

Jamie Merrick
Director-General
Department of Environment, Tourism, Science and Innovation
Via email: jamie.merrick@des.qld.gov.au

10 December 2024

Dear Mr Merrick

RE: Recommendations in relation to improving the Department of Environment, Tourism, Innovation and Science's policies and procedures

We are writing to recommend amendments to the policies, guidelines, and procedures used by the Department of Environment, Tourism, Science and Innovation (**DETSI**) in implementing the *Environmental Protection Act 1994 (EP Act)*, with a focus on ensuring better alignment with national environmental standards and the protection of threatened species and ecosystems.

By way of background, Environmental Advocacy in Central Queensland (**EnvA**) is a Central Queensland association concerned about the risks associated with coal mining, coal seam gas and climate change. We are particularly concerned that new and expanding coal and gas projects result in:

- further clearing and degrading threatened species habitat,
- irreparable damage to our local landscape, and
- increased greenhouse gas emissions which will put our local community at further risk of extreme weather events and will place our significant coastal resources (such as our beaches and the Great Barrier Reef) at further risk through rising sea levels, storm surge and increased coral bleaching events.

Our group has been actively engaged in making submissions on new and expanding fossil fuel projects and tracking the assessment processes after the public consultation stages. The majority of the comments and recommendations raised in this letter relate to issues arising from the approval of an Environmental Authority (EPPR03277115) for the Queensland Coking Coal Pty Ltd (**the Proponent**) Vulcan North Bulk Sample Project (**bulk sample project**) without being referred for assessment under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, and the related approval of the Vulcan South Coal Project (**P-EA-100265081**) which is currently under EPBC Act assessment.

As you will be aware, the bulk sample project is currently under criminal investigation for potential breaches of the EPBC Act as:

- a) The Project was not referred for assessment under the EPBC Act, and/or
- b) the proponent has breached s74AA of the EPBC Act by conducting activities in relation to an area that is subject to referral of a project (EPBC 2023/9708) which has not been approved.



We have summarised our comments and recommendations on improvements to DETSI's policies and procedures, and potential amendments to the relevant legislation for your consideration below.

Environmental Authorities clauses

Most, if not all, Environmental Authorities (**EA**) contain a standard clause:

Other permits required

This permit only provides an approval under the Environmental Protection Act 1994. In order to lawfully operate you may also require permits / approvals from your local government authority, other business units within the department and other State Government agencies prior to commencing any activity at the site. For example, this may include permits / approvals with your local Council (for planning approval), the Department of Transport and Main Roads (to access State controlled roads), the Department of Resources (to clear vegetation), and the Department of Agriculture and Fisheries (to clear marine plants or to obtain a quarry material allocation).

Under the EP Act, standard criteria are defined in Schedule 4, which must be considered under s. 176. The definition of standard criteria includes:

- b) any Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development.

EnvA considers that any project that has the potential to impact on Matters of National Environmental Significance (**MNES**) clearly fits under standard criteria (b) and must be referred for assessment under the EPBC Act.

In the case of the Proponent's bulk sample project, significant areas of threatened species habitat were identified and approved by DETSI without any referral for assessment under the EPBC Act. Moreover, DETSI did not require offsets for any habitat loss.

EnvA strongly recommends that:

- Procedures are amended to ensure that projects that have the potential to impact on MNES are referred for EPBC Act assessment through direct advice to the proponent about their legal requirement, and
- The standard clause used in EA's under "other permits required" is expanded to include Commonwealth government approvals. As an example of alternate text:

Other permits required

This permit only provides an approval under the Environmental Protection Act 1994. In order to lawfully operate you may also require permits / approvals from your local government authority, other business units within the department, ~~and~~ other State Government agencies and Commonwealth Government departments prior to commencing any activity at the site. For example, this may include permits / approvals with your local Council (for planning approval), the Department of Transport and Main Roads (to access State controlled roads), the Department of Resources (to clear vegetation), and the Department of Agriculture and Fisheries (to clear marine plants or to obtain a quarry material allocation) and the federal Department of Climate Change, Energy, the Environment and Water (for impacts on Matters of National Environmental Significance).

Definitions of threatened species habitats

There is currently an inconsistency between the Queensland and Commonwealth in the definition of threatened species habitat. This became apparent through reviewing and making submissions on the Vulcan South coal mine applications under the relevant State and Commonwealth legislation. The following table provides examples of the State and Federal government department's determination of the area of residual impacts on MNES for the proposed Vulcan South coal mine.

Threatened species or community	State EA assessment (ha)	Federal EPBC assessment (ha)
<i>Brigalow</i>	67	71.2
<i>Squatter pigeon</i>	1023.5	1219
<i>Koala</i>	770.4	1167
<i>Greater glider</i>	39.4	1056
<i>Ornamental snake</i>	-	>1000

EnvA questioned this discrepancy in our submission on the draft Public Environment Report for the Vulcan South coal mine (EPBC 2023/09708).¹

The Proponent advised that they submitted the EA Application and EPBC referral using DETSI's definitions of habitat for the greater glider and koala. DETSI then reviewed this information and agreed with the total habitat areas for the species which they published in the final Vulcan South EA.

The Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) disagreed with DETSI's definitions of habitat and required the Proponent to amend their terrestrial ecology documentation to align with DCCEEW's definitions of habitat. The total disturbance footprint remained unchanged, but the area of MNES habitat differed considerably for endangered species such as the koala and greater glider.

EnvA strongly recommends that:

- The Queensland government amends the definition of koala habitat to align with the Commonwealth Government's definitions. This would provide greater consistency for proponents and the community. It would also align with the precautionary principle as threatened species become increasingly reliant on sub-optimal habitat as the impacts of vegetation clearing and climate change induced weather events displace the species from preferred habitat.

The implementation of the National Recovery Plan for the Koala (lead by DCCEEW)² might be an appropriate forum to progress this recommendation as the Queensland Government is already engaged in this process.

¹ [Comment on the draft Public Environment Report – Vulcan South Coal Mine – EPBC 2023/09708](#)

² [National Recovery Plan for the Koala *Phascolarctos cinereus* \(combined populations of Queensland, New South Wales and the Australian Capital Territory\)](#)

Mineral resources exploration

Our concerns here relate to the issuance of a major amendment to the EA for the bulk sample project without public notification. Hence, we were denied an opportunity to make a comment on this application.

EnvA has taken a significant interest in the operations at the Vulcan Coal Complex due to the cumulative ecological impacts that this staged project is having on threatened species. We would not have been aware of this project if the Proponent had not breached the conditions of their bulk sample project EA. If provided the opportunity, we would have raised our concerns about the project's impacts on threatened species and the inconsistency with the Proponent's application for the Vulcan South coal mine. ^{e.g. 3, 4}

We made enquiries of the approving delegate to question why a major EA amendment was not made available for public comment and we were advised that "The notification requirements under the EP Act only relate to environmental authorities for mining leases. As the VN BSP is on an exploration tenure (EPC1233), public notification does not apply. Approval to undertake bulk sampling activities on an EPC tenure rests with the Department of Resources."

Without seeking legal opinion, it is our view that the proposed bulk sample project should have been made available for public comment as required under the following sections of the EP Act:

- **s230 Administering authority must require public notification for particular amendment applications**

(1) This section applies if—

- (a) an amendment application is for an [environmental](#) authority for a resource activity; and
- (b) the assessment level decision is that the amendment is a major amendment.

- **152 Public notice of application**

(1) The applicant must give and publish a notice about the application (the "application notice").

(2) The [application notice](#) must be given and published—

- (a) simultaneously or together with, and in the same way as, any public notice for an application under resource legislation for a relevant tenure for the application; or
- (b) if public notice is not required to be given for an application under resource legislation for a relevant tenure for the application—

- (i) in a newspaper circulating generally in the area where the relevant resource activity is proposed to be carried out; and
- (ii) before the day that is 10 business days after the end of the information stage for the application; or
- (c) in another way prescribed under a regulation.

(3) The administering authority may decide an additional or substituted way to give or publish the application notice if it gives the applicant an information notice about the decision before the application notice is given.

³ [Correspondence to the Qld Environment Minister and DETSI: Vulcan North Bulk Sample Project – not referred for assessment under the EPBC Act](#)

⁴ [Correspondence to the Federal Environment Minister and DCCEW: Vulcan North Bulk Sample Project – potential illegal clearing of threatened species habitat](#)

We also note that section 4.3 of the Department of Resources' *Operational Guideline: Applying for bulk sampling on a Mineral Development Licence or Exploration Permit*⁵, requires that "if any of the approved activities trigger the requirement for an amendment to an Environmental Authority for the bulk sampling, then the activity cannot commence until a valid Environmental Authority for the activity has been issued." This indicates that the approval of the bulk sample project is dependent on DETSI granting an EA.

We consider that an application for disturbance of the scale of the bulk sample project should have been the subject of a public notification and invitation to make comment. This may have circumvented the community concern about the project's impacts and legality.

EnvA strongly recommends that:

- If the lack of referral for EPBC assessment and public consultation was a DETSI error in process, we respectfully request that steps are urgently taken to improve procedures to ensure that this does not occur again.
- DETSI take appropriate action to halt the continuing activity at the bulk sample project until such time as all approvals are in place and that the required rehabilitation activities outlined in the Directions Notice are progressing in line with the rehabilitation of the unauthorised clearing by July 2025.

In the circumstance that we are not interpreting the legislation and policy correctly, we further recommend that:

- The EP Act and implementation guidelines are amended to ensure that projects which will have significant residual impacts on Matters of State Environmental Significance (MSES) and/or MNES are made available for public comment as a component of the approval process,
- Appropriate offset provisions are required for the significant residual impacts to MSES for all resource related projects, and
- Our above-mentioned recommendations in respect of the appropriate referral of projects for EPBC assessment are fully implemented.

We would appreciate your responses to the concerns we have raised, and how DETSI processes and guidelines can be amended to incorporate our recommendations.

Kind regards,



Dr Coral Rowston
Director
Environmental Advocacy in Central Queensland Inc.

⁵ [Applying for bulk sampling on a Mineral Development Licence or Exploration Permit](#)