 November 2016 approving a variation for an extension of time to secure the long term conservation of existing (approved) biodiversity offset areas for Ulan Coal Mines Limited under EPBC2009/5252. The table provided in **Attachment 1**, outlines the status of Conservation Agreements (CA's) for Ulan Coal Mines Limited. Whilst some unforeseen delays have been experienced in order to address feedback received from NSW Office of Environment and Heritage (OEH) relating to CA content, plans and survey requirements, GCAA has made substantial progress towards completion. Draft CA's Ulan have been submitted to OEH for review. There are a number of outstanding matters relating to the Ulan CA's that we are working to finalise as soon as practicable.

OEH's Conservation Department has advised GCAA that they currently have a large number of CA's to review and process, in addition to the 27 draft CA's relating to GCAA sites. At this stage OEH have not provided Glencore with a firm timeframe for them to complete their review of the draft CA's for GCAA sites. However, the overall large number of CA's for them to process suggests that this may take some time.

Given the uncertainty regarding the time that it will take OEH to complete their review, we have sought an extension from NSW Department of Planning and Environment (DPE) that requires relevant GCAA operations, including Ulan Mine, to provide appropriate long term security for existing offset areas *within 6 months of the NSW Government (OEH) providing written confirmation to the approval holder that the Conservation Agreement submitted for their approval meets Government's requirements*. The proposed extension would provide both OEH and GCAA sufficient time after CA's for each GCAA operation are approved by OEH to obtain the required signatures on the CA's (including Joint Venture parties and Crown Lands in the case of Ulan Mine) and have the CA's registered on the relevant land titles.

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

Alternatively, we would be pleased to discuss this matter with both the Department of Environment and Energy and DPE to agree on a suitable timeframe for completion (registration of the CA's) and an appropriate extension. We recommend that your Department contact Mr s47F [REDACTED] from the NSW DPE in the first instance, who is dealing with this matter.

We trust that this update demonstrates our strong intent to have the CA's finalised as soon as practicable and we look forward to your reply. In the meantime, please do not hesitate to contact Robyn Stoney on s47F [REDACTED] if you have any questions regarding this matter.

Yours sincerely,

s47F

Charlie Allan
General Manager
Ulan Coal Mines Ltd

**ULAN
COAL**

GLENCORE

Attachment 1: Update on Conservation Agreements for UCML Biodiversity Offset Areas (as at 7 June 2017)

Site	Number of VCA's Required	Consultant Engaged	Status	Date draft CA's lodged with OEHL for Review	Comments
Ulan	6	Ecological Australia	<p>Initial consultation with OEHL completed.</p> <p>Additional field Ecological Survey to meet CA requirements completed.</p> <p>Mapping of easements across CA completed.</p> <p>Draft Conservation Agreements prepared and lodged with OEHL for review.</p> <p>Boundary/Infrastructure survey completed and survey plans to be inserted into the final approved CA.</p>	Lodged 7 June 2017	<p>Ulan are still working to resolve a number of issues affecting some of the CA's, including:</p> <ul style="list-style-type: none"> • Final Agreement of Crown Lands for those offset areas overlying Crown Land. Draft CA's have been provided to the Crown for review. • Agreement of one private landowner partly within the Brokenback Offset Area. Negotiations on-going. • Proposal by s22 [redacted] s22 [redacted] that will impact on an area of the Bobadeen East Offset Area

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4505 Ulan Road, Ulan, NSW 2850

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture



Planning & Environment

Mr Nigel Charnock
 Manager – Land and Property
 Glencore Coal Assets Australia
 Private Mail Bag 8
 SINGLETON NSW 2330

Dear Mr Charnock

Glencore Coal Assets Australia Extension to Security of Offset Areas

I refer to your letter dated 7 June 2017 seeking an extension of time to make suitable arrangements for the long-term security for Conservation and Biodiversity Stewardship Agreements for Glencore Coal's assets in NSW.

The Department has liaised with Glencore and the Office of Environment and Heritage (OEH) to draft a forecast timetable for review of the agreements. This timetable has been developed on the understanding that OEH has received draft versions of relevant agreements and has indicated that each agreement requires around three months to review and provide comments to Glencore.

I have attached the forecast timetable for OEH's review of these agreements and encourage Glencore to respond to OEH's review comments in a timely manner. I also note that:

- Ulan's three Bobadeen Offset Areas are covered under one agreement, the area of which is subject to review due to a power easement associated with the Liverpool Range Windfarm development;
- four of the s22 agreements are not due for submission until 2018; and
- consent has not yet been obtained from the private landholder at Brokenback.

While the Department understands the challenges faced in developing and implementing the agreements, it is becoming concerned with the prolonged delays in implementation and will be reticent to approve any further extensions to the security timeframes unless thoroughly justified. It is therefore imperative that the agreements are finalised and implemented as soon as possible.

Given the above and the need for a suitable response period to resolve any issues raised in OEH's review of the draft agreements, the Secretary has granted an extension to 28 February 2018 for the finalisation of the attached agreements. The only exceptions to this revised date are the s22 Offsets agreements, which are due by 30 June 2018.

Should you have any queries regarding the above, please contact s47F on s47F.

Yours sincerely,

s47F 2/8/17

Executive Director
Resource Assessments and Compliance
as the Secretary's nominee

Attachment A: Timetable

#	Site (Approval)	Offset Areas to be Secured (by separate Agreements)	Mechanism	Glencore submission date to OEH	OEH date for review comments
<h1>s22</h1>					

s22

17	Ulan (08_0184)	- Brokenback Offset Area (Ulan owned Land portion)	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017
18	Ulan (08_0184)	- Brokenback Offset Area (Privately owned Land portion- McGrath)	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017
19	Ulan (08_0184)	- Brokenback Offset Area (Crown Land owned portion)	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017
20	Ulan (08_0184)	- Bobadeen Offset Areas (Bobadeen, Bobadeen East and Bobadeen East Corridor)	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017
21	Ulan (08_0184)	- Spring Gully Cliffline Management Area	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017
22	Ulan (08_0184)	- Highett Road Offset Area	Conservation Agreement under <i>NSW National Parks and Wildlife Act</i>	7/6/2017	5/09/2017

s22

To: s22 A/g Assistant Secretary

Through: s22 Director, Post Approvals Section

s22

4 October 2018

EPBC 2009/5252 Ulan Coal Continued Operations Project, Ulan, NSW: variation to timeframe for securing offset sites required by conditions 2 and 4.

Timing:

Recommendations:

1. That you agree to vary the conditions attached to the EPBC Act approval for 2009/5252, in accordance with the decision instrument at **Attachment A**.

Agreed / Please discuss

2. If you agree to Recommendation 1, that you sign the decision instrument at **Attachment A** for publication.

Signed / Not signed

3. If you sign the instrument at **Attachment A**, that you sign the letter at **Attachment B** advising the approval holder of your decision.

Signed / Not signed

Signatory: s22 A/g Assistant Secretary
Assessments (WA, SA, NT) and Post Approvals Branch

Date: 4/10/18

Comments:

Background

1. The Minister has delegated you as decision maker for this matter pursuant to section 515 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
2. On 30 November 2010, a delegate of the Minister approved with conditions a proposal to extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No 3 underground operation. The project includes clearing up to 69 ha of vegetation (**Attachment C**). Conditions 2 and 4 have been varied on six occasions.
3. On 23 August 2018 the approval holder, Ulan Coal Mines Ltd (UCML), requested variations to conditions 2 and 4 of the approval to extend the timeframe to secure offsets to 31 December 2018 (**Attachment D**). Your agreement to the proposed variation, which is agreed by UCML, will provide an additional four months to secure the offset area under a legal mechanism.

The proposed variation

4. The controlling provisions for the action are listed threatened species and communities (Sections 18 & 18A) and listed migratory species (sections 20 & 20A). The conditions of approval provide for the protection of White Box – Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands ecological community, habitat for the Swift Parrot, Regent Honeyeater and Large-eared Pied Bat.

5. Conditions 2 and 4 of the approval require UCLM to register, by 31 August 2018, legally binding conservation covenants over the offset areas identified in Appendix 1 of **Attachment C**.
 - Condition 2 specifies the Bobadeen and Bobadeen East Offset Areas for offsetting of impacts on the ecological community and species habitat.
 - Condition 4 specifies the Brokenback Conservation Area and Spring Gully Cliff Line Management Area for offsetting of impacts on the Large-eared Pied Bat. This condition also requires an alternative offset to be submitted for the Ministers approval within 3 years of the date of the previous variation approval (if the covenants cannot be finalised by 31 August 2020).
6. UCLM advised that conservation agreements for the Bobadeen and Bobadeen East offset sites required by condition 2 were submitted to the NSW Office of Environment and Heritage (OEH) on 29 June 2018 and are awaiting OEH advice on execution of these agreements (**Attachment E**).
7. The offset sites required by condition 4 include crown and privately owned portions, and UCLM have advised (**Attachment E**) of the following difficulties in securing the offsets.
 - UCLM submitted final draft conservation agreements to the NSW Department of Industry Crown Lands and Water Division (Crown Lands). Crown Lands have provided a preliminary letter of support (**Attachment F**) that the draft agreements indicate a potential benefit to the Crown estate. The letter also indicates that Crown Land will work with UCLM to determine if the agreements can be authorised and approved by the Industry Minister.
 - UCLM advised that the landowner and the NSW Department of Planning and the Environment (DPE) are unable to agree on an appropriate conservation agreement for the privately owned portion of the Brokenback Conservation Area and may need to seek an alternative offset.

Proposed decision

8. An extension of time to secure offsets would provide for OEH to consider the final draft conservation agreements for the Bobadeen and Bobadeen East offset areas required by condition 2. It would also provide for:
 - Crown Lands' decision on the draft conservation agreements that would enable OEH's consideration of the Spring Gully and crown portion of the Brokenback offsets required by condition 4.
 - A decision to proceed with the privately owned portion of the Brokenback offset required by condition 4.

Further clarity around the condition 4 offsets would support a future decision around whether the alternative offset requirement is triggered for condition 4. Note that the Department has also proposed to vary condition 4 to clarify the date upon which an alternative offset must be submitted to the Minister for approval.

9. On 2 October 2018, UCLM agreed to the draft variation (see **Attachment G**).
10. The Department considers the conditions attached to the approval after the proposed variation are, in accordance with section 143(1)(c) of the EPBC Act, necessary or convenient for protecting the relevant matters protected. This is because the conditions as varied will continue to ensure a suitable offset area is managed and protected to compensate for the residual impacts on protected matters.
11. On the above basis, the Department recommends that you:
 - agree to vary the conditions of approval for EPBC 2009/5252, in accordance with the variation decision instrument at **Attachment A**;
 - sign the decision instrument at **Attachment A**; and
 - sign the letter to UCLM at **Attachment B** advising of your decision.

CONTACT OFFICER: **s22**

ATTACHMENTS

- A:** Notice of Variation **(for signature)**
- B:** Letter to the approval holder advising of your decision **(for signature)**
- C:** Conditions of approval for EPBC 2009/5252 dated 30 November 2010 **(for information)**
- D:** Letter from UCLM seeking variation to conditions 2 and 4 **(for information)**
- E:** Advice from UCLM on progress with securing offset sites **(for information)**
- F:** Preliminary letter of support from Crown Lands **(for information)**
- G:** UCLM's email of 2 October 2018 agreeing to the variation wording **(for information)**



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Continued Operations Project, Ulan, NSW (EPBC 2009/5252)

This decision to vary a condition 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	Ulan Coal Mines Limited ACN: 000 189 248
---	---

Approved action	To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009.
------------------------	--

Variation

Variation of conditions of approval	The variation is: Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and subsequent variation notices and substitute with the conditions specified below. Note: All other conditions including the definitions in the approval remain unchanged.
--	--

Date of effect	This variation has effect on the date the instrument is signed
-----------------------	--

Person authorised to make decision

Name and position	Declan O'Connor-Cox A/g Assistant Secretary Assessments (WA, SA, NT) and Post Approvals Branch
--------------------------	--

Signature	
------------------	--

Date of decision	4 October 2018
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Conditions attached to the approval

2. To offset impacts on the listed White Box-Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over the Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 December 2018 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on the Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as Described in Appendix 1. The Conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 December 2018.

If the conservation mechanism cannot be finalised by 31 December 2018, the proponent must submit for the Minister's approval an alternate offset by 31 December 2021. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.



2009/5252

Mr Charlie Allan
General Manager
Ulan Coal Mines Limited
Private Mail Bag 3006
MUDGEE NSW 2850

Ulan Coal Continued Operations Project, Ulan, NSW: variation to extend timeframe to secure offsets required by conditions 2 and 4 (EPBC 2009/5252)

Dear Mr Allan

Thank you for your letter dated 23 August 2018 to the Department, seeking advice from the Department, requesting variations to conditions 2 and 4 of the approval decision dates 30 November 2010.

Officers of the Department have considered the variation request. On the advice of the Department, and as a delegate of the Minister for the Environment, I have, in accordance with section 143(1)(c) of the *Environment Protection and Biodiversity Conservation Act 1999*, varied conditions 2 and 4 of the approval for EPBC 2009/5252. The variation extends the timeframe to:

- finalise conservation agreements for the Bobadeen and Bobadeen East offset areas with the NSW Office of Environment and Heritage;
- continue discussions with the NSW Department of Industry, Crown Lands and Water Division, towards obtaining the Industry Minister's approval for conservation agreements over the Spring Gully offset area and the Crown portion of Brokenback offset area; and
- make a decision on whether to proceed with the privately owned portion of the Brokenback offset site.

Conditions 2 and 4 must now be undertaken in accordance with the varied conditions, as specified in the variation notification, and which is attached for your information.

I note the need for this variation is due to factors that are beyond Ulan Coal Mine Limited's control. However, I note the length of time to secure the offsets and I strongly encourage you to continue to work closely with the relevant authorities and land owners to meet your environmental offset obligations.

As you are aware, the Department has an active monitoring program which includes monitoring inspections, desk top document reviews and audits. Please ensure that you maintain accurate records of all activities associated with, or relevant to, the conditions of approval so that they can be made available to the Department on request.

Should you require any further information please contact the Post Approvals Section at post.approvals@environment.gov.au.

Yours sincerely

s22

s22

A/g Assistant Secretary
Assessments (WA, SA and NT) and Post Approvals Branch
Environment Standards Division
6 October 2018

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.

D

ULAN
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GLENCORE

23 August 2018

Seq No: 161/18

Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch
Environmental Assessment and Compliance Division
Department of Environment and Energy

Attention: s22

Dear Mr Gaddes,

Re: Ulan Coal Security of Biodiversity Offset Areas

I refer to Ulan Coal Mines Limited (UCML) approval EPBC2009/5252 and the subsequent variation to approval EPBC2009/5252 issued by the Department of Environment and Energy (DoEE) on 16 February 2018.

UCML have been working with relevant stakeholders to secure Voluntary Conservation Agreements (VCA's) for offsets required under UCML's project approvals EPBC2009/5252 and PA08_0184 (issued by the NSW Department of Planning and Environment).

The status of the offsets is as follows:

- VCA's for the Bobadeen Conservation Area, the Highetts Road Conservation Area and the UCML portion of the Brokenback Conservation Area were submitted to the Office of Environment and Heritage (OEH) in final form on 29 June 2018;
- The owner of the section of the Brokenback Conservation Area that is privately owned has not agreed to a VCA and UCML requested approval of the DP&E to proceed with a Conservation Covenant on 11 April 2018; and
- Final versions of the VCA's for the Spring Gully and the Crown owned portion of the Brokenback Conservation Area were provided to the Department of Industry Crown Lands and Water Division (Crown Lands) for review on 28 June 2018. Crown Lands have provided a draft licence, which subject to agreement by parties would clear the way for the compensation agreement and subsequently the VCA's to be agreed by all parties involved.

Whilst UCML met with Crown Lands on 22 August 2018 to seek to have the draft licence finalised as soon as possible, there are a number of matters of relevance to Crown Lands that may take some time to resolve.

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

UCML are working to finalise the agreements as soon as practicable and respectfully request that DoEE approve an extension of time for finalisation of the agreements until 30 December 2018. The extension of time would relate to a variation of conditions 2 and 4 of approval EPBC2009/5252. I have attached a copy of the recently approved variation, which refers to these conditions for your convenience.

Please contact Robyn Stoney on s47F or via email Robyn.Stoney@glencore.com.au, if you have any questions.

Yours sincerely,

s47F

Charlie Allan
General Manager
Ulan Coal Mines Ltd

Attached: Approved Variation to Conditions EPBC 2009/5252



VARIATION TO CONDITIONS ATTACHED TO APPROVAL

Ulan Coal Operations Project, Ulan, NSW (EPBC 2009/5252)

This decision to vary a condition 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 Ulan Coal Mines Limited
ACN. 000 189 248

Approved action To extend the open cut coal mine, develop Ulan West underground mine and modify or construct new infrastructure associated with these operations and the Ulan No. 3 underground operation, Ulan, New South Wales and as described in the referral received under the Act on 18 December 2009

Variation

Variation of conditions of approval The variation is:
Delete conditions 2 and 4 attached to the approval dated 30 November 2010 and subsequent variation notices and substitute the conditions specified below.
Replace Appendix 1 with the attached map.
Note: All other conditions including the definitions in the approval remain unchanged.

Date of effect This variation has effect on the date the instrument is signed

Person authorised to make decision

name and position Greg Manning
Assistant Secretary
Assessments (WA, SA, NT) and Post Approvals Branch

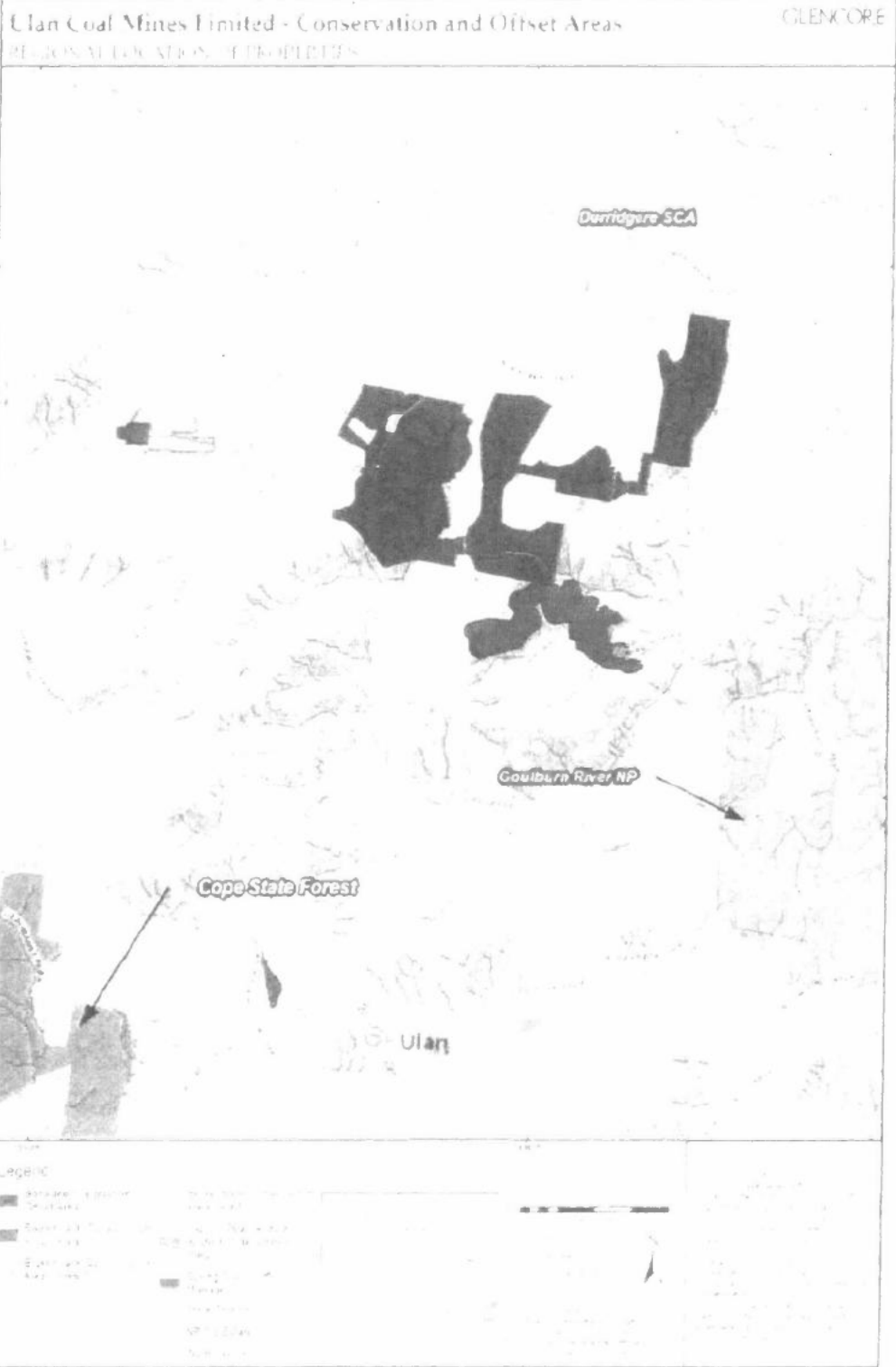
Signature 

Date of decision 10/12/2018 2018

Conditions attached to the approval

2. To offset impacts on the listed White Box-Yellow Box Blakely's Red Gum Grassy Woodland and Derived Native Grasslands threatened ecological community, and foraging habitat of the listed Swift Parrot, Regent Honeyeater and Large-eared Pied Bat, the person taking the action must register a legally binding conservation covenant in perpetuity over the Bobadeen Offset Area and Bobadeen East Offset Area as described in Appendix 1. The covenants must be registered by no later than 31 August 2018 and covenant conditions must ensure that management is for the protection and enhancement of the matters of national environmental significance identified above.
4. To offset the impacts on the Large-eared Pied Bat, the person taking the action must provide a legally binding conservation mechanism for the long term protection of the Brokenback Conservation Area and Spring Gully Cliff Line Management Area as Described in Appendix 1. The Conservation mechanism must be agreed to in writing by the Department and must be finalised by no later than 31 August 2018.

If the conservation mechanism cannot be finalised by 31 August 2018, the proponent must submit for the Minister's approval an alternate offset within 3 years of the date of this approval. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.



s22

E

From: s22
Sent: Tuesday, 18 September 2018 3:36 PM
To: s22
Cc: s22; s22
Subject: FW: Ulan Coal Mine Conservation Agreement extension request additional information [DLM=For-Official-Use-Only]
Attachments: FW: Conservation Agreements; FW: FW: Voluntary Conservation Agreements
Follow Up Flag: Follow up
Flag Status: Flagged

Hi s22

Please see the additional information from Glencore re. the Ulan Coal Mine.

Let me know if you think we need anything else.

Cheers

s22

From: Bradley.Tanswell@glencore.com.au [mailto:Bradley.Tanswell@glencore.com.au]
Sent: Tuesday, 18 September 2018 3:12 PM
To: s22
Cc: Robyn.Stoney@glencore.com.au
Subject: Ulan Coal Mine Conservation Agreement extension request additional information

Hi s22

Thanks again for the meeting on Monday 10 September to discuss the Conservation Agreements (CA's) for Ulan Coal Mine (as required by EPBC approval ref EPBC2009/5252) and apologies for the delay in getting this information to you. As discussed during the meeting, pls find additional information in relation to the status of, and complexities associated with finalising the CA's to support Ulan Coal Mine Limited's (UCML) requested extension to finalise the CA's.

The status of the offsets is as follows:

- CA's under the NSW *National Parks and Wildlife Act* for the Bobadeen Conservation Area, the Highetts Road Conservation Area and the UCML portion of the Brokenback Conservation Area were submitted to the Office of Environment and Heritage (OEH) in final form on 29 June 2018. We are now awaiting further instructions from OEH regarding execution of these Agreements
- The owner of the section of the Brokenback Conservation Area that is privately owned has not agreed to a CA but is agreeable in principle to the use of an alternative mechanism, being a Conservation Covenant on the land title. UCML requested approval of the DP&E to proceed with a Conservation Covenant on 11 April 2018. DP&E asked UCML (on 3 Sept 2018) to advise if an alternative offset can be provided as the conservation covenant is their least preferred solution. UCML is currently reviewing possible alternatives
- The draft CA's for the Spring Gully and the Crown owned portion of the Brokenback Conservation Area were provided to the Department of Industry Crown Lands and Water Division (Crown Lands) for review on 30 June 2017, 28 August 2017 and as a final draft on 28 June 2018. The attached email indicates the Crown can issue a letter providing their advice on the agreements by the end of September
- The negotiations with Crown Lands for Licence and associated compensating agreement, which would clear the way for the CA's to be agreed has been in progress since 2014. Lengthy delays and changes to requirements have made it a slow process. On 5 September 2018, Crown Lands requested a new Licence Application due to recent amendments to the *Crown Land Management Act 2016* (this is almost ready for submission and will be submitted in the coming days)

- Crown Lands committed to providing UCML with correspondence confirming their commitment and intent to finalise the licence, compensation agreements and CA's as soon as practicable. As per the attached email from David Baber of Crown Lands this advice is expected by the end of September 2018. As soon as we receive this advice, we will provide it to you and the Department of Planning and Environment (who have recently approved an extension to finalise the CA's until the end of December 2018)
- Crown Lands has expressed their intention to provide formal advice about possible avenues to resolve outstanding issues with the compensation agreement and CA's

Pls let me know if you have any queries or would like any additional information at this stage.

Regards,

Brad

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

s22

From: Bradley.Tanswell@glencore.com.au
Sent: Wednesday, 12 September 2018 10:37 AM
To: Bradley.Tanswell@glencore.com.au
Subject: FW: FW: Voluntary Conservation Agreements

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333
E: Bradley.Tanswell@glencore.com.au
www.ulancoal.com.au

From: s47F
Sent: Friday, 24 August 2018 12:33 PM
To: Tanswell, Bradley (Ulan No 3 - AU)
Cc: Stoney, Robyn (Ulan No 3 - AU) ; Charnock, Nigel (Hunter Valley - AU)
Subject: Re: FW: Voluntary Conservation Agreements

Hi Brad

A formal request has been sent by the Department for the 3 Conservation Agreements to be reviewed, including a review of an additional Native Title and Aboriginal Land Claim Annexure containing Special Conditions that will detail the effect on the Agreement and processes to follow in the event a Native Title Claim is Determined or an Aboriginal Land Claim is granted over the Crown land affected by the Conservation Agreements.

I have requested that the review be completed by 31st August 2018.

If you have any questions I can be contacted on s47F

Regards

s47F

s47F | Projects Manager, Regional Projects West
NSW Department of Industry - Crown Land & Water Division
K Block TAFE campus Allingham Street Armidale NSW 2350
PO Box 2185 Dangar NSW 2309
Direct T: s47F M: s47F E: s47F

On 20 August 2018 at 07:50, <Bradley.Tanswell@glencore.com.au> wrote:

Hi s47F

Thanks for your advice below. I have just started with Ulan Mine, with part of my role being coordinating Ulan's approvals.

Can you pls keep me in the loop as this progresses.

I look forward to hearing your response.

Pls call me if there is anything else you need, noting I am currently working through landline issues so best to call on my mobile.

thanks,

Brad

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

From: s47F
Sent: Wednesday, 15 August 2018 4:15 PM
To: Stoney, Robyn (Ulan No 3 - AU) <Robyn.Stoney@glencore.com.au>
Cc: Charnock, Nigel (Hunter Valley - AU) <Nigel.Charnock@glencore.com.au>; Tanswell, Bradley (Ulan No 3 - AU) <Bradley.Tanswell@glencore.com.au>
Subject: Re: FW: Voluntary Conservation Agreements

Hi Robyn

Yes I have been able to access the 3 Conservation Agreements (the Valley Way agreement having been previously reviewed last year).

I have made further inquiries in relation to Native Title and Aboriginal Land Claims (note all lands are subject to ALC Claims).

The information I have to-date is that the Agreements will need to include Termination/Assignment clauses in the event of a Determination of Native Title and or Grating of an Aboriginal Land Claim.

I am seeking further input on the suitability of such clause which may take a number of weeks.

Ideally the Department will be in a position to issue Ulan Coal with a comfort letter in the next 3 to 4 weeks that will advise OEH of the Departments position.

Call me on s47F if you have any questions.

s47F

s47F | Projects Manager, Regional Projects West

NSW Department of Industry - Crown Land & Water Division

K Block TAFE campus Allingham Street Armidale NSW 2350

PO Box 2185 Dangar NSW 2309

Direct T: s47F M s47F E: s47F

On 15 August 2018 at 14:25, <Robyn.Stoney@glencore.com.au> wrote:

Hi s47F

Ahead of a meeting planned for next week, just wanted to check and make sure you were able to download the draft Voluntary Conservation Agreements and see whether you had any comments or concerns in relation to them please? Thank you.

Best regards,

Robyn

Robyn Stoney
Environment and Community Manager
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: robyn.stoney@glencore.com.au

www.ulancoal.com.au

From: s47F

Sent: Thursday, 28 June 2018 9:43 AM

To: Stoney, Robyn (Ulan No 3 - AU) <Robyn.Stoney@glencore.com.au>

Cc: Charnock, Nigel (Hunter Valley - AU) <Nigel.Charnock@glencore.com.au>

Subject: Re: FW: Voluntary Conservation Agreements

Thanks Robyn

I'll review today.

s47F

s47F Projects Manager, Regional Projects West

NSW Department of Industry - Crown Land & Water Division

K Block TAFE campus Allingham Street Armidale NSW 2350

PO Box 2185 Dangar NSW 2309

Direct T: s47F M: s47F E: s47F

On 28 June 2018 at 09:41, <Robyn.Stoney@glencore.com.au> wrote:

Hi s47F

Thank you for considering the final drafts of the VCAs for Spring Gully and Brokenback on Crown Land which can be downloaded from the link below using the password Welcome1 .

Could you please let me know any changes you require? It is possible to upload to the file transfer drive should you wish to. I have left track changes on so you can see what has changed. We have adjusted the signing blocks, these in particular might need some amendment to suit Crown's requirements. On the other hand, if you are satisfied with the agreements in their final draft form could you please let me know?

I included the Valley Way conservation agreement for the grinding grooves, which I understand was as final as possible in 2015. Could you please confirm you are satisfied with it also, so that I can let OEH know we are just waiting on reaching agreement with Crown and it can be finalised? Please call me if you have any questions. Thanks again.

Best regards,

Robyn

Robyn Stoney
Environment and Community Manager
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: robyn.stoney@glencore.com.au

www.ulancoal.com.au

From: Stoney, Robyn (Ulan No 3 - AU)
Sent: Thursday, 28 June 2018 9:23 AM
To: s47F
Subject: Voluntary Conservation Agreements

Shared Folder from Robyn Stoney

Hi s47F

I will send a further email in a moment or two. Thank you,
Robyn

Shared Folder

Name: Ulan VCAs on Crown title final draft
Public Link: [Ulan VCAs on Crown title final draft](#)
Expires On: Wed, 04 Jul 2018 21:22:45 GMT

Click on the link below to open a webpage to view and download files from the shared folder.

This link also allows uploading files to the shared folder.

[Open](#)

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s47F Projects Manager, Regional Projects West

NSW Department of Industry - Crown Land & Water Division

K Block TAFE campus Allingham Street Armidale NSW 2350

PO Box 2185 Dangar NSW 2309

Direct T: s47F M s47F E: s47F

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Best regards,

Robyn

Robyn Stoney
Environment and Community Manager
Ulan Coal Mines - A Glencore managed company

s47F

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s22

From: Bradley.Tanswell@glencore.com.au
Sent: Wednesday, 12 September 2018 10:37 AM
To: Bradley.Tanswell@glencore.com.au
Subject: FW: Conservation Agreements

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333
E: Bradley.Tanswell@glencore.com.au
www.ulancoal.com.au

-----Original Message-----

From: s47F
Sent: Thursday, 6 September 2018 7:10 AM
To: Charnock, Nigel (Hunter Valley - AU) <Nigel.Charnock@glencore.com.au>
Subject: Conservation Agreements

Hi Nigel

Just providing you with an update from my meeting yesterday with the departments legal representatives.

1. I have emphasised the importance of mid Sept as due date and the departments desire to issue Ulan with a letter before end of month.
2. Can you advise if Annexure B for all of the agreements is complete. The question has been asked that this Annexure refers to "conservation values" yet the values are not defined from an ecological view point or financially. Is any additional work going to be undertaken on further defining these values.
3. Can you advise what CA template has been used to draft the agreements and if OEH legal team have recently reviewed the agreements. If OEH have reviewed are you able to provide contacts for their legal team.

Thanks

s47F

Sent from my iPhone

--

<<https://www.industry.nsw.gov.au/lands/what-we-do/legislation-policies>>

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s22

f

Subject: FW: Ulan Coal Mine Conservation Agreement extension request additional information
Attachments: Re: Conservation Agreements

From: Bradley.Tanswell@glencore.com.au [mailto:Bradley.Tanswell@glencore.com.au]

Sent: Tuesday, 2 October 2018 8:44 AM

To: s22

Cc: Robyn.Stoney@glencore.com.au

Subject: RE: Ulan Coal Mine Conservation Agreement extension request additional information

Morning s22

As mentioned in my previous message on 18 September (below), Crown Lands have now provided the letter of support in relation to finalising the licence, compensation agreements and Conservation Agreement's (pls see attached).

Ulan Coal Mines Ltd (UCML) also resubmitted the new Licence application to Crown Lands as referred to below on 25 September 2018.

UCML look forward to the Department of Environment and Energy's response in relation to the requested extension to finalise the Conservation Agreements.

Pls call me if you would like any additional information.

Regards,

Brad

Brad Tanswell
 Environment and Community Coordinator
 Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

From: Tanswell, Bradley (Ulan No 3 - AU)

Sent: Tuesday, 18 September 2018 3:12 PM

To: s22 <s22>

Cc: Stoney, Robyn (Ulan No 3 - AU) <Robyn.Stoney@glencore.com.au>

Subject: Ulan Coal Mine Conservation Agreement extension request additional information

Hi s22

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- CA's under the NSW *National Parks and Wildlife Act* for the Bobadeen Conservation Area, the Highetts Road Conservation Area and the UCML portion of the Brokenback Conservation Area were submitted to the Office of Environment and Heritage (OEH) in final form on 29 June 2018. We are now awaiting further instructions from OEH regarding execution of these Agreements
- The owner of the section of the Brokenback Conservation Area that is privately owned has not agreed to a CA but is agreeable in principle to the use of an alternative mechanism, being a Conservation Covenant on the

land title. UCML requested approval of the DP&E to proceed with a Conservation Covenant on 11 April 2018. DP&E asked UCML (on 3 Sept 2018) to advise if an alternative offset can be provided as the conservation covenant is their least preferred solution. UCML is currently reviewing possible alternatives

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- Crown Lands committed to providing UCML with correspondence confirming their commitment and intent to finalise the licence, compensation agreements and CA's as soon as practicable. As per the attached email from David Baber of Crown Lands this advice is expected by the end of September 2018. As soon as we receive this advice, we will provide it to you and the Department of Planning and Environment (who have recently approved an extension to finalise the CA's until the end of December 2018)
- ~~Crown Lands has expressed their intention to provide formal advice about possible avenues to resolve outstanding issues with the compensation agreement and CA's~~

Pls let me know if you have any queries or would like any additional information at this stage.

Regards,

Brad

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

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s22

From: s47F
Sent: Friday, 28 September 2018 10:16 AM
To: Nigel.Charnock@glencore.com.au
Cc: Bradley.Tanswell@glencore.com.au; s47F
s47F Robyn.Stoney@glencore.com.au
Subject: Re: Conservation Agreements
Attachments: Support Letter to Ulan Coal Mines Limited - Conservation Agreements - Signed 28 Sept 2018.pdf

Hi Robyn, Nigel, Brad

Please find attached letter of support for proposed Conservation Agreements associated with Ulan Coal Mines.

Please contact s47F or myself if you wish to discuss further.

Regards

s47F

s47F | A/Senior Project Manager, Commercial Projects
NSW Department of Industry - Crown Land & Water Division
K Block TAFE campus Allingham Street Armidale NSW 2350
PO Box 2185 Dangar NSW 2309
Direct T: s47F M: s47F E: s47F

On Fri, 28 Sep 2018 at 09:51, <Nigel.Charnock@glencore.com.au> wrote:

Hi s47F I am going on leave for 2 weeks from today so thought that I would touch base prior to see how the Dept's letter to UCML is progressing regarding UCML's offsets on Crown Land? Can you please email it directly to Brad Tanswell and copy me in.

By way of update UCML has now lodged the new Licence Application with Crown Lands and we have also this week sent our comments back to Maddocks on the revised draft Compensation Agreement.

Thanks and we look forward to your reply.

Nigel

-----Original Message-----

From: s47F
Sent: Thursday, 6 September 2018 7:10 AM
To: Charnock, Nigel (Hunter Valley - AU) <Nigel.Charnock@glencore.com.au>
Subject: Conservation Agreements

Hi Nigel

Just providing you with an update from my meeting yesterday with the departments legal representatives.

1. I have emphasised the importance of mid Sept as due date and the departments desire to issue Ulan with a letter before end of month.
2. Can you advise if Annexure B for all of the agreements is complete. The question has been asked that this Annexure refers to "conservation values" yet the values are not defined from an ecological view point or financially. Is any additional work going to be undertaken on further defining these values.
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Thanks

s47F

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28 September 2018

Robyn Stoney
Environment and Community Manager
Ulan Coal Mines Limited
(Glencore)
Private Mail Bag 3006
MUDGEES NSW 2850

Dear Ms Stoney

Ulan Coal Mine - Conservation Agreements - National Parks & Wildlife Act 1974

(This is a preliminary letter of support subject to outcome of a comprehensive briefing to the Minister for Lands)

I refer to Ulan Coal Mines Ltd (Ulan Coal) request for Conservation Agreements on Crown land at Ulan under the *National Parks & Wildlife Act 1974 (NP&WA)*.

It is understood that Ulan Coal have been issued development consent for coal mining activities in accordance with the *Environmental Planning and Assessment Act 1979* (Project Approval No 08-0184 for the Ulan Coal Continued Operations Project).

Condition 46 in Schedule 3 of this development approval requires Ulan Coal to provide long term security for Environmental Offset Areas to the satisfaction of the Director-General of the Department of Planning and Environment.

Ulan Coal has proposed three Offset Areas located on Crown land to meet Condition 46, to be secured by way of Conservation Agreements under the NP&WA (refer to Table below) ("the Crown land").

Title	Area (of Crown land)	Lot/DP (part affected)	Land Claim	Native Title Claim
Spring Gully Cliffline Management Area	272.3ha	Lot 83 DP704077 Lot 7008 DP1128119	ALC 36642	NC2017/001 Warrabinga-Wiradjuri #7
Brokenback Conservation Area	27.7ha	Lots 41 & 42 DP750735 Lot 7301 DP1148421	ALC 34158	NC2017/001 Warrabinga-Wiradjuri #7
Valley Way Grinding Groove Area	0.78ha	Lot 7008 DP1128119	ALC 34127 & 6563	NC2017/001 Warrabinga-Wiradjuri #7

The Department of Industry – Lands (Department) has reviewed each of the draft Conservation Agreements and makes the following comments:

- It is acknowledged that Ulan Coal have undertaken in-depth environmental and heritage studies into each of the three Conservation Agreement Areas, developing a body of work that is recognised as a significant information and knowledge resource potentially available to interest groups and the NSW public.

- The Conservation Agreements provide base-line information on the ecology, plant and animal species diversity, Aboriginal heritage values, and identified threats to these values.
- The Agreements have the potential to provide a mechanism for further research into the agreement areas, to monitor impact on the above values over time, and to introduce measures to limit the impact from identified threats.
- Ultimately the work done to date by Ulan Coal and the proposed further study and monitoring work over the duration of the Agreements will have the potential to benefit the Crown estate and the people of NSW through the development of a comprehensive environmental and heritage resource base.

It is for the reasons outlined above that the Department can provide preliminary support for the request from Ulan Coal and a commitment to work with Ulan Coal over the coming months to determine if the Conservation Agreements can be authorised and approved by the Minister over the Crown land.

The progression of any Conservation Agreement is subject to agreement to the following in principle negotiation terms, agreement to the terms of the Conservation Agreements and ultimately approval by the Minister administering the NP&WA and NSW Department of Planning and Environment.

Draft in principle negotiation terms for consideration are:

Terms	Comment
1. Ulan Coal and Minister for NP&WA are the preferred parties to the Agreements with the Minister for Lands consent.	Please note that a comprehensive briefing to the Minister for Lands is required and the negotiated Agreements are subject to the Minister's approval.
2. Agreements to comply with the Objects and Principles of Crown Land Management as defined in the <i>Crown Land Management Act 2016</i>	Proposed amendments will be required to achieve this.
3. Agreements to comply with Subdivision L of the <i>Native Title Act 1993</i> .	A clause will be necessary stating that the agreements will terminate in the event of an approved determination in order to comply with requirements under the <i>Native Title Act 1993</i> (draft clause attached – Attachment A).
4. Property Rights associated with Aboriginal Land Claims under the <i>Aboriginal Land Rights Act 1983</i> are to be protected by termination clause.	It is noted that the Aboriginal Land Claims listed post-date the issue of Mining Leases. Agreements (or part thereof) will terminate in the event of the granting of Claim. This clause will not apply if the Minister refuses the Claims (draft clause attached – Attachment A).
5. Compensation is payable to the Department for the use of the Crown land and impact of Conservation Agreements.	At this point in time compensation is payable to the Department as provided for in the proposed s265 Compensation Agreements under the <i>Mining Act 1992</i> . Amendments are required to the Conservation Agreements to establish the connection between the payment and the activities under the Agreements ie the relationship between agreements.

6. Notification process to be considered by the Department to stakeholders Native Title Body Corporate and Local Aboriginal Land Council.	Consideration will be given to providing stakeholders with a further opportunity to comment on the proposed activities by being invited directly by writing and through the Department's Website notification process.
7. Negotiation of amendments to Agreements with Ulan Coal as required.	Amendments concerning the above terms and to clarify uncertain wording provided via mark-up documents. Department representative will be s47F Area Manager North West and s47F Projects Manager Regional Projects.

Note that the Department will consider briefing the Minister following confirmation in writing by Ulan Coal:

- and NSW Planning and Environment that the terms proposed in this letter are agreed in principle or subject to agreed variations,
- that it wishes to proceed with the negotiation of the Conservation Agreements over Crown land; and
- completion of consultation with all stakeholders.

The Department will consider alternative mechanisms to secure Offset Areas, to that of the proposed Conservation Agreements, such as Public Positive Covenants or Restrictions on Land Use under the *Conveyancing Act 1919*.

If you have any further questions I can be contacted on s47F or alternatively forward enquiries to s47F Projects Manager Regional Projects West on s47F s47F

Yours sincerely

s47F

s47F

A/Director Crown Property Services
NSW Department of Industry – Land and Water

Attachment A: – Draft Termination Clauses

Native title restrictions on the grant of this Agreement

- 1.1 This Agreement does not permit or authorise any of the following:
- (i) the excavation or clearing of any of the Land¹ except for:
 - a. excavation or clearing that is reasonably necessary for the protection of public health or public safety; or
 - b. tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities;
 - (ii) mining (other than fossicking by using hand-held implements);
 - (iii) the construction or placing on the Land, of any building, structure, or other thing (other than fencing or a gate), that is a fixture;
 - (iv) the disposal or storing, on the Land, of any garbage or any poisonous, toxic or hazardous substance;
 - (v) the conferral of a right of exclusive possession over any of the land or waters; or
 - (vi) the grant of a lease over the Land.

Termination of this Agreement upon approved determination of native title

- 1.2 This Agreement terminates immediately on the making of an approved determination under the *Native Title Act 1993 (Commonwealth)* ("NT Act") that native title exists in relation to the Agreement area, in part or in whole, without any further notice or action.

Indigenous Land Use Agreement – New Agreement

- 1.3 The parties agree that, if, prior to an approved determination under the *NT Act* that native title exists over the Land (in part or in whole):
- (a) an indigenous land use agreement ("ILUA") is registered on the Register of Indigenous Land Use Agreements and the area of land described in the ILUA includes the whole or the part of the Land, and
 - (b) the ILUA expressly provides that the parties to the ILUA agree to enter into a new agreement on the same or similar terms and conditions as this Agreement ("the New Agreement"),

then the New Agreement is valid and binding and will take effect on the same terms and conditions as this Agreement, without the need for the parties to enter into any further documentation or take any other action, except that:

- (i) the commencement date of the New Agreement will be the date the ILUA is registered on the Register of Indigenous Land Use Agreements;

¹ The definition of "Land" can be amended to include any waters within the Land.

- (ii) (if applicable) the New Agreement only applies to that part of the Land affected by the ILUA;
- (iii) clauses 1.2, 1.3, 1.4 and 1.5 of this special condition do not apply to the New Agreement; and
- (iv) the Minister will register with the Registrar General a variation or such other document as is required to give effect to this clause 1.3 and to ensure that the New Agreement is binding on the Land.

1.5 Words and terms used in this clause and defined in the *NT Act* have the same meaning.

2. Agreement subject to Aboriginal land claim

2.1 This Agreement is subject to an aboriginal land claim over all or part of this Land pursuant to s. 36 of the *Aboriginal Land Rights Act 1983* ("*ALR Act*").

2.2 Notwithstanding any other provision, this Agreement will end, in part or in whole, in the event that the Minister administering the *ALR Act* grants the aboriginal land claim over the Land, or part of it, or a Court orders that the Land or part of it, be transferred to the claimant aboriginal land council

2.3 The parties acknowledge and agree that no party is entitled to any compensation costs or damages in respect of the termination of this Agreement by operation of this clause.

s22

From: s22
Sent: Tuesday, 2 October 2018 4:45 PM
To: 'Bradley.Tanswell@glencore.com.au'
Cc: Robyn.Stoney@glencore.com.au
Subject: RE: 2009-5252 - variation notice [SEC=UNCLASSIFIED]

Hi Brad

Thanks for reviewing the proposed varied conditions. My intent was to set a specific timeframe rather than rolling it over which your second preference appears to revert to. I'm happy to present the following to the delegate for their consideration:

If the conservation mechanism cannot be finalised by 31 December 2018, the proponent must submit for the Minister's approval an alternate offset by 31 December 2021 ~~within 3 years of the variation approved on 31 August 2018~~. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.

Kind regards

s22

Assistant Director
Post Approvals Section
Assessments (WA, SA, NT) and Post Approvals Branch
Environment Standards Division
Department of the Environment and Energy

s22

s22

From: Bradley.Tanswell@glencore.com.au [mailto:Bradley.Tanswell@glencore.com.au]
Sent: Tuesday, 2 October 2018 4:37 PM
To: s22 <s22>
Cc: Robyn.Stoney@glencore.com.au
Subject: FW: 2009-5252 - variation notice [SEC=UNCLASSIFIED]

Hi s22

Thank you for providing a copy of the draft revised conditions for EPBC 2009/5252 and for the opportunity to comment.

Ulan Coal Mines Ltd (UCML) are generally happy with the proposed amendments to conditions 1. and 4. as set out in the attached draft, with the exception of the second paragraph attached to draft condition 4. UCML requests that this be amended to state:

If the conservation mechanism cannot be finalised by 31 December 2018, the proponent must submit for the Minister's approval an alternate offset by 31 December 2021 ~~within 3 years of the variation approved on 31 August 2018~~. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.

UCML consider that the proposed preferred amendment does not vary the intent of the condition or considerably vary the timeframes associated with this condition.

If the Department is not amenable to this preferred amendment, UCML's second preference would be that the condition be amended to state:

If the conservation mechanism cannot be finalised by 31 December 2018, the proponent must submit for the Minister's approval an alternate offset within 3 years of the date of this approval ~~within 3 years of the variation approved on 31 August 2018~~. The alternate offset must provide at least an equivalent environmental outcome to those specified under condition 5.

This condition would be consistent with the wording of previously approved amendments and also would not vary the intent of the condition or considerably vary the timeframes associated with this condition.

Notwithstanding the comments above, UCML remain committed to finalising the current Conservation Agreements ASAP and by 31 December 2018, pending agreement with all associated Government Agencies.

Pls call me if you would like to discuss this further.

Thanks,

Brad

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

From: s22 <s22 >

Sent: Tuesday, 2 October 2018 12:29 PM

To: Tanswell, Bradley (Ulan No 3 - AU) <Bradley.Tanswell@glencore.com.au>

Subject: 2009-5252 - variation notice [SEC=UNCLASSIFIED]

Hi Bradley

I'm currently progressing your request for an extension of time to secure the proposed offsets for conditions 2 and 4 of EPBC 2009/5252. Prior to submitting the draft brief to the delegate, could you please review the attached (proposed changes in yellow highlight) and either agree or provide comment on the proposed changes. Please note that I have proposed a change to condition 4 to clarify when an alternative offset site must be submitted for the Minister's approval.

Kind regards

s22

Assistant Director
Post Approvals Section
Assessments (WA, SA, NT) and Post Approvals Branch
Environment Standards Division
Department of the Environment and Energy

s22

s22

LEGAL DISCLAIMER. The contents of this electronic communication and any attached documents are strictly confidential and they may not be used or disclosed by someone who is not a named recipient.

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20 December 2018

Seq No: 192/18

Shane Gaddes
A/g Assistant Secretary
Compliance and Enforcement Branch
Environmental Assessment and Compliance Division
Department of Environment and Energy

Attention: s22

Dear Mr Gaddes,

Re: Ulan Coal Security of Biodiversity Offset Areas

I refer to the Department of Environment and Energy's (DoEE) letter dated 4 October 2018 granting an extension to the timeframe to make suitable arrangements for the long-term security of biodiversity offsets as required by Approval EPBC2009/5252 for the Ulan Coal Mine.

Ulan Coal Mine Ltd (UCML) have continued to work with relevant stakeholders and primarily the Department of Industry Crown Lands and Water Division (Crown Lands) to secure Conservation Agreements (CA's) for offsets required under UCML's project approvals PA08_0184 (issued by the NSW Department of Planning and Environment) and EPBC2009/5252.

Whilst significant progress has been made towards finalising the CA's, the status of the offsets is as follows:

- CA's for the Bobadeen Conservation Area, the Hightetts Road Conservation Area and the UCML portion of the Brokenback Conservation Area were submitted to the Office of Environment and Heritage (OEH) in final form on 29 June 2018. OEH advised UCML on 7 December 2018 that they are in the process of finalising the CA's for Ulan's agreement;
- The owner of the section of the Brokenback Conservation Area that is privately owned has not agreed to a CA and UCML requested approval of the DP&E to proceed with a Conservation Covenant on 11 April 2018. UCML have continued to liaise with the property owner in an attempt to finalise a mutually acceptable agreement however, this has not yet been achieved;
- Final versions of the CA's for the Spring Gully and the Crown owned portion of the Brokenback Conservation Area were provided to Crown Lands for review on 28 June 2018. Crown Lands subsequently provided a draft licence for UCML's consideration;
- During a meeting with Crown Lands on 5 September 2018, Crown Lands requested that UCML submit a new Licence Application due to recent amendments to the *Crown Land*

Management Act 2016. UCML submitted a new licence application on 17 September 2018, but have not received a response to the licence application;

- On 28 September 2018 Crown Lands provided correspondence to UCML providing support for the offsets. This also highlighted benefits in terms of research, improvement of environmental values and benefits to the Crown and people of NSW through the development of a comprehensive environmental and heritage resource base;
- The letter of 28 September 2018 also identified a number of proposed Clauses to be incorporated into the draft Conservation and Compensation Agreements associated with the offset areas;
- UCML have been in regular dialogue with Crown Lands since receiving their letter of 28 September 2018 in an attempt to finalise the Licence and Conservation and Compensation Agreements. UCML provided a revised draft Compensation Agreement to Crown Lands on 27 September 2018 and proposed amendments to the Conservation Agreement on 29 October 2018;
- UCML received response letters from Crown Lands on 13 and 14 December 2018 in relation to the proposed amendments to the Conservation Agreement and the revised draft Compensation Agreement (which Crown Lands advised remains subject to review from Crown Lands Legal Branch);
- UCML are currently considering the amended draft Compensation Agreement. UCML plan on meeting with Crown Lands as soon as practicable to discuss available options to resolving issues surrounding the proposed termination clause within the draft Conservation Agreement and to further discuss the revised draft Compensation Agreement. It is also likely that this will require meetings with OEHL in relation to the proposed termination clause.

UCML remain committed to securing the current offsets via seeking a resolution with Crown Lands with respect to the Crown Licence and Conservation and Compensation Agreements. However, given the complexities involved and delays experienced to date this is expected to take some time to resolve.

Due to the current challenges being experienced in finalising the relevant Licences and Agreements with the respective parties, UCML have initiated a study to explore other possible offset options that may be available, in the event that currently sought Agreements cannot be reached.

UCML engaged EcoLogical Australia Pty Ltd to undertake a preliminary vegetation community and cliffline validation field survey within three land parcels currently owned by UCML, which has recently been completed. Whilst the preliminary assessment has provided positive findings in relation to the potential suitability of the land parcels as offsets further detailed assessments are required in relation to Ecology and Cultural Heritage. UCML plan on progressing these assessments in concert with seeking to finalise the Crown licence, Conservation and Compensation agreements and CA's as soon as practicable.

UCML would like to meet with DoEE in the New Year to discuss the current challenges being encountered in finalising the Crown licence, Conservation Agreements, Compensation Agreements and CA's and further discuss options moving forward.

Considering the further progress made and challenges encountered in relation to these Agreements UCML respectfully request that DoEE approve an extension of time for finalisation of the respective agreements until 30 June 2019. UCML consider the requested timeframe necessary due to the complexities involved and delays experienced to date in seeking to finalise the relevant Agreements.

Please contact Robyn Stoney on s47F or via email Robyn.Stoney@glencore.com.au, if you have any questions.

Yours sincerely,

s47F

Charlie Allan
General Manager
Ulan Coal Mines Ltd

24 May 2019

Seq No: 32/19

s22

Director
Post Approvals Section
Environmental Standards Division
Department of Environment and Energy

Attention: s22

Dear Mr s22

Subject: Ulan Mine Project Approval PA08_0184 - Long Term Security of Ulan Coal Mine Offset Areas

I refer to correspondence provided on 11 March 2019 in relation to the current status of long term security arrangements for UCML's approved offset areas as required by Project Approval 08_0184 for the Ulan Coal Mine. This letter provides a further update.

Offsets on UCML owned land

The Conservation Agreement (CA) for the Bobadeen Offset area has now been signed by the registered Lessee and returned to the NSW Biodiversity Conservation Trust (BCT). UCML were advised by the BCT on 20 May 2019 that the CA's for all CA's on Ulan owned land, including for the Brokenback Area 1, Hightetts Road and Bobadeen Offset areas have been signed and are progressing through a final check before being sent to the Land Registry Service for registration on title.

Offsets on Crown land

UCML met with Crown Lands on 19 March 2019 and their legal representatives to discuss the draft Crown Licence. The draft Conservation Agreements that are proposed to be registered on Crown land, including potential amendments to the automatic termination rights sought by Crown Lands in relation to a potential Native Title determination and in relation to Aboriginal land claims were also discussed, amongst other related matters.

UCML have been liaising with Crown Lands since the meeting in relation to commitments made by both parties to address matters discussed at the meeting and UCML are currently seeking to meet with Crown Lands, the BCT and the Department of Planning and Environment in the week commencing 27 May 2019 to discuss and attempt to resolve outstanding matters.

Offsets on Private land

UCML wrote to the NSW Department of Planning and Environment (DPE) on 7 March 2019 requesting approval to secure the Brokenback Conservation Area on "Farrs Hill" via a Covenant on Title under the *Conveyancing Act 1919*. The DPE advised UCML on 17 April 2019 that the Secretary does not object to the proposed security mechanism and requested that UCML informs the landowner, the Office of Environment and Heritage (OEH) and Department of Environment and Energy (DoEE) of the Secretary's decision (DPE's advice is provided in Attachment 1).

Given DPE's concurrence with UCML's proposed mechanism of security, UCML requests the approval of the DoEE to secure this 10ha portion of the Brokenback Conservation Area on 'Farrs Hill' via a restrictive covenant registered on the land title pursuant to the *Conveyancing Act 1919* (the Covenant).

UCML firmly believes that the conservation objectives for this offset area and long term security can be achieved using this mechanism and that this complies with the requirements of condition 2 of the EPBC Approval 2009/5252, which requires the placement of a legally binding conservation covenant in perpetuity over the relevant land parcels. Please refer to the letter provided to DPE on 7 March 2019 for UCML's justification for the use of a Covenant (refer Attachment 1).

Potential Alternate Offsets

As noted in recent correspondence, UCML have been progressing the suitability assessments of three potential alternate offset areas located on UCML owned land. The assessments are being undertaken as a contingency in case the currently approved offsets cannot be secured. UCML will continue to progress these assessments in concert with seeking to finalise the Crown licence, and Conservation and Compensation agreements as soon as practicable.

EcoLogical Australia Pty Ltd (ELA) recently completed a vegetation community and cliffline habitat validation field survey within the potential alternate offset areas. Whilst the preliminary assessment has provided positive findings in relation to the potential suitability of the land parcels as offsets, further detailed assessments of the alternate sites are required to confirm the suitability of the alternative areas. This includes detailed vegetation mapping, targeted threatened species surveys, fauna habitat mapping and Cultural Heritage assessment. I have attached the vegetation community and cliffline habitat validation survey report prepared by ELA for your information (refer Attachment 2).

UCML met with OEH on 25 March 2019 to discuss the potential alternate offset areas, available security mechanisms and the methodology for the detailed assessment of the alternate offset areas and have had follow up discussions with OEH. UCML subsequently met with OEH and DPE on 22 May 2019 to discuss and seek a consensus on the methodology for assessment of the alternate offset areas. DPE and OEH requested at the meeting that UCML write to both agencies seeking formal advice on the methodology to be employed. UCML plan on writing to both agencies in the coming days.

UCML looks forward to the Department's response in relation to the requested approval to secure the Brokenback Conservation Area on "Farrs Hill" via a Covenant on Title under the *Conveyancing Act 1919*.

If you have any questions, please contact Brad Tanswell on s47F or via email:
Bradley.Tanswell@glencore.com.au

Yours sincerely,



Charlie Allan
General Manager
Ulan Coal Mines Limited

Attachment 1- Department of Planning and Environment Correspondence



Mr Charlie Allan
General Manager
Ulan Coal Mines Ltd
Private Mail Bag 3006
MUDGEES NSW 2850

Via email: bradley.tanswell@glencore.com.au

Dear Mr Allan

Ulan Coal Mine (08_0184) – Long Term Security of Biodiversity Offset Areas

I refer to your letter dated 7 March 2019 about long-term security mechanisms for the Brokenback Conservation Area, as required under project approval 08_0184 for the Ulan Coal Mine.

The Department understands that the owner of the privately-owned portion of Brokenback Conservation Area does not wish to enter into a Conservation Agreement due to the associated long-term monitoring and reporting obligations. Instead, a positive and restrictive covenant on title is proposed to secure this land under the *Conveyancing Act 1919*.

Further, the Department notes that:

- the privately-owned portion is remotely located, is densely timbered and is unlikely to require active ongoing management; and
- the privately-owned portion has the same vegetation as the adjacent company-owned and Crown Land, reference monitoring points within the adjacent land are proposed to monitor the entire Brokenback Conservation Area for the life of the mine.

Given these circumstances, the Secretary does not object to the proposed security mechanism and proposed monitoring. I would appreciate it if you could inform the landowner, the Office of Environment and Heritage and the Commonwealth Department of Energy and Environment of the Secretary's decision at the earliest convenience.

In regard to the long-term security of the Crown Land portion of the Brokenback Conservation Area, the Department notes that the company has asked Crown Lands to provide further advice on the terms of the proposed Conservation Agreement. The Department would like to meet with you and Crown Lands following receipt of the advice.

I would appreciate it if you could contact s47F Team Leader, or s47F to arrange a suitable time for the meeting.

Yours s

s47F

17/4/19

s47F

A/Director
Resource and Energy Assessments
as nominee of the Secretary

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7 March 2019

Seq No: 18/19

s47F
Team Leader, Resource Assessments
Department of Planning & Environment
GPO Box 39
Sydney, NSW

Dear s47F,

Subject: Ulan Mine Project Approval PA08_0184 - Long Term Security of Ulan Coal Mine Offset Areas

I refer to our meeting on 20 February 2019 in relation to the current status of long term security arrangements for Ulan Coal Mines Ltd's (UCML) approved offset areas as required by Project Approval 08_0184 for the Ulan Coal Mine.

Offsets on UCML owned land

As discussed during the meeting, the Conservation Agreements (CA) for the Brokenback Area 1 and Hightets Road have been finalised, signed and returned to the NSW Biodiversity Conservation Trust (BCT). The CA for the Bobadeen Offset area has been finalised and is in the process of being signed by the registered Lessee before being returned to the NSW BCT.

Offsets on Private land

In relation to the privately owned portion of the Brokenback CA located on "Farrs Hill", the landowners s47F have indicated that they will not agree to the Offset area being secured using a Conservation Agreement due to requirements associated with on-going monitoring and reporting on the performance of the Offset area after the term of the UCML Approvals. Figure 1, in Attachment A depicts the Brokenback CA and associated land ownership.

The portion of the Brokenback CA located on "Farrs Hill" is 10ha in area, is small in size relative to the overall size of the Brokenback CA (which has a total area of 58ha) and very small in size relative to the other UCML offset areas (0.05% of the total UCML offset areas). It is very remote, densely timbered and in good ecological condition and therefore requires minimal active management. Access is impracticable over most of the offset area as can be seen in Figure 1.

The CA's drafted for the UCML and Crown owned portions of the Brokenback CA contain the same Plant Community Types (PCT) as are found in the portion located on the privately owned land, but in larger quantities (refer Figure 1, in Attachment A). The UCML and Crown owned portions contain 3 detailed monitoring sites for the red ironbark community (PCT 478), 4 for the narrow leaved ironbark community (PCT 479) and 4 for the Rough-barked Apple- Blakely's Red Gum community (PCT 481). The monitoring sites located within the UCML and Crown owned portions are considered as providing adequate monitoring in terms of the condition of each PCT and the offset area as a whole.

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

There is approximately 150m of cliffline over the privately owned portion of the Brokenback CA and there are 5 cultural heritage sites of significance as depicted on Figure 1. It is considered that these sites are unlikely to be subject to degradation due to the condition and remoteness of the Brokenback CA located on the privately owned portion as described above.

Given the above factors, UCML firmly believes that the conservation objectives for this offset area and long term security can be achieved using an alternative security mechanism. UCML requests the approval of the Department of Planning and Environment (DP&E) to secure this 10ha portion of the Brokenback Conservation Area on 'Farrs Hill' via a restrictive covenant registered on the land title pursuant to the *Conveyancing Act 1919* (the Covenant).

We understand that there are precedents for this type of arrangement for mining proponents and, based on our recent discussion with the owner of the "Farrs Hill" property, this alternative security mechanism would be supported by the Landowner as it would not bind them to monitoring and reporting to the Government on the offset area in perpetuity. Further, it would be a good ecological outcome to secure the "Farrs Hill" portion of this offset area in this manner as it will avoid the need for UCML to source a replacement area that is not contiguous with the broader Brokenback Conservation Area.

The Covenant would be registered on title and would place restrictions on the use of the offset area to preserve and enhance its conservation values. The offset area would be monitored, managed and reported on for the life of the UCML Approvals in accordance with a Biodiversity Offset Management Plan (or similar) to meet conservation objectives for this offset area. Thereafter, the Covenant would remain on the title of the land. It is therefore considered that this mechanism is suitable to provide for the long term protection of the offset area on "Farrs Hill".

UCML discussed the possibility of utilising this mechanism to secure the currently approved offsets with the Department of Environment and Energy (DoEE) during a meeting to discuss the current status of long term security arrangements for UCML's offset areas on 21 February 2019. The DoEE have requested that UCML seek the DP&E's position on this before considering the suitability of this alternative mechanism from their perspective.

Offsets on Crown land

UCML have continued to work with the Department of Industry Crown Lands and Water Division (Crown Lands) to secure the CA's located on Crown land. Negotiations have been ongoing since 29 November 2012. Table 1, in Attachment B provides a summary of interactions with Crown Lands and the time and effort that UCML has invested in negotiations with Crown Lands in an attempt to reach agreement. Copies of relevant correspondence can be provided upon request.

On 25 September 2018 Crown Lands provided formal support for the UCML offsets on Crown Land, highlighting the benefits in terms of research, improvement of environmental values and to the people of NSW. This letter is provided in Attachment C.

Following submission of a new Crown Licence application on 17 September 2018 at the request of Crown Lands, UCML received a draft Licence for consideration on 7 February 2019. UCML are meeting with Crown Lands on 19 March 2019 and their legal representatives to discuss the draft licence. At that meeting UCML will also be discussing with Crown Lands the draft Conservation Agreements that are proposed to be registered on Crown land, including potential amendments to the automatic termination rights sought by Crown Lands in relation to a potential Native Title determination and in relation to Aboriginal land claims.

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4505 Ulan Road, Ulan, NSW 2850

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Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

Based on discussions that took place in relation to this matter during the meeting on 20 February 2019, UCML understand the DP&E are willing to participate in further discussions with Crown Lands and the Office of Environment and Heritage in relation to outstanding matters associated with the Crown Licence and the Conservation Agreements. UCML would be appreciative of any support the Department is able to provide in this regard.

Resolution of the outstanding issues associated with the Conservation Agreements would pave the way to finalise the CA's located on Crown Land.

UCML will provide a further update to DP&E in relation to the offsets located on Crown land following the meeting with Crown Lands and will continue to progress the suitability assessment of the potential alternate offset areas located on UCML owned land. This assessment is being undertaken as a contingency in case the currently approved offsets cannot be secured (as referred to in UCML's letter dated 20 December 2018).

UCML looks forward to the Department's response in relation to the requested approval to secure the Brokenback Conservation Area on "Farrs Hill" via a Covenant on Title under the *Conveyancing Act 1919*.

If you have any questions, please contact Brad Tanswell or **s47F** or via email: Bradley.Tanswell@glencore.com.au

Yours sincerely,

s47F

Charlie Allan
General Manager
Ulan Coal Mines Limited

CC Department of Environment and Energy

Private Mail Bag 3006, Mudgee, NSW 2850
4505 Ulan Road, Ulan, NSW 2850

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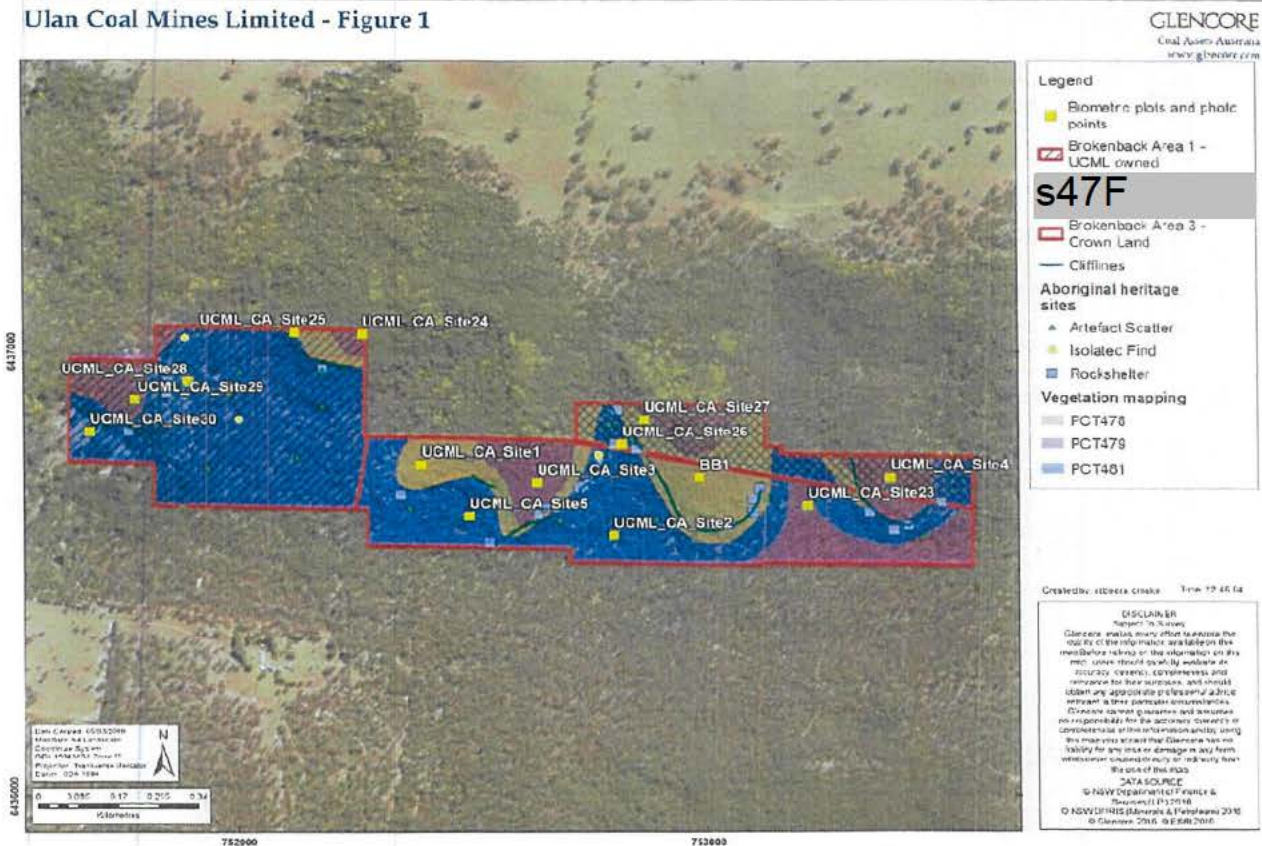
Ulan Coal Mines Ltd ABN 80 000 189 248
Manager of the Ulan Joint Venture

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Attachment A- Brokenback Conservation Area

Ulan Coal Mines Limited - Figure 1



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Ulan Coal Mines Ltd. ABN 80 000 189 248

Manager of the Ulan Joint Venture

Attachment B- Department of Industry Crown Lands and Water Division (Crown Lands)
Summary of Interactions

Table 1: Summary of Crown Lands Interactions

Date	Type	Reason
29 November 2012	Meeting s47F s47F s47F (Crown Lands), Robyn Stoney (UCML).	Discussed project approval matters, including offsets. Crown raised the issue of needing to resolve a compensation and licence agreement prior to any further agreements with Ulan. A discussion which had commenced with Crown Lands at UCML's request sometime in 2011.
8 February 2013	Letter from s47F to Dan Clifford (then General Manager, UCML).	Provides a new draft licence and listing proposed land uses including the conservation offset areas and identifies the Crown will require a compensation agreement.
21 February 2014	Meeting s47F s47F (Crown Lands), Robyn Stoney, Ben Anderson (UCML).	Briefing on all of the offset areas. At that time a suitable conservation mechanism for Brokenback and Spring Gully had not been agreed by NSW Department of Planning and Environment, the NSW Office of Environment and Heritage and the Commonwealth Department of Environment and Energy.
9 September 2014	Meeting Ben Anderson, Robyn Stoney and s47F	The conservation agreement type and the proposed method to achieve it was discussed. OEHL provided with an update on progress (following OEHL visit to the Valley Way site).
10 July 2015	Email Ben Anderson to s47F and s47F s47F (OEHL).	After numerous phone calls confirmation was sought that the pathway to securing the CA's was for Crown Lands to sign the agreement as the landholder and the existing Crown licence needed to be varied making UCML responsible for CA commitments. OEHL notes the proposed process but confirms the owner (the Crown) still has to fulfil the commitments in the CA.
18 August 2015	Email s47F to Ben Anderson and s47F (OEHL).	Confirms the approach described in the above email and provides the form for amending the condition of the existing Crown Licence.
1 September 2015	Email s47F to s47F and Ben Anderson	Provides the proposed final agreement for Valley Way Conservation Area.
11 September 2015	Email s47F to Ben Anderson and s47F	Confirmation that the agreement appears satisfactory, but questions whether there are any costs that may need to be passed on to UCML.
17 September 2015	Emails s47F to s47F and Ben Anderson	Confirmation that there will be costs that will need to be dealt with via a third party agreement.
29 September 2015	Revised licence variation application	Licence variation application made by UCML to Crown Land, requesting to alter the existing license to include a clause stating that UCML is required to fulfil all requirements of the Conservation Agreement.
16 October 2015	Email Ben Anderson to s47F s47F	Indicated intention to place the proposed Valley Way agreement on public exhibition, and asked if Crown Lands have any further issues.
27 November 2015	Emails s47F to Ben Anderson	Crown requested wording be provided in the Conservation Agreement that Crown Lands agree on the condition that UCML execute an agreement under s265 of the Mining Act 1992 within 12 months and retain the right to withdraw from the Conservation Agreement if not. On 1 December 2015, OEHL indicate by email they would not be willing to include this clause.
6 January 2016	Email Ben Anderson to s47F s47F	Requests explanation of what is required to progress the Conservation Agreements (in this case Valley Way, although it applies to all Conservation Agreement's).
22 January 2016	Emails s47F to Ben Anderson	Response to above email, Crown are seeking to secure a compensation agreement as explained in the letter of 8 February 2013 and are not

Date	Type	Reason
		willing to proceed until it can be finalised. The compensation agreement objects as follows: 1. Cover all Crown land in use by or impacted on by UCML, 2. Identify categories of land use, 3. Apply a compensation figure/ market rent value to each category of use, 4. Be linked to a single or at most two separate Crown Land Licences issued under section 34 of the Crown Lands Act 1989. 5. Identify Crown land that is to be purchased by UCML within a set timeframe.
21 April 2016	Meeting Ben Anderson, Nigel Charnock (Glencore) and s47F (Crown Lands).	Discuss general land matters relating to UCML, Conservation Agreements and Compensation Agreement process.
13 October 2016	Email s47F to Ben Anderson.	Crown provided draft Crown Licence and Compensation Agreement for review by UCML.
7 February 2017	Email Nigel Charnock to s47F s47F	Advising Crown Lands that Ben Anderson had recently left UCML and Nigel Charnock would be the interim contact. Provision of initial feedback on the Licence and Compensation Agreement templates to Crown Lands.
10 February 2017	Email from s47F to Nigel Charnock.	Request for further information from UCML (Mining Lease Plans and information) for Crown Licence.
3 March 2017	Email from Nigel Charnock to s47F.	Provision of additional information as requested by Crown Lands on 10 February 2017.
23 March 2017	Email from Nigel Charnock to s47F.	Further to initial feedback provided to Crown lands on 7 February 2017, UCML provide detailed comments on the draft Crown Licence and Compensation Agreement.
30 March 2017	Meeting Nigel Charnock, s47F s47F s22 and David Baber.	Discuss UCML's detailed comments on the draft Crown Licence and Compensation Agreement and s22 matters.
11 May 2017	Email from s47F to Nigel Charnock.	Update on Crown Licence and Compensation Agreement from Crown Lands.
30 May 2017	Email from Nigel Charnock to s47F.	Seeking update on progress since Crown Land's last update on 11 May 2017.
5 July 2017	Email from Nigel Charnock to s47F.	At Crown Land's request resend comments on the Crown Licence and Compensation Agreement previously sent to Crown Lands in March 2017. Reinforce our need to finalise arrangements as soon as practicable, including the Conservation Agreements on Crown Lands.
31 July 2017	Email from Nigel Charnock to s47F.	Seeking update on progress since email to Crown Lands on 5 July 2017.
28 August 2017	Teleconference Nigel Charnock and s47F.	Discuss progress on Licence Agreement and Compensation Agreement.
7 September 2017	Teleconference Nigel Charnock, s47F (UCML) and s47F.	Discuss progress on Licence Agreement and Compensation Agreement. Regular teleconference established by Ulan with Crown lands to try maintain Crown Land's focus on the Licence Agreement, Compensation Agreement and Conservation Agreements. Calls generally held at least fortnightly between September 2017 and November 2017.
21 December 2017	Meeting Andrew Daly (Glencore), Nigel Charnock, s47F and Maddocks Lawyers (representing Crown Lands).	Discuss Ulan's further comments on Licence Agreement and Compensation Agreement.
18 January 2018	Email from Nigel Charnock to s47F.	Provision of additional information to Crown Lands as requested at the meeting on 21 December 2017.
12 February 2018	Email from Nigel Charnock to s47F.	Seeking further update on progress and seeking meeting in person to discuss.
21 February 2018	Meeting Nigel Charnock and s47F.	Discuss Crown Lands progress on the Licence Agreement, Compensation Agreement since last meeting in December 2017. Limited progress evident.

Date	Type	Reason
27 February 2018	Email from s47F to Nigel Charnock.	Update on Crown Licence and Compensation Agreement from Crown Lands.
22 March 2018	Email from Nigel Charnock to s47F	Seeking further update on progress on Crown Licence and Compensation Agreement from Crown Lands since Crown Lands last email on 27 February.
23 March 2018	Email from s47F to Nigel Charnock.	Update on Crown Licence and Compensation Agreement from Crown Lands, with Crown noting that they were still waiting on further internal input.
6 April 2018	Meeting Nigel Charnock and s47F	Discuss Crown Lands progress on the Licence Agreement, Compensation Agreement since last meeting in February 2018. Limited progress evident.
23 April 2018	Email from Nigel Charnock to s47F	Seeking further update on progress on Crown Licence and Compensation Agreement from Crown Lands since last meeting on 6 April 2018.
5 June 2018	Email from Nigel Charnock to s47F	Seeking further update on progress on Crown Licence and Compensation Agreement from Crown Lands since last meeting on 6 April 2018.
14 June 2018	Meeting Nigel Charnock and s47F	Discuss Crown Lands progress on the Licence Agreement, Compensation Agreement since last meeting in April 2018. Further information requested by Crown Lands at the meeting including asking for Ulan's comments on the Compensation Agreement to be re-sent to Crown Lands. These were the same comments provided to Crown Lands for review prior to the December 2017 meeting. Further plans also requested by Crown Lands.
15 June 2018	Email from Nigel Charnock to s47F	Provision of additional information to Crown Lands as requested at the meeting on 14 June 2018.
21 June 2018	Email from s47F to Nigel Charnock.	Further request for information.
26 June 2018	Email from Nigel Charnock to s47F	Provision of information to Crown Lands as requested on 21 June 2018.
28 June 2018	Submission of Final conservation agreements	Final versions of the conservation agreement for the Spring Gully and the Crown owned portion of the Brokenback Conservation Area were provided to Crown Lands for review.
21 June 2018	Crown Licence	Crown Lands provided a revised Crown Licence for UCML's consideration.
26 July 2018	Email s47F (Maddocks Solicitors Acting on behalf Crown Lands) to Andrew Daly (Glencore).	Updated version of Compensation Agreement consolidating Crown Lands 20 December 2017 draft with Crown Lands' current commercial position.
8 August 2018	Meeting Nigel Charnock and s47F	Discuss Crown Lands progress on the Licence Agreement and Compensation Agreement since last meeting in June 2018. Further information requested by Crown Lands at the meeting, including Plans.
9 August 2018	Email from Nigel Charnock to s47F	Provision of additional information to Crown Lands as requested at the meeting on 8 August 2018.
13 August 2018	Email Andrew Daly to s47F	Response to Updated version of Compensation Agreement provided on 26 July 2019 and request for meeting with Crown Lands and Maddocks to discuss the amendments.
22 August 2018	Meeting Nigel Charnock, Andrew Daly, Brad Tanswell (UCML) and s47F and s47F	Meeting to discuss draft Compensation Agreement and Crown Licence.
3 September 2018	Email from s47F to Andrew Daly.	Email setting out additional information and proposed amendments to the Compensation Agreement.
5 September 2018	Teleconference s47F (Crown Lands), Nigel Charnock, Andrew Daly and Brad Tanswell.	During a teleconference with Crown Lands to discuss the previously submitted Crown Licence application, Crown Lands requested that UCML submit a new Licence Application due to recent amendments to the <i>Crown Land Management Act 2016</i> .

Date	Type	Reason
17 September 2018	Submission of new Crown Licence application.	UCML submitted a new Crown Licence application as requested by Crown Lands on 5 September 2018.
27 September 2018	Email Andrew Daly to s47F s47F (Maddocks Solicitors).	Email providing proposed amendments to the Crown Compensation Agreement following 22 August 2018 meeting.
28 September 2018	Letter from Crown Lands to UCML.	Crown Lands provided correspondence to UCML providing support for the offsets. The letter also identified a number of proposed Clauses to be incorporated into the draft Conservation and Compensation Agreements associated with the offset areas, including a proposed Native Title termination clause.
11 October 2018	Email s47F to Andrew Daly.	Amended draft Compensation Agreement in response UCML proposed amendments 27 September 2018.
26 October 2018	Email Andrew Daly to s47F s47F	UCML provided proposed amendments to the draft Compensation Agreement provided 11 October 2018.
29 October 2018	Email from Nigel Charnock to s47F and s47F s47F	Email with proposed amendments to the Conservation Agreement, including proposed amendments to the Crown's proposed Termination Clause.
13 and 14 December 2018	Email s47F to Nigel Charnock	Response letters in relation to the proposed amendments to Native Title termination clauses requested on 29 October 2018 (which Crown Lands advised remains subject to review from Crown Lands Legal Branch). Crown disagree with UCML's proposed amendments. Response was prompted by email from Nigel Charnock seeking update.
14 December 2018	Email s47F to Andrew Daly.	Email with attached proposed amendments to draft Compensation Agreement, subject to review by Crown Lands legal Branch.
7 February 2019	Email s47F (Crown Lands) to Brad Tanswell.	Draft Crown Licence for UCML's consideration following UCML submission on 17 September 2018.
27 and 28 February 2019	Email Nigel Charnock to s47F s47F.	Email seeking meeting date to discuss draft Crown Licence, Compensation Agreement and Conservation Agreement amendments following UCML meeting with DP&E on 20 February 2019 and DoEE on 21 February 2019 to discuss options moving forward s47F confirms 19 March 2019 as a suitable date for meeting.
27 February 2019	Email Nigel Charnock to s47F s47F.	Proposes amendments to termination clauses outlined in Crown Lands correspondence dated 13 and 14 December 2019 for discussion at meeting booked for 19 March 2019.
28 February 2019	Email Andrew Daly to s47F s47F	Provides amendments to draft Compensation Agreements provided 14 December 2018 for discussion at 19 March 2019 meeting.
1 March 2019	Email Nigel Charnock to s47F s47F	Provides comments on draft Crown Licence offer for discussion at 19 March 2019 meeting.

Attachment 2- ELA Vegetation Community and Cliffline Habitat Validation Report

Brad Tanswell
Environment and Community Coordinator
Ulan Coal Mines



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Ref: MUD-11465

5 April 2019

Dear Brad,

UCML Alternate Biodiversity Offsets – Vegetation community and cliffline validation

Summary

The vegetation and cliffline habitat validation assessment undertaken for the alternate biodiversity offset areas (BOAs) has provided a preliminary identification of vegetation communities and potential cliffline habitat lengths within three land parcels (Site 1A, Site 1B and Site 1C). A summary of the results obtained during these investigations has found that:

- The three land parcels total an area of 1,400 ha.
- 952 ha of the 1,400 ha had undergone vegetation mapping under existing approvals. These areas were originally mapped to Biometric Vegetation Types (BVT's), with ELA's work mapping them to Plant Community Types (PCT's).
- The remaining 448 ha had not been previously mapped. These areas underwent high level vegetation mapping.
- Site 1A contains eight PCT's, totalling an area of approximately 350 ha, which includes approximately 4.58 ha of vegetation that potentially meets the listing criteria for White Box Yellow Box Blakely's Red Gum Woodland listed as an Endangered Ecological Community (EEC) under the NSW *Biodiversity Conservation Act 2016* (BC Act), and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland listed as a Critically Endangered Ecological Community (CEEC) under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- Site 1B contains five PCTs, totalling an area of approximately 157 ha.
- Site 1C contains eight PCTs, totalling an area of approximately 893 ha, which includes approximately 21.23 ha of vegetation that potentially meets the listing criteria for White Box Yellow Box Blakely's Red Gum Woodland listed as an EEC under the BC Act, and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland listed as a CEEC under the Commonwealth EPBC Act.
- Two PCTs mapped within the Crown Land portions of the Spring Gully Cliff Line Management Area (SG) and Brokenback Conservation Area (BCA) were identified within the alternate BOAs (approximately 177.67 ha), while another two PCTs that occur within the SG and BCA have not been identified within the alternate BOAs (approximately 1,447.53 ha).
- The three alternate BOAs contain a total of 25.81 ha of potential EEC/CEEC, where the SG and BCA contain no EEC/CEEC.
- Cliffline habitat within the potential alternate offsets areas totals approximately 12,858 m (Site 1A – 2,184 m, Site 1B – 2,857 m and Site 1C – 7,817 m), which is 3,122 m greater than the Crown Land portions of the SG (8,196 m) and BCA (1,540 m).

Further detailed assessments of the alternate BOAs are potentially required to confirm the suitability of the alternative BOAs, including detailed vegetation mapping, targeted threatened species surveys and fauna habitat mapping (including identification of potential maternity roost sites for the Large-eared Pied Bat, which is listed under the NSW BC Act and Commonwealth EPBC Act). The scope of further detailed assessments are pending advice from the NSW Office of Environment and Heritage (OEH).

Background

Eco Logical Australia (ELA) was engaged by Ulan Coal Mines Limited (UCML) to undertake vegetation community and cliffline habitat validation within areas that may provide alternate BOAs. It is understood that the alternate BOAs are under consideration to satisfy UCMLs current Conditions of Approval if the current BOA Crown Land Conservation Agreements are not successfully agreed.

The alternate BOAs investigated, comprised three land parcels, totalling an area of 1,400 ha, of which 952 ha have been previously surveyed by either Umwelt or ELA as part of previous impact assessments undertaken onsite, with 448 ha having not been previously surveyed.

To determine the suitability of the proposed alternate BOAs identified by UCML, ELA undertook an initial vegetation community and cliffline habitat validation field survey. This validation field survey has broadly determined if the vegetation communities and cliffline habitat within the proposed BOAs are consistent those within the current BOAs.

The vegetation community and cliffline habitat validation was undertaken within three land parcels, totalling an area of 1,400 ha. The three land parcels include:

- Site 1A – approximately 350 ha
- Site 1B – approximately 157 ha
- Site 1C – approximately 893 ha

Methods

Vegetation community and cliffline habitat validation was undertaken by ELA ecologists s47F s47F s47F and s47F over a four day period, from the 26 to 31 October 2018. Vegetation community validation consisted of rapid assessments at numerous locations across the study area to validate the existing vegetation mapping (approximately 952 ha) and mapping of areas that have not been previously surveyed (approximately 448 ha).

Rapid assessments focused on recording dominant species in each strata layer, vegetation condition, soil type and landscape position to help determine the relevant PCT, and to help assist in determining if the PCTs meet any listed Threatened Ecological Community (TEC) under the NSW BC Act and Commonwealth EPBC Act.

Results

Vegetation community validation

The vegetation communities within the study area straddle the boundary between the Southern Brigalow Belt and the Sydney Basin Interim Biogeographic Regionalisation for Australia (IBRA) Bioregions, with the western edge of the study area located within 2 to 3 km of the South-west Slopes IBRA bioregion. Being at the boundary of a number of bioregions, there is understandably intergrading between bioregions, in that one bioregion may extend into another.

The occurrences of a number of dominant plant species found within the study area are considered to be located near the limits of their distributional range. These dominant plant species include:

- *Eucalyptus crebra* (Narrow-leaved Ironbark) – a species which nearly reaches the tip of Cape York is near the limits of its south-western boundary at Mudgee
- *Eucalyptus punctata* (Grey Gum) – extends from coastal SE Queensland to Jervis Bay in NSW and is at its western limit
- *Eucalyptus sparsifolia* (Narrow-leaved Stringybark) – extends from the eastern Pilliga diagonally south to Wollongong and is near its western limit.

Although a number of vegetation community plant species are near their western limits, the PCTs that most accurately reflect vegetation of the study area are those deriving from work undertaken by Benson (2010) for the southern Brigalow Belt Biogeographic area and are found entering the Sydney Basin.

Thirteen PCTs were validated and mapped across the three land parcels (maps provided in **Attachment A**). These PCTs were distributed across each land parcel, with eight PCTs validated within Site 1A, five PCTs validated within Site 1B, and eight PCTs validated and mapped within Site 1C (**Table 1**). The PCTs validated and mapped across the land parcels, along with general descriptions for each PCT listed on the Vegetation Information System database (OEH) include:

- *Rough-Barked Apple - Red Gum - Yellow Box woodland on alluvial clay to loam soils on valley flats in the northern NSW South Western Slopes Bioregion and Brigalow Belt South Bioregion (PCT 281)* – this PCT is a widespread community that occurs on black, brown and grey alluvial and colluvial clay loam, loam or sandy loam soils derived from a range of substrates on valley flats and footslopes in valleys in hill landform patterns mainly in the Brigalow Belt South Bioregion. Some areas also occur north of Mudgee in the Gulgong-Dunedoo area in the NSW South-western Slopes Bioregion.
- *Grey Box - cypress pine - red gum woodland on deep sandy loam soil in northern NSW Brigalow Belt South Bioregion (PCT 374)* – this PCT occurs on well drained deep light brown sand loam soils often derived from granite on lower slopes, valleys in hill landscape patterns in the Yetman district in the far northern part of the Brigalow Belt South Bioregion in NSW. This community is mainly cleared and overgrazed with soil erosion in places. Grey Box mainly occurs east of the Great Dividing Range but extends to the western side of the range as far west as this area. It forms a separate association with Narrow-leaved Ironbark on fine-grained sediments on hills near Ashford in the Nandewar Bioregion to the east, and other associations to the south in the Nandewar Bioregion.
- *Rough-barked Apple - Blakely's Red Gum - Black Cypress Pine woodland on sandy flats, mainly in the Pilliga Scrub region (PCT 401)* – this PCT occurs on clayey sand or sandy clay loam soils derived from sandstone on valley flats in low hill and rises landscapes mainly in the mid to eastern Pilliga Scrub forests. Grades into similar riparian woodland along creeks (ID399).
- *Tumbledown Gum woodland on hills in the northern NSW South Western Slopes Bioregion and southern Brigalow Belt South Bioregion (PCT 461)* – this PCT occurs on shallow to stony brown to red sandy loam to light clay soils derived from metasediments or granite on hillslopes, hillcrests and gullies in rises, low hills and hills landform patterns mainly in the Gulgong - Dunedoo - Goolma - Tanner Springs region in the NSW South-western Slopes Bioregion with minor outliers to the north at the southern edge of the Brigalow Belt South Bioregion. It is likely also located in the Capertee Valley south of Mudgee. Mostly cleared and overgrazed with some pasture weed infestation. A poorly protected and threatened community.
- *Red gum - Rough-barked Apple - Narrow-leaved Ironbark - cypress pine grassy open forest on flats and drainage lines in the Goonoo and surrounding forests, southern Brigalow Belt South Bioregion (PCT 473)* – this PCT occurs on sand to sandy loam soils derived from sandstone or present as alluvium in drainage depressions, footslopes, and along creeks in low hill landscapes in the Goonoo forest region in the far south of the Brigalow Belt South Bioregion. This PCT is well represented in reserves.

- *Inland Scribbly Gum - Red Stringybark - Black Cypress Pine - Red Ironbark open forest on sandstone hills in the southern Brigalow Belt South Bioregion and northern NSW South Western Slopes Bioregion (PCT 477)* – this PCT occurs on sandy loam to clayey sands soils derived from sandstone on hillcrests and hillslopes in hill landform patterns in the Dunedoo - Merriwa region of the extreme south BBS Bioregion overlapping into the NSW SWS Bioregion. This community grades into a similar community dominated by Red Ironbark (*Eucalyptus fibrosa*) (ID478) and also into the Dapper Mugga Ironbark community (ID403)
- *Red Ironbark - Black Cypress Pine - stringybark +/- Narrow-leaved Wattle shrubby open forest on sandstone in the Gulgong - Mendooran region, southern Brigalow Belt South Bioregion (PCT 478)* – this PCT occurs on sandy loam to clayey sand soils derived from sandstone, siltstone, shale or slate on footslopes, hillcrests and hillslopes in hill and low hill landform patterns in the Dunedoo - Merriwa region of the extreme south BBS Bioregion overlapping into the NSW SWS Bioregion and upper Hunter Valley and Capertee Valley. This community grades into a similar community dominated by Inland Scribbly Gum - Red Stringybark open forest (ID477), into the Dapper Mugga Ironbark community (ID403) and a Narrow-leaved Ironbark - Black Cypress Pine shrubby community (ID479) on sandstones. Partly cleared.
- *Narrow-leaved Ironbark- Black Cypress Pine - stringybark +/- Grey Gum +/- Narrow-leaved Wattle shrubby open forest on sandstone hills in the southern Brigalow Belt South Bioregion and Sydney Basin Bioregion (PCT 479)* – this PCT occurs on red-brown loamy clay to sandy loam soils derived from sandstone, siltstone and shale in hill and low hill landforms in the southern BBS, northern NSW SWS and north-western Sydney Basin Bioregions.
- *Grey Box x White Box grassy open woodland on basalt hills in the Merriwa region, upper Hunter Valley (PCT 483)* – this PCT occurs on brown to black earth, chocolate loam to clay soils derived from basalt on hillslopes, hillcrests, footslopes and valley flats on rolling hills and low hills on the Merriwa Plain and lower southern slopes of the Liverpool Range in the upper Hunter Valley in the far south-eastern corner of the Brigalow Belt South Bioregion. This PCT is mainly cleared, however is listed as part of the grassy box-gum woodland EEC in both the EPBC and NSW TSC Acts. Threatened by fragmentation, weed invasion, tree dieback and intensive agricultural development of ground cover. Very poorly or not represented in protected areas as of 2009.
- *Derived tall spear grass grassland on mainly basalt hills of the Liverpool Plains, Liverpool Range and in the upper Hunter Valley (Merriwa district), south-eastern Brigalow Belt South Bioregion (PCT 484)* – this PCT occurs on black or brown clay soils derived from fine-grained sedimentary or basalt substrates on flats, hillslopes, hillcrests and gullies in low hill and hill landforms mainly in the Liverpool Plains, Liverpool Ranges and Kerrabee IBRA sub-regions.
- *Narrow-leaved Ironbark +/- Grey Box grassy woodland of the upper Hunter Valley, mainly Sydney Basin Bioregion (PCT 623)* – this PCT occurs on brown clay soil derived from fine-grained sedimentary substrates on hillcrests and upper hillslopes in hill and low hill landforms from 70 m to 350 m altitude with about 1000 mm rainfall in the central to upper parts of the Hunter Valley around Scone. Not well protected in reserves and mostly cleared.
- *Large-fruited Grey Gum - Narrow-leaved Stringybark open forest on sheltered sandstone hillslopes in the Scone region of the upper Hunter Valley (PCT 624)* – this PCT occurs on shallow sandy loam soil derived from conglomerate or sandstone substrate on sheltered hillslopes in the Scone region of the upper Hunter Valley mainly in the Sydney Basin Bioregion.
- *Blakely's Red Gum - Narrow-leaved Ironbark - Rough-barked Apple shrubby woodland of the upper Hunter (PCT 1607)* – this PCT is found on valley flats and lower slopes within the ranges of central and upper Hunter Valley and Northern Wollemi NP at mid to low elevations on sandstone.

The breakdown of the area of each PCT within each land parcel surveyed is provided below in **Table 1**. The dominant PCTs across all three land parcels include Tumbledown Gum woodland on hills in the northern NSW South Western Slopes Bioregion and southern Brigalow Belt South Bioregion (Site 1C only), Red Ironbark - Black

Cypress Pine - stringybark +/- Narrow-leaved Wattle shrubby open forest on sandstone in the Gulgong - Mendooran region, southern Brigalow Belt South Bioregion (Site 1A, Site 1B and Site 1C), and Narrow-leaved Ironbark- Black Cypress Pine - stringybark +/- Grey Gum +/- Narrow-leaved Wattle shrubby open forest on sandstone hills in the southern Brigalow Belt South Bioregion and Sydney Basin Bioregion (Site 1A, Site 1B and Site 1C).

Table 1: PCT breakdown per land parcel

PCT		Site 1A (ha)	Site 1B (ha)	Site 1C (ha)	Total (ha)
281	Rough-Barked Apple - red gum - Yellow Box woodland on alluvial clay to loam soils on valley flats in the northern NSW South Western Slopes Bioregion and Brigalow Belt South Bioregion			21.23	21.23
374	Grey Box - cypress pine - red gum woodland on deep sandy loam soil in northern NSW Brigalow Belt South Bioregion			123.18	123.18
401	Rough-barked Apple - Blakely's Red Gum - Black Cypress Pine woodland on sandy flats, mainly in the Pilliga Scrub region	17.26	24.48	146.78	188.52
461	Tumbledown Gum woodland on hills in the northern NSW South Western Slopes Bioregion and southern Brigalow Belt South Bioregion			330.58	330.58
473	Red gum - Rough-barked Apple - Narrow-leaved Ironbark - cypress pine grassy open forest on flats and drainage lines in the Goonoo and surrounding forests, southern Brigalow Belt South Bioregion			29.29	29.29
477	Inland Scribbly Gum - Red Stringybark - Black Cypress Pine - Red Ironbark open forest on sandstone hills in the southern Brigalow Belt South Bioregion and northern NSW South Western Slopes Bioregion		4.08		4.08
478	Red Ironbark - Black Cypress Pine - stringybark +/- Narrow-leaved Wattle shrubby open forest on sandstone in the Gulgong - Mendooran region, southern Brigalow Belt South Bioregion	161.36	47.46	65.60	274.42
479	Narrow-leaved Ironbark- Black Cypress Pine - stringybark +/- Grey Gum +/- Narrow-leaved Wattle shrubby open forest on sandstone hills in the southern Brigalow Belt South Bioregion and Sydney Basin Bioregion	86.42	8.79	83.29	178.46
483	Grey Box x White Box grassy open woodland on basalt hills in the Merriwa region, upper Hunter Valley	1.71			1.71
484	Derived tall spear grass grassland on mainly basalt hills of the Liverpool Plains, Liverpool Range and in the upper Hunter Valley (Merriwa district), south-eastern Brigalow Belt South Bioregion	2.87			2.87
623	Narrow-leaved Ironbark +/- Grey Box grassy woodland of the upper Hunter Valley, mainly Sydney Basin Bioregion	49.44			49.44

PCT		Site 1A (ha)	Site 1B (ha)	Site 1C (ha)	Total (ha)
624	Large-fruited Grey Gum - Narrow-leaved Stringybark open forest on sheltered sandstone hillslopes in the Scone region of the upper Hunter Valley	15.53	72.73	68.57	156.83
1607	Blakely's Red Gum - Narrow-leaved Ironbark - Rough-barked Apple shrubby woodland of the upper Hunter	12.74			12.74
	Cleared Pasture			25.15	25.15
TOTAL		347.33	157.54	893.67	

Vegetation mapping completed across the alternative BOAs has been compared with vegetation mapping completed across existing BOAs at UCML where parcels of the existing BOAs are located on Crown Land. The existing BOAs that contain Crown Land include SG and BCA.

PCTs that are common across both the existing BOAs (SG and BCA) and alternative BOAs include Red Ironbark - Black Cypress Pine - stringybark +/- Narrow-leaved Wattle shrubby open forest on sandstone in the Gulgong - Mendooran region, southern Brigalow Belt South Bioregion (PCT 478), and Narrow-leaved Ironbark- Black Cypress Pine - stringybark +/- Grey Gum +/- Narrow-leaved Wattle shrubby open forest on sandstone hills in the southern Brigalow Belt South Bioregion and Sydney Basin Bioregion (PCT 479).

Table 2 shows the PCTs present within the Crown Land owned areas of Spring Gully and Brokenback Conservation Areas only. Areas of these Conservation Areas that are owned by UCML or private landowners has been excluded.

Table 2: Comparison of PCT breakdown between current and alternate BOAs

PCT	Current BOAs (ha)			Alternate BOAs			
	SG	BCA	Total	Site 1A	Site 1B	Site 1C	Total
281			0			21.23	21.23
374			0			123.18	123.18
401			0	17.26	24.48	146.78	188.52
461			0			330.58	330.58
473			0			29.29	29.29
477			0		4.08		4.08
478	43.03	6.62	49.65	161.36	47.46	65.60	274.42
479	128	0.04	128.04	86.42	8.75	83.29	178.46
481	1,354.75	14.25	1,369.00				0

PCT	Current BOAs (ha)			Alternate BOAs			
	SG	BCA	Total	Site 1A	Site 1B	Site 1C	Total
483			0	1.71			1.71
484			0	2.87			2.87
623			0	49.44			49.44
624			0	15.53	72.73	68.57	156.83
1607			0	12.74			12.74
1675	78.53		78.53				0
Other			0			25.15	25.15
Total			1,546.69				1,398.50

Cliffline validation

Cliffline habitat within the alternative BOAs consists of cliffline habitat previously mapped within the UCML project area. Field observations did NOT make any changes to the mapped cliffline habitat (**Attachment B**). Site 1A has 2,184 m of mapped cliffline habitat, Site 1B has 2,857 m of mapped cliffline habitat, and Site 1C has 7,817 m of mapped cliffline habitat.

In comparison to the existing BOAs (SG and BCA), the three alternative BOAs have a combined cliffline habitat length of 12,858 m, which is 3,122 m more than the existing BOAs (SG has 8,196 m of mapped cliffline habitat, and BCA has 1,540 m of mapped cliffline habitat).

Threatened Ecological Communities and species

The threatened ecological community, Box-Gum Woodland, can potentially be attributed to three PCTs within the alternative BOAs, PCT 281, PCT 483 and PCT 484 (**Attachment C**). These PCTs could potentially meet the listing criteria for White Box Yellow Box Blakely's Red Gum Woodland listed as an EEC under the NSW BC Act, and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland listed as a CEEC under the Commonwealth EPBC Act. The total area of potential EEC/CEEC within the alternative BOAs is 25.81 ha.

In comparison to the existing BOAs (SG and BCA), the three alternative BOAs have 25.81 ha more EEC/CEEC, with both the SG and BCA BOAs containing no EEC/CEEC.

Threatened flora and fauna species observed within the potential alternative BOAs included one threatened flora species and four threatened fauna species (**Attachment D**), and include:

- *Acacia ausfeldii* (Ausfeld's Wattle) – vulnerable under the BC Act, and was located at one location within Site 1A and two locations within Site 1B
- *Calyptorhynchus lathami* (Glossy Black-cockatoo) – vulnerable under the BC Act, was observed at two locations within Site 1A, one location within Site 1B and one location within Site 1C

- *Grantiella picta* (Painted Honeyeater) – vulnerable under the BC Act and EPBC Act, was observed at four locations within Site 1A, one location within Site 1B and two locations within Site 1C
- *Chthonicola sagittata* (Speckled Warbler) – vulnerable under the BC Act, and was observed at one location within Site 1A
- *Climacteris picumnus victoriae* (Brown Treecreeper (eastern subspecies)) – vulnerable under the BC Act, and was observed at one location within Site 1B.

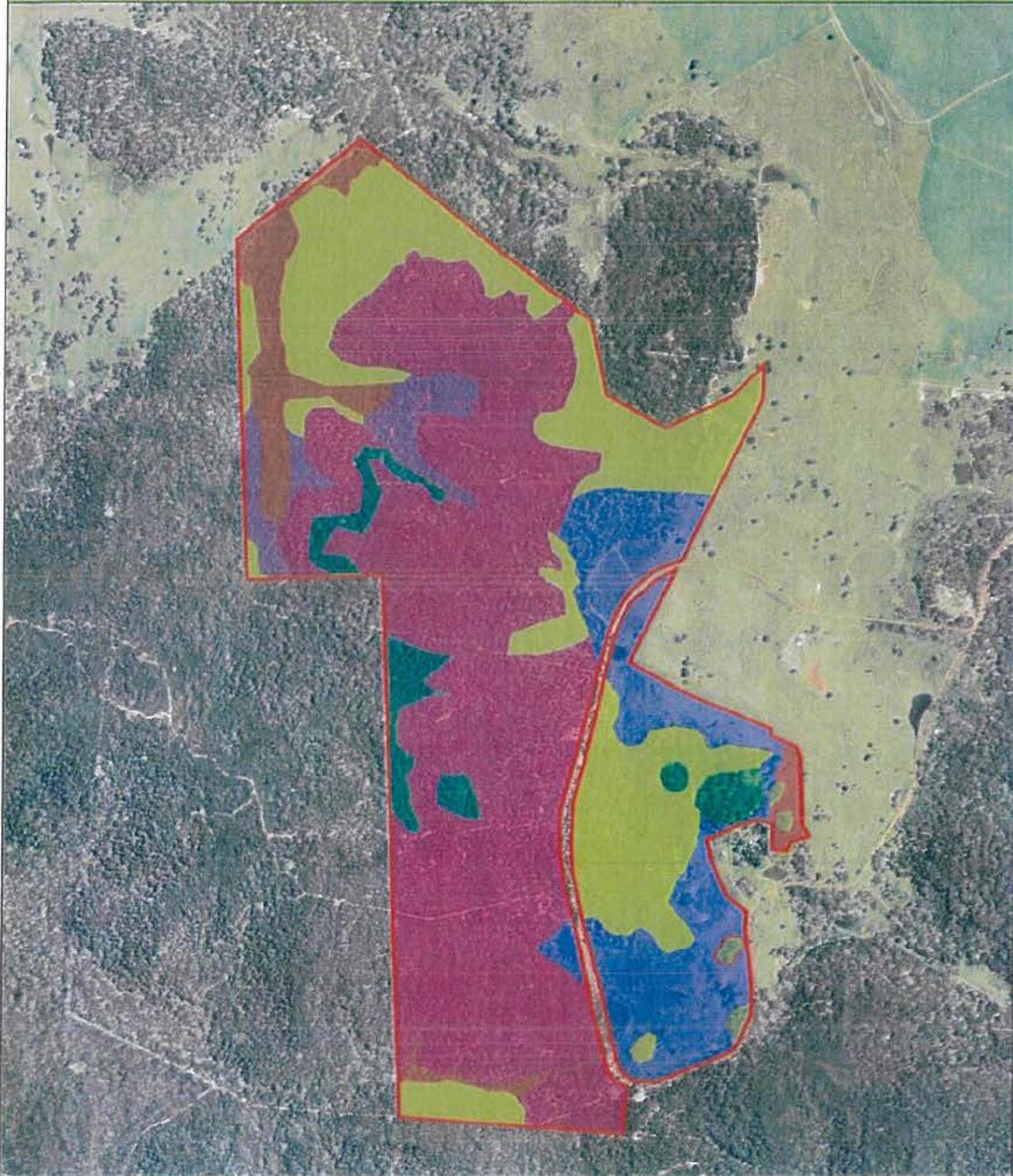
Yours sincerely,

s47F

Resource Sector Lead – NSW & QLD

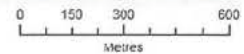
Attachment A – Vegetation community mapping

UCML Alternative Offsets - Site 1A Plant Community Types



Legend

- Site 1A
- PCT 1607 - Blakey's Red Gum - narrow-leaved ironbark - Rough-barked Apple shrubby woodland of the upper Hunter
- PCT 401 - Rough-barked Apple - Blakey's Red Gum - Black Cypress Pine woodland on sandy flats, mainly in the Ridge Scrub region
- PCT 478 - Red Ironbark - Black Cypress Pine - stringybark - narrow-leaved (stone) shrubby open forest on sandstone in the Ruyton - Merindrah region, southern Pigeon or Bell Spur, Boregor
- PCT 479 - narrow-leaved ironbark - Black Cypress Pine - stringybark - Grey Gum - narrow-leaved (stone) shrubby open forest on sandstone flats in the southern Boregor Bell Spur, Boregor and Sydney Basin Boregor
- PCT 483 - Grey Box - White Box grassy open woodland on basalt hills in the Ilwerrin region, upper Hunter Valley
- PCT 484 - box-leafed stone grass grassland on mainly basalt hills of the Liverpool Plains - Liverpool Ranges and the upper Hunter Valley, Merindrah (alt.) south-eastern Boregor Bell Spur, Boregor
- PCT 603 - narrow-leaved ironbark - Grey Box grassy woodlands of the upper Hunter Valley, mainly Sydney Basin Boregor
- PCT 624 - Large-Flowered Grey Gum - narrow-leaved stringybark open forest on sheltered sandstone hillslopes in the Stone region of the upper Hunter Valley
- Fm



GDA 1994 MGA Zone 56

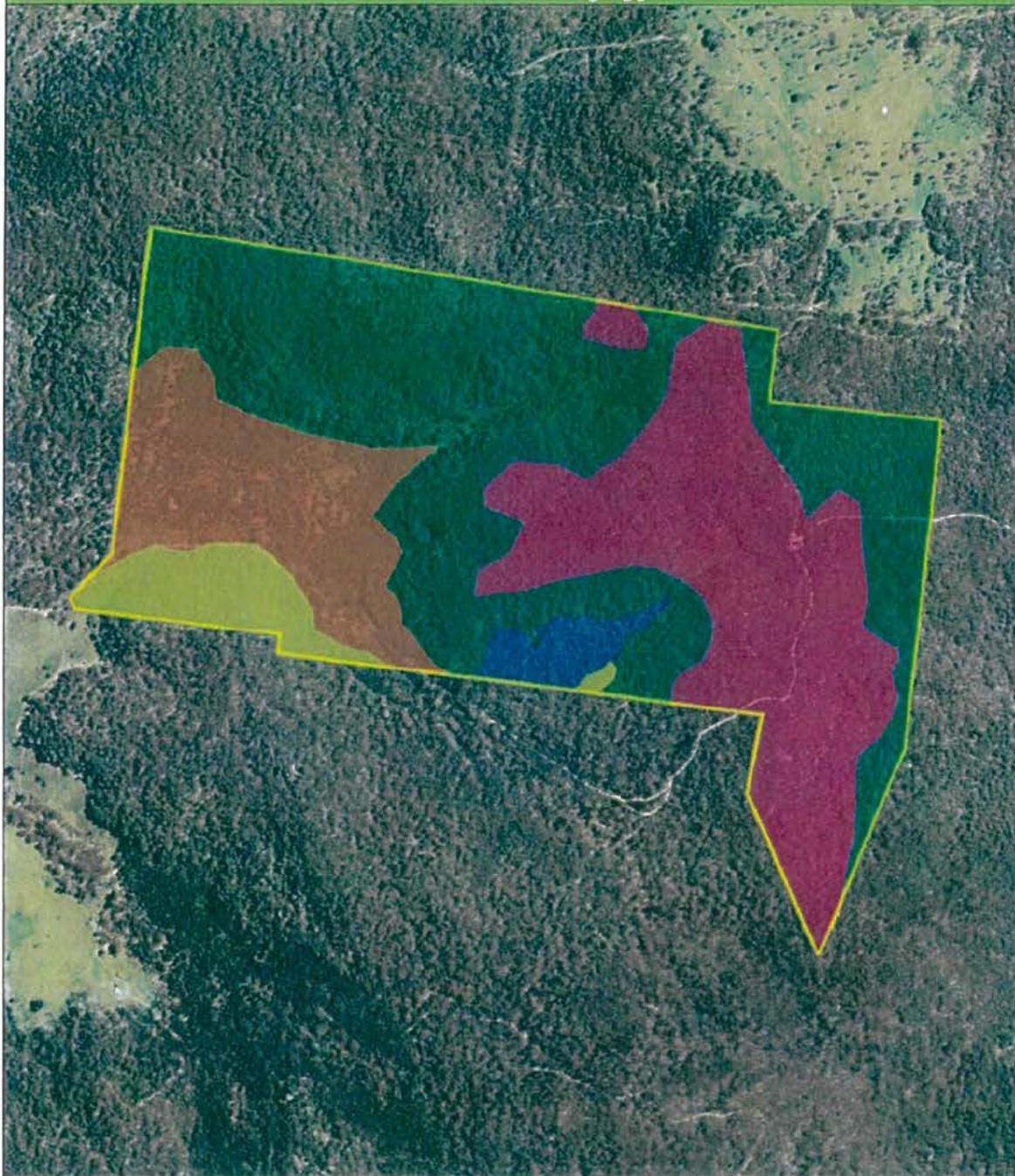


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Prepared by: DM Date: 11/7/2016

UCML Alternative Offsets - Site 1B Plant Community Types



Legend

- Site 1B
- PCT 401 - Rough-barked Apple - Bakery's Red Gum - Black Cypress Pine woodland on sandy flats, mainly in the Pilliga State region
- PCT 471 - Inland Straggly Gum - Red Stringybark - Black Cypress Pine - Near coastal open forest on sandstone hills in the southern Bigga-Bell South-Boregon and northern New South Wales-Southern Riverina
- PCT 478 - Red Stringybark - Black Cypress Pine - Stringybark - Narrow-leaved White ash/Elly open forest on sandstone in the Gulping - Meroporan region southern Bigga-Bell South-Boregon
- PCT 479 - Narrow-leaved Stringybark - Black Cypress Pine - Stringybark - Grey Gum - Narrow-leaved White ash/Elly open forest on sandstone hills in the southern Bigga-Bell South-Boregon and Sydney Basin-Boregon
- PCT 824 - Large-leafed Grey Gum - Narrow-leaved Stringybark open forest on elevated sandstone in Places 1 to 3 in the Boregon region of the Upper Hunter Valley

0 100 200 400

Metres

GDA 1994 MGA Zone 55

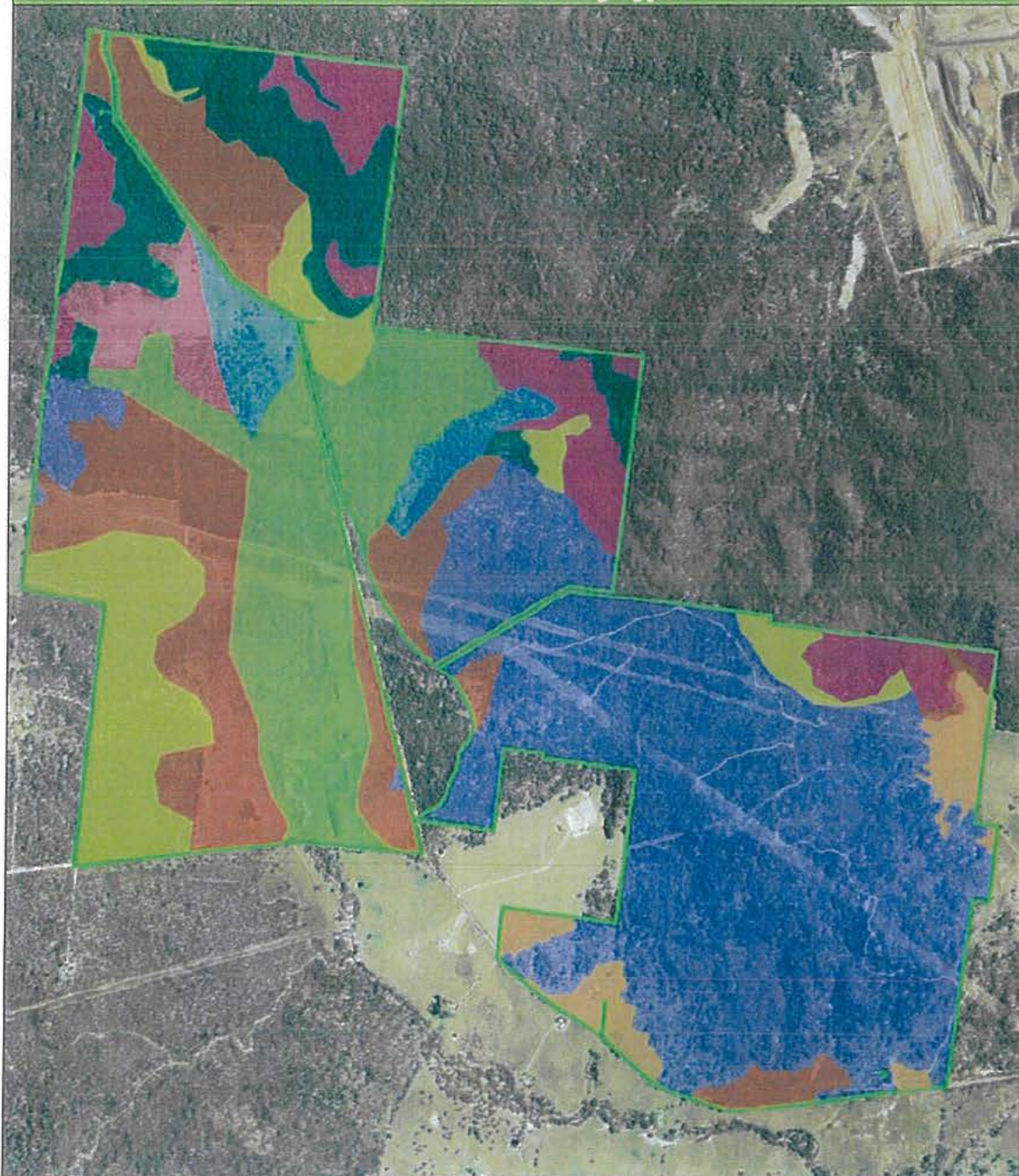


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Prepared by: BC Date: 22/03/2019

UCML Alternative Offsets - Site 1C Plant Community Types



Legend

- Site 1C
- POT 261 - Rough Barked Apple - red gum - Yellow Box woodland on alluvial clay to loam soils on valley flats in the northern NSW South Western Slopes Bioregion and Angles Belt South Bioregion
- POT 374 - Grey Box - cypress pine - red gum woodland to deep sandy loam soil in northern NSW Angles Belt South Bioregion
- POT 401 - Rough-barked Apple - Blakely's Red Gum - Black Cypress Pine woodland on sandy flats, mainly in the Pilga Scub region
- POT 401 - Turmisseous Gum woodland on hills in the northern NSW South Western Slopes Bioregion and southern Angles Belt South Bioregion
- POT 473 - Red gum - Rough-barked Apple - narrow-leaved ironbark - cypress pine grassy open forest on flat and drainage lines in the Goonoo and surrounding forests southern Angles Belt South Bioregion
- POT 476 - Red ironbark - Black Cypress Pine - swampy bank - narrow-leaved Wade shrub - open forest on sandstone in the Gilgong - Mendocore region southern Angles Belt South Bioregion
- POT 478 - narrow-leaved ironbark - Black Cypress Pine - sandstone - Grey Gum - narrow-leaved Wade shrub - open forest of sandstone hills in the southern Angles Belt South Bioregion and Sydney Basin Bioregion
- POT 804 - Large-leaved Grey Gum - narrow-leaved Sheo gum - open forest on sheltered sandstone hill slopes in the Scone region of the upper Hunter Valley
- Created pasture

0 150 300 600
Metres
GDA 1994 MGA Zone 56

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Prepared by: DM Date: 11/7/2018

Attachment B – Potential EEC/CEEC mapping

UCML Alternative Offsets - Site 1A Endangered Ecological Communities



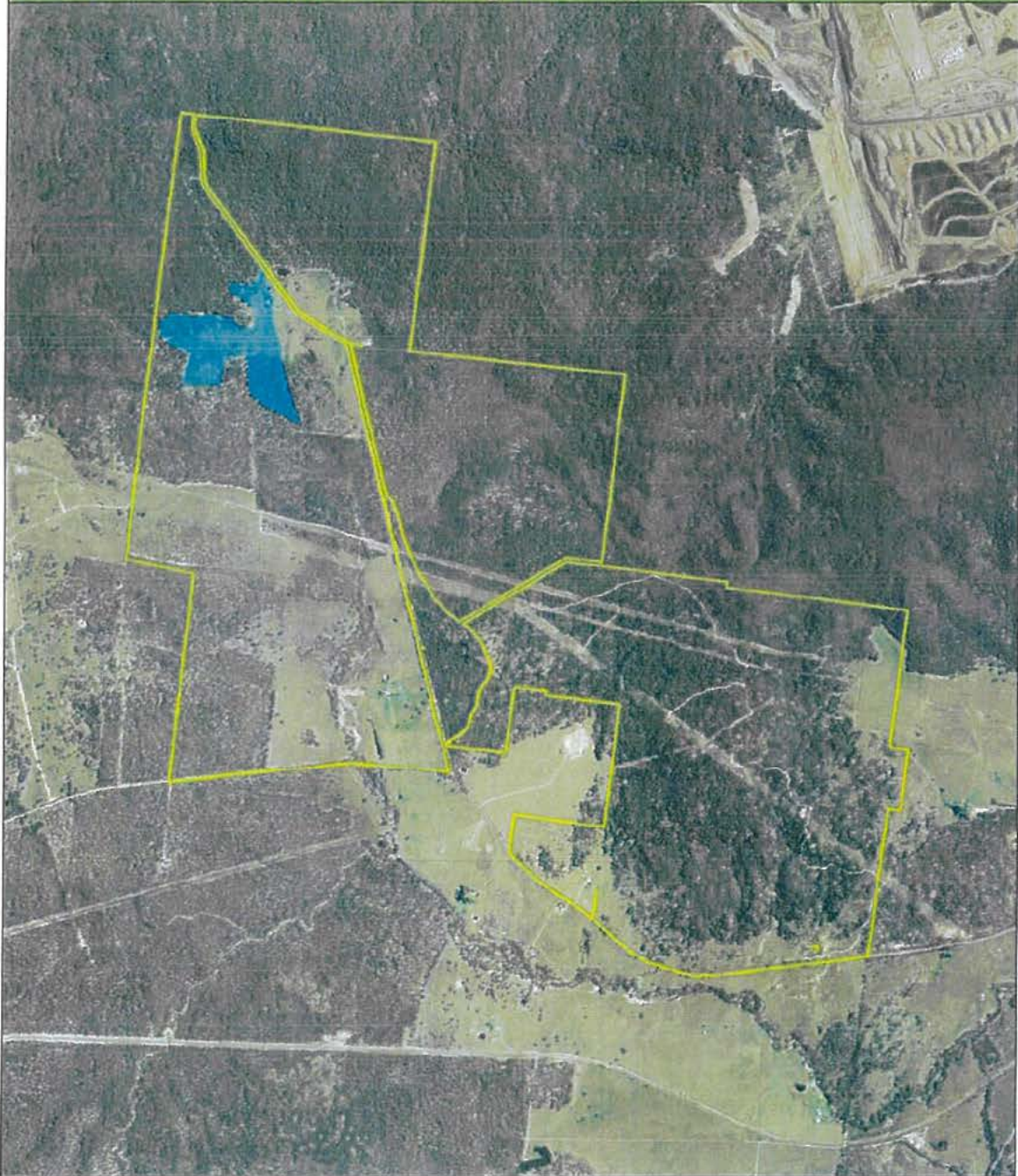
Legend
Site 1A
W1 - Grey Box / White Box grassy open woodlands and heathlands of the Murrumbidgee region, upper Hunter Valley
W2 - Dry heath, grassy open woodlands and heathlands of the Murrumbidgee region, upper Hunter Valley
W3 - Dry heath, grassy open woodlands and heathlands of the Murrumbidgee region, upper Hunter Valley
South Blackbutt

0 150 300 600
Metres
GDA 1994 / GA Zone 56

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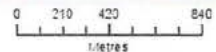


UCML Alternative Offsets - Site 1C Endangered Ecological Communities



Legend

- 1C - Endangered Ecological Community
- Biological - Biological Feature



GDA 1994 MGA Zone 55

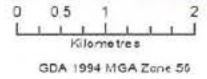
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Prepared by RC Date 19/11/2016

Attachment C – Cliffline habitat mapping

UCML Alternative Offsets Cliffline Mapping



- Legend**
- 1A
 - 1B
 - 1C
 - Access tracks
 - EA Clifflines
 - Additional Clifflines



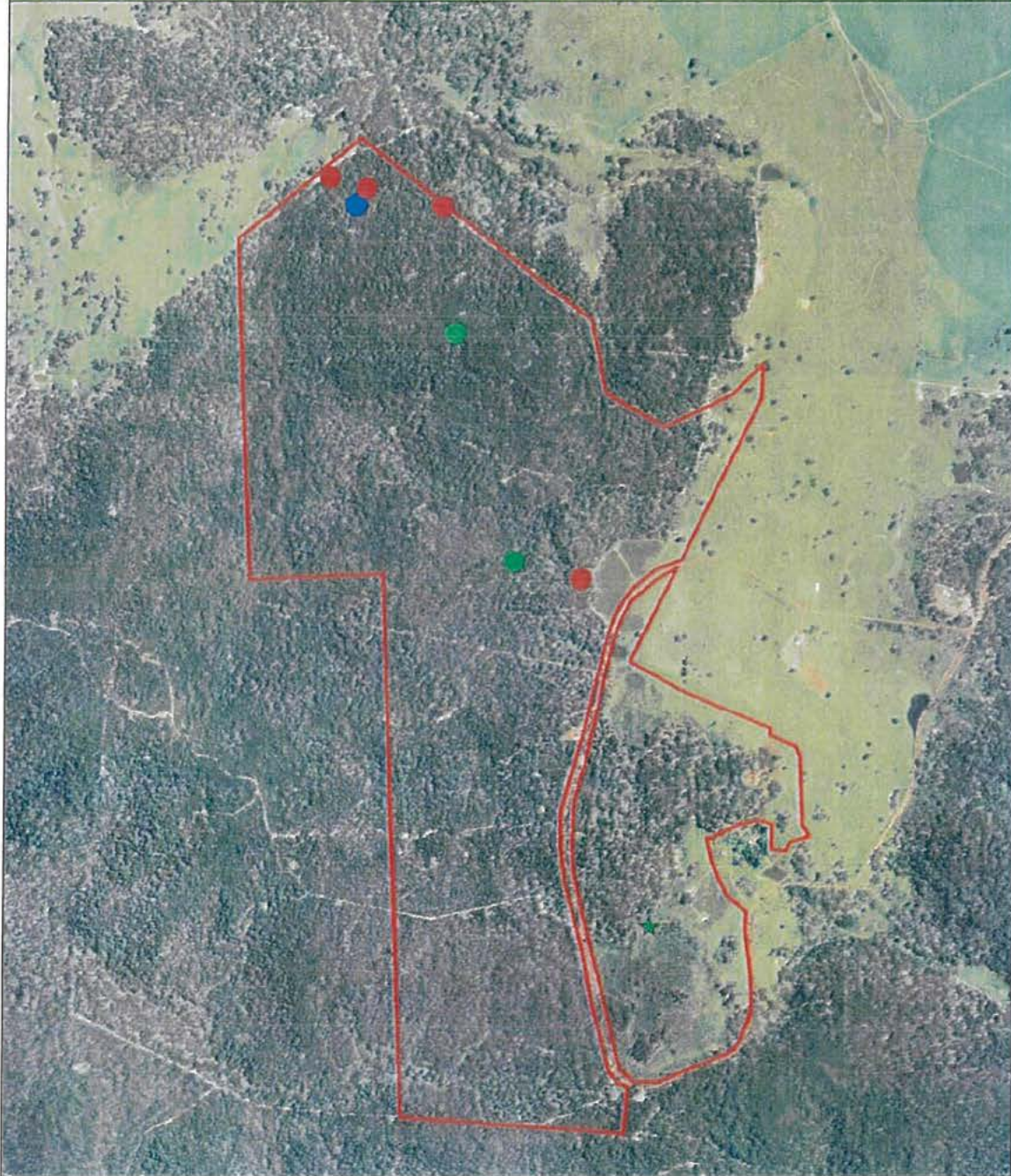
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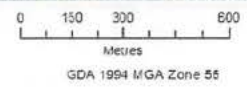
Prepared by: RC Date: 22/02/2019

Attachment D – Threatened species locations

UCML Alternative Offsets - Site 1A Threatened Flora & Fauna

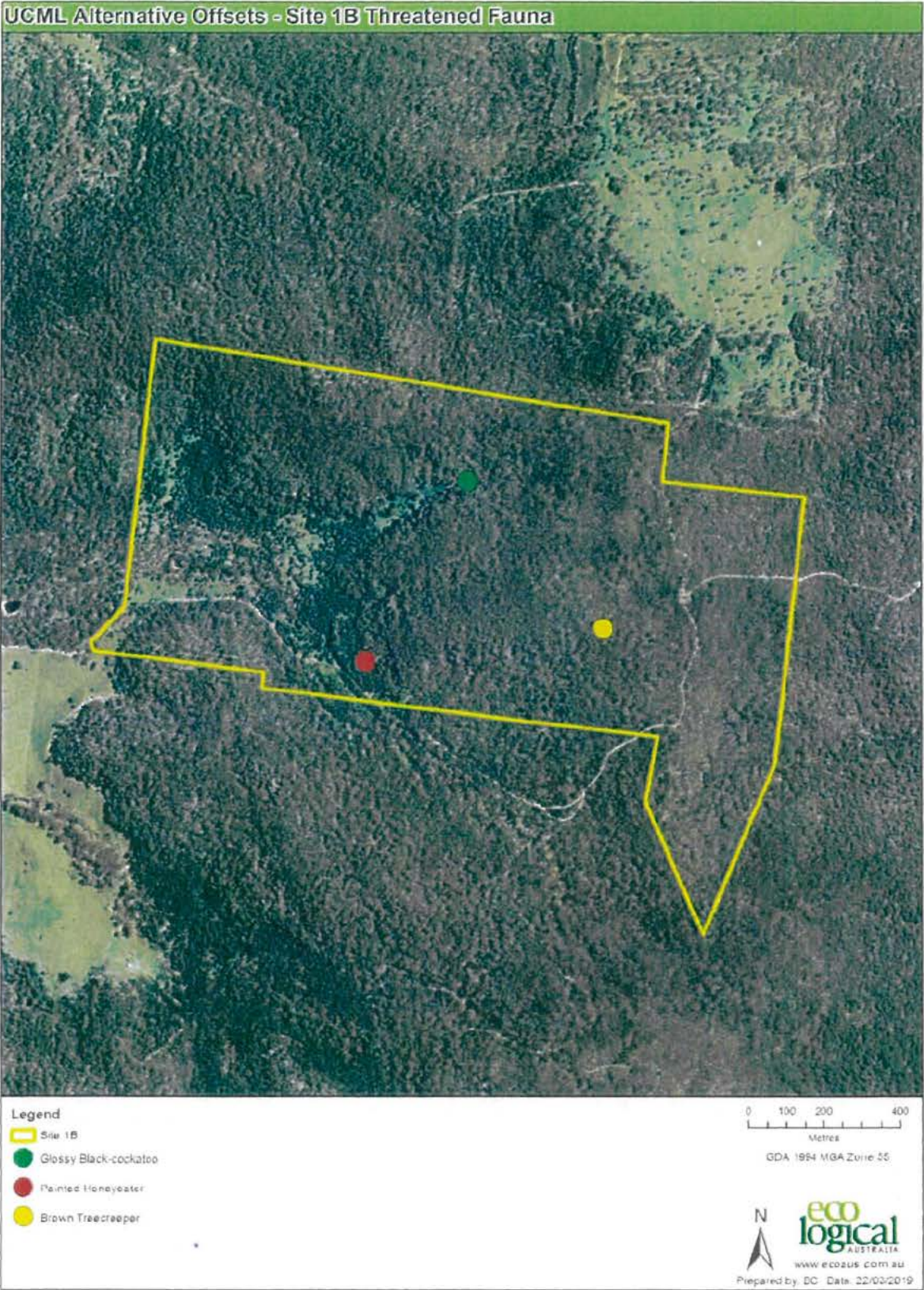


- Legend**
- Site 1A
 - Austro's Noddy
 - Glossy Black-cockatoo
 - Flame Kestrel
 - Spotted Pardalote



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UCML Alternative Offsets - Site 1C Threatened Flora & Fauna



- Legend
- Site 1C
 - Assessment Area
 - Class 1B/2B/3B/4B
 - Planned non-vegetation

0 150 300 600
Metres
GDA 1994 MGA Zone 55

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www.ecoaus.com.au
Prepared by: DM Date: 11/7/2018

From: s22
To: "Bradley.Tanswell@glencore.com.au"
Cc: s22
Subject: RE: Ulan Coal Mine Offsets [SEC=OFFICIAL]
Date: Tuesday, 18 June 2019 2:53:55 PM

Hi Brad,

I'm following up on your letter dated 24 May 2019 to s22 and s22 regarding offsets for Ulan Coal projects.

Before the Department can respond to your proposal to use a Covenant on Title under the *Conveyancing Act 1919* (NSW) as a protection mechanism for the potential offset area at Farris Hill, the Department needs clarification on several matters. Could you please clarify the following:

- The Brokenback Conservation Area was referred to in the approval conditions for the Ulan Coal Continued Operations project (EPBC 2009/5252). Is it correct that the Farris Hill arrangements are intended to be an offset exclusively to meet the conditions of that EPBC approval, not also for the s22 ?
- Your letter refers to the Brokenback covenant needing to meet the requirements of Condition 2 of the EPBC Act approval. Condition 2 refers only to the Bobadeen East offset areas. Is this intended to be a reference to meeting the requirements of Condition 4?
- Is the Covenant on Title you are considering a section 88B covenant? If so, please provide a draft text of the potential covenant, or at least of the provisions of the covenant relating to environmental management?
- If the covenant is not a section 88B covenant, please provide details of the nature of the covenant, including the circumstances under which it could be amended or removed at some point in the future, and any safeguards you propose in order to prevent such actions.
- Please confirm whether the covenant (whether section 88B or not) would be capable of preventing:
 - use of the land by mining or other extractive industries (including purely underground mining),
 - clearing of the land by any person, or
 - any other form of development.
- Please confirm how the covenant would address impacts by actions occurring outside of the covenanted area, but still impacting upon the key environmental values of the covenanted area.

Additionally, your letter advised that the Conservation Agreement for the Bobadeen Offset area has been signed and returned to the NSW Biodiversity Conservation Trust, but were still undergoing final checks. Could you please advise on the current status of that Conservation Agreement, whether it covers the Bobadeen East Offset area, and provide a copy of the signed agreement(s) for the Department's records?

Thank you,

Regards,

s22

Post Approvals Section | Assessments and Post Approvals Branch | Environment Standards Division | Phone: s22

From: Bradley.Tanswell@glencore.com.au [<mailto:Bradley.Tanswell@glencore.com.au>]

Sent: Friday, 24 May 2019 1:31 PM

To: s22 <s22@environment.gov.au>

Cc: s22 <s22@environment.gov.au>; Robyn.Stoney@glencore.com.au

Subject: Ulan Coal Mine Offsets

Hi s22 and s22 ,

Please find attached a letter providing an update on the status of Securing Ulan Coal Mine Ltd's approved offset areas and requesting approval from the Department for the use of a Conservation Covenant under the *Conveyancing Act 1919* for the portion of the Brokenback Conservation Area located on the property "Farrs Hill".

I have been advised s22 is no longer with the Department, and s22 now holds s22 position. If this is incorrect can you please refer this onto s22 as well.

Please call me if you have any questions in relation to this.

Regards,

Brad

[Brad Tanswell](#)

Environment and Community Coordinator

Ulan Coal Mines - A Glencore managed company

s47F

s47F

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

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If you have received this electronic communication in error please notify the sender by replying to this electronic communication inserting the word "misdirected" as the subject and delete this communication from your system.

From: Bradley.Tanswell@glencore.com.au
To: s22
Cc: s22
Subject: RE: Ulan Coal Mine Offsets [SEC=OFFICIAL]
Date: Thursday, 20 June 2019 12:20:06 PM

Morning s22,

Thanks for your message. I will seek the answers to these questions (noting some will require legal input) and provide a response as soon as I can.

Regards

Brad

Brad Tanswell

Environment and Community Coordinator

Ulan Coal Mines - A Glencore managed company

s47F

s22

F: +61 2 6372 5333

E: Bradley.Tanswell@glencore.com.au

www.ulancoal.com.au

From: s22
Sent: Tuesday, 18 June 2019 2:54 PM
To: Tanswell, Bradley (Ulan No 3 - AU)
Cc: s22
Subject: RE: Ulan Coal Mine Offsets [SEC=OFFICIAL]

External sender

Hi Brad,

I'm following up on your letter dated 24 May 2019 to s22 and s22 regarding offsets for Ulan Coal projects.

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- Is the Covenant on Title you are considering a section 88B covenant? If so, please provide a draft text of the potential covenant, or at least of the provisions of the covenant relating to environmental management?
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Thank you,

Regards,

s22

Post Approvals Section | Assessments and Post Approvals Branch | Environment Standards Division | Phone:

s22

From: Bradley.Tanswell@glencore.com.au [<mailto:Bradley.Tanswell@glencore.com.au>]

Sent: Friday, 24 May 2019 1:31 PM

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Cc: s22 <s22@environment.gov.au>; Robyn.Stoney@glencore.com.au

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Please call me if you have any questions in relation to this.

Regards,

Brad

Brad Tanswell

Environment and Community Coordinator

Ulan Coal Mines - A Glencore managed company

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