

INQUIRY INTO KOALA POPULATIONS AND
HABITAT IN NEW SOUTH WALES

RESPONSES TO SUPPLEMENTARY QUESTIONS

HEARING 18 FEBRUARY 2020

Responses to supplementary questions by:

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1. Which of the biodiversity offsets for Whitehaven Coal's Maules Creek Coal mine have been so far approved by the NSW Biodiversity Conservation Trust?
 - a. please provide the names of all properties which have had Conservation Agreements signed and the date they were signed.
 - b. which have been finalised but not executed?
 - c. which have been registered with the NSW Land Registry Services? (Please provide identifying dealing reference numbers, where relevant)
 - d. will they be registered by the due date on 30th March 2020?
 - i. if not, why not?

Answer

The biodiversity offsets for Whitehaven Coal were approved by the NSW Planning Assessment Commission (ref. PA10_0138), which can be found here:

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2012/08/maules-creek-coal-project/determination/maulescreekcoalprojectconditionspdf.pdf>

A summary of the status of applications for offset conservation agreements associated with Whitehaven Coal's Maules Creek Coal mine is presented in attachment 1.

The Biodiversity Conservation Trust's (BCT) role is to enter conservation agreements that are consistent with the development consent conditions and with the requirements of the *Biodiversity Conservation Act 2016*.

Compliance with the conditions of consent is a matter for the relevant NSW and Commonwealth authorities that can take compliance action, civil proceedings or criminal proceedings under the relevant planning laws.

2. We understand that outstanding obligations on Whitehaven Coal to improve Maules Creek offsets and render them satisfactory have been incorporated into the Management Plans, with a further 12-month extension of time to demonstrate satisfactory progress. Is this correct?
 - a. please list all matters which did not satisfy the BCT up until the signing of the Conservation Agreements and were included as deliverables in the relevant Management Plans.

Answer

That is not correct. Conservation management obligations take effect immediately once agreements are executed and registered on title.

The BCT will not execute a conservation agreement if there are any unresolved matters.

3. What options are available to the BCT if the Management Plans have been unsuccessful in achieving targeted deliverables contained within the Maules Creek Conservation Agreements within the 12-month time-frame?
 - a. what financial penalties are able to be imposed?

Answer

The BCT can pursue action, such as civil proceedings, as set out in the BCT's Compliance Policy as available on the BCT's website, seeking compliance with the conditions of a conservation agreement.

The BCT cannot impose financial penalties. Financial penalties for offences under the *Biodiversity Conservation Act 2016* or the *Environmental Planning and Assessment Act 1979* are a matter for the regulator: the Department of Planning, Industry and Environment.

4. Please clarify using detailed vegetation maps the areas of the Maules Creek offsets which were originally thought to be Critically Endangered Ecologically Community (CEEC) but were found to be in the wrong place? Please supply comparison vegetation maps showing:
 - a. how much of the CEEC was allegedly in the wrong place?
 - b. where was the CEEC in fact found to occur?
 - c. how much of the offsets in hectares was in dispute?
 - d. how did the vegetation change between the time when it was first audited by the BCT?

Answer

The original maps supplied to BCT were derived from the Biodiversity Offset Management Plan for the Northern, Eastern, Southern and Western Offsets (pages 85 to 91 for vegetation maps including areas of CEEC). These maps were presented at a regional scale and were not suitable for the conservation agreements as they did not adequately describe the vegetation to a plant community type (PCT) level. The BCT has been seeking and obtaining more accurate PCT mapping at a finer scale for the purposes of assessing and finalising the conservation agreements.

5. Has the required amount of CEEC been reduced to make the Maules Creek offset maps more accurate?

Answer

Attachment 1 lists the area of threatened ecological communities (TECs) suggested in original applications to the BCT (where it was provided) and the area of TECs recognised in the conservation agreements that have been finalised. Whether the final outcomes in the conservation agreements satisfy the development consent conditions is a matter for the consent authorities.

6. Has the definition of Whitebox Grassy Woodland CEEC changed since the Maules Creek offsets were approved by the Commonwealth?

Answer

The BCT is not aware of any changes to the NSW or Commonwealth definitions of this CEEC since the date they were last published or amended in 2006 and 2011 respectively.

7. Is the BCT aware of the difference between the “woodland” form and the “grassland” form of the CEEC?
- a. what is this difference?

Answer

Yes. This CEEC, as defined by the NSW Scientific Committees, includes three structures, including woodland with trees and a substantially native understory, woodland with an overstory of trees but no substantial understory, or grassland.

The BCT’s primary reference point for the White Box Yellow Box Blakely’s Red Gum Woodland (commonly referred to as Box-Gum Woodland) is the NSW Scientific Committee’s determination.

The Commonwealth definition also references the different forms of the CEEC.

8. Is it the case that CEEC previously mapped as grassland is now mapped as woodland, or vice versa?

Answer

The TECs mapped in the conservation agreements do not distinguish between the structural forms.

9. The CEO said in response to the Chair “These are very large sites and so to the extent that our staff may have done a preliminary site assessment and looked at an area that was supposedly EEC and then determined, well, actually it is not, they have gone back to the mining company”. Is this reference to “very large sites” referring to “Mt Lindsay” and “Wirradale”, the largest Maules Creek offsets known as the Northern Offsets?
- a. 4290 ha of CEEC is claimed to occur within the Northern Offsets. Is this correct?
 - b. does the combined total of the proposed offsets meet the requirements of the Federal EPBC Act Offset Calculator?

Answer

The Northern Offsets sites of Wirradale, Wongala and Mt Lindsay will be large conservation areas.

- a. The BCT does not yet have finalised vegetation maps of Plant Community Types for the Northern Offset sites, so we cannot yet provide a figure of the area of CEEC on these sites.
- b. Whether the combined total of the proposed offsets meet the requirements of the Federal EPBC Act Offset Calculator is a matter for the Commonwealth Government.

10. When the BCT conducted its first survey in 2018, how much CEEC (in hectares) did it find at the Northern Offsets, and for each other individual offset property of the Maules Creek mine?

Answer

The BCT is awaiting finalised mapping of PCTs for the Northern Offsets from the applicant.

11. How much CEEC does the BCT now conclude to exist at each individual offset of the Maules Creek mine?

Answer

Please refer to answer to Supplementary Question 1.

12. Did the BCT auditors survey the number of hollow-bearing trees in the course of their visits to the Northern Offsets? If so, how many tree hollows per hectare did they record?

Answer

No. There is no requirement for BCT to survey tree hollows. They are not specified in the development consent conditions that inform the conservation agreements.

13. The EPBC Definition of Critically Endangered Box-Gum Woodland states that Yellow Box, Blakely's Red Gum or White Box must occur as dominant or co-dominant overstorey trees. Does the BCT conclude that this is the case at the Northern Offsets.

Answer

The BCT is awaiting finalised mapping of PCTs for the Northern Offsets from the applicant.

14. The EPBC Definition states: The specified dominants must be in a woodland community with clearly separated canopies. Does the BCT audit include an assessment of the canopy, concluding that this is the case for the Northern Offsets?

Answer

The BCT is awaiting finalised mapping of PCTs for the Northern Offsets from the applicant.

15. The EPBC Definition states: If shrubs are present they must be scattered and not forming a continuous layer. How much of the randomised sites at the Northern Offsets display discontinuous vs continuous shrub layer?

Answer

The BCT is awaiting finalised mapping of PCTs for the Northern Offsets from the applicant

16. The EPBC Definition states: Ground cover vegetation must be greater than 50% cover of tussock grasses. How much of the randomised sites at the Northern offsets contain greater than 50% of tussock grasses?

Answer

The BCT is awaiting finalised mapping of PCTs for the Northern Offsets from the applicant

17. Exactly what procedures are in place to oversee management plans and ensure that their progress is satisfactory, and report accordingly?

Answer

Agreement holders must submit an annual report on their compliance with the agreement.

The BCT conducts at least annual site inspections of all offset sites to check for compliance with agreements. Site visits also provide an opportunity for BCT staff to provide technical advice and support to promote compliance.

Compliance with development consent conditions is a matter for the relevant planning authorities

18. Can you provide the BCT's Compliance Policy?

Answer

The BCT Compliance Policy for private land conservation agreements is available on the BCT's website at www.bct.nsw.gov.au

19. In relation to the one civil enforcement case that the BCT has conducted since its inception, can you provide details including:

- a. the name of the case
- b. a reference to any transcript of the proceedings,
- c. the exact nature of any offences committed and
- d. the amount of any fines or details of any settlement reached

Answer

This matter does not involve koala habitat and therefore falls outside the terms of reference of the inquiry. Summary details are:

- a. BCT vs Rae
- b. There were no proceedings because a settlement was reached prior to any hearing.
- c. The matter was initially commenced by the former Nature Conservation Trust and taken over by the BCT on 25 August 2017. The action concerned failure to comply with the conditions of the conservation agreement.
- d. The settlement involved several elements including: Mr Rae admitting breach of the agreement; an entirely new management plan containing stricter and clearer grazing management provisions, a penalty regime in place for any breaches of the new management plan, requiring Mr Rae to retain an independent grazing expert of BCT's choosing, and no grazing to occur on the conservation area until it has been restored to the expert's satisfaction; requiring Mr Rae to retain an independent native vegetation restoration expert of BCT's choosing, whose recommendations Mr Rae must implement in restoring the land that remains in the conservation area; and Mr Rae providing an additional bank guarantee in the amount of \$400,000, which can be called upon to pay any penalties assessed under the new agreement and the independent expert(s) if needed.

20. Are any efforts being made to fix the Public Register to make it possible to search the register without needing to know the date of execution?

- a. if not, why not?

Answer

It is already possible to search the register using free text (for agreement name, local government area, BCT region) or by agreement type. A user viewing all agreements can also select one or more options to filter the results.

21. Please provide the details of what information is intended to be publicly available on the Public Register portal.

a. is all of this information currently available?

i. if not, what is the reason for the delay and when will it be available?

Answer

The BCT Public Register includes data for agreements made under Part 5 of the *Biodiversity Conservation Act 2016*. This data includes the type of agreement, BCT region, local government area, IBRA and IBRA subregion, size of the agreement, whether the agreement is unfunded or funded, and the agreement term, as required by the Act.

Section 9.10(4) of the *Biodiversity Conservation Act 2016* provides that access to information on a public register is to be restricted if its disclosure would contravene the *Privacy and Personal Information Protection Act 1998*. The BCT will only make personal or identifying information about an agreement available on the BCT Public Register if it has received written consent from the landholder.

Biobanking Agreements, now administered by the BCT, are available on the Biobanking Public Register at www.environment.nsw.gov.au and will be transitioned to the BCT register.

22. Are you aware that Whitehaven Coal has an active coal Exploration Licence which is over three of the Maules Creek biodiversity offset properties – Wollondilly, Warriahdool and Tralee?

Answer

The BCT is aware of the coal exploration licence applying to these properties.

Attachment 1

Whitehaven Coal (WHC) Maules Creek Offset Conservation Agreements

Offsets group	Property name	Status	Executed by BCT	Total hectares (application)	Total hectares TECs (application)	Total hectares (agreement)	Total hectares TECs (agreement)	Total hectares grassland to be regenerated
Western	Kelso	Signed and with LRS for registration	20/02/20	488.46	0	489.49	4.69	211.61
	Velyama			406.28	107.85	702.61	4.65	548.03
	Louenville			213.78	0	213.78	21.36	213.10
	Olivedeen	Signed and with LRS for registration	20/02/20	43.46	0	90.95	0	78.92
Southern	Roseglass,	Signed and with LRS for registration	20/02/20	1919	not specified	2087.5	74.26	175.70
	Bimbooria						13.22	214.76
Eastern	Teston North and South	Signed and with LRS for registration	20/02/20	506	19.43	630.01	30.73	288.29
	Tralee			98.14	0	205.23	4.74	170.35
	Wollandilly	With WHC for execution		839	159.11	804.5	117.73	333.28
	Onavale, Oakleigh	With WHC for execution		533	not specified	557.6	32.9	359.31
	Cattle Plain	Agreement being developed		213	not specified	Final spatial data not yet with BCT		
Northern	Wirradale, Wongala	Agreement being developed		4082.8	1174.19	Final spatial data not yet with BCT		
	Mt Lindsay	Agreement being developed		1974.70	1005.02	Final spatial data not yet with BCT		
Shared	Rocklea	Agreement being developed		713.67	0	Final spatial data not yet with BCT		
Other	Willeroi	Agreement being developed		3330	not specified	Final spatial data not yet with BCT		
	Thornfield	Agreement being developed		171.4	not specified	Final spatial data not yet with BCT		
	Ellerslie	Agreement being developed		60.22	not specified	Final spatial data not yet with BCT		
	Ferndale	Agreement being developed		45.2	not specified	Final spatial data not yet with BCT		