

Request for Statutory Approval

Issue of an Environmental Authority (Mining Lease) Under s194 of the *Environmental Protection Act 1994* (version current as at 14 March 2013)

CLIENT: Adani Mining Pty Ltd
REGISTERED OFFICE ADDRESS: Level 25, BRISBANE QLD 4001
TENEMENT: ML70441, ML70505, ML70506
ENV AUTHORITY NO.: EPML01470513
FILE NO.: 101/0002008
ECOTRACK AR NO.: 534189
PROJECT REF NO.: 333466
DUE DATE: 2 February 2016
TIME SPENT: 8 hours

1.0 SUMMARY

The draft EA was issued on 28th August 2014. Objections to the draft EA were referred to the Land Court on 1st October 2014. The Land Court objection decision on the EA was handed down on the 15th December 2015, with the order not to be made final until the 17th December 2015 at 4:00pm in order to allow the parties to make any submission to the Court as to why the conditions set out in Order 2 should not be included in the environmental authority.

The Land Court objection decision recommended eight additional conditions to better understand Black-throated finch requirements and ensure their conservation going forward.

Under section 194 of the EP Act the MRA Minister or State Development Minister had 10 business days to give the administering authority advice about any matter that they consider may help with making a final decision about the application.

On the 15th January 2016, EHP received a letter from the Minister of Natural Resources and Mines which stated that he had no further advice to offer that could assist with the decision of the application.

The EA had been revised to include all these eight recommendations. Internal legal advice was sought on the 16th December 2015 and received on the 27th January 2016. Legal advice recommended the inclusion of a condition that stipulated the survey and monitoring work be carried out by experienced ecologists and also advised to provide more specific requirements with respect to the survey conditions for information on BTF movements and BTF breeding requirements.

On 27th January expert advice was sought from departmental ecologists regarding condition wording to capture the requirement to accurately describe the habitat area and breeding requirements of the BTF.

Discussions with the proponent were undertaken to communicate the final wording for the EA conditions.

Additional to the Land Court recommended conditions some other changes were also made to make the EA more effective. Prior to the issuing of the final EA, the proponent requested that the effective date of the EA to be changed from the 9th of February 2016 to the 'upon effect of Mining Leases 70505, 70506 and 70441'.

Additionally, the proponent requested that the wording in Condition I1 'in accordance with the Carmichael Coal Project Biodiversity Offset Strategy, <Version number to be confirmed upon issuance of Final EA> be changed to 'in accordance with the Carmichael Coal Project Biodiversity

Offset Strategy, as approved. This request was made because the Commonwealth and Queensland Government have not yet approved this Strategy.

EHP also noted that the offset conditions referred to State Significant Biodiversity Values while the current draft of the Carmichael Biodiversity Offset Strategy refers to Matters of State Environmental Significance which is the current terminology under the Queensland *Environmental Offsets Act 2014* which came into effect in July 2014, two months after the CG approved the project. All references to State Significant Biodiversity Values were changed to Matters of State Environmental Significance.

Updates were also made to dates that have been drafted to be a stated time after the issuing of the final EA. These dates were updated to refer to "from grant of Mining Leases 70441,70506 and 70505", or to reference a specific date.

None of the corrections made to the EA alter the meaning or intent of the conditions. Changes that have been made are:

Land Court decision recommendations	Change	Justification for the change
Insertion of the following conditions into the BTF Species management plan referred to in Condition I6 of the environmental authority:		
A (i) monitoring of water bodies should be conducted over at least a six hour period commencing from dawn in order to accurately capture utilisation of the watering points;	Addition of: "(f) monitoring of watering points that must be conducted for a minimum six hour period commencing from dawn, to accurately capture BTF utilisation of watering points."	Wording inserted to include Land Court recommendation – '(i) monitoring of water bodies should be conducted over at least a six period commencing from dawn in order to accurately capture utilisation of the watering points.' The usage of 'must' is more definitive.
(ii) detailed botanical assessment should be focussed on all BTF siting locations to record habitat values within those locations;	Addition of: "(g) detailed botanical assessment that must occur at all BTF sighting locations in the project area to record habitat values at those locations."	Wording inserted to include Land Court recommendation – '(ii) detailed botanical assessment should be focused on all BTF siting locations to record habitat values within those locations.' The usage of 'must' is more definitive.
(iii) more effort should be placed into actively locating BTF and collecting information on their movements across the project and offset areas;	Addition of: '(h) detailed surveys that must occur across the mining lease area and approved offset areas and must include information on BTF movements. The survey method and effort must be sufficient to accurately describe the BTF home range and detail	Wording inserted to include Land Court recommendation – '(iii) more effort should be place into actively locating BTF and collection information on their movements across the project and offset areas;' The usage of 'must' is more definitive and the required effort

	<p>BTF resource usage patterns between seasons and years (for up to 10 years) and that allow robust management actions to be developed for the maintenance of a viable local BTF population;'</p>	<p>is quantified so that accurate information informs the management requirements to ensure the conservation of the species across the mining lease area and approved offset areas.</p> <p>Expert advice was that provided to EHP that the BTF is possibly locally nomadic with its movements changing according to spatial and temporal variation in resources. Therefore it was recommended that multiple years of surveys would be required to develop management actions to account for this variation. Advice recommended effort for three times the generation time of the BTF (3.5 years), which is approximately 10 years (as per Garnett et. al. 2010).</p>
<p>(iv) call playback should be used when BTF are encountered to assist in gaining a more complete identification of birds present in the local area;</p>	<p>Addition of:</p> <p>'(i) survey work that should incorporate the usage of call playback and identify all birds present when BTF are encountered;'</p>	<p>Wording inserted to include Land Court recommendation –</p> <p>'(iv) call playback should be used when BTF are encountered to assist in gaining a more complete identification of birds present in the local area'.</p> <p>Wording was modified but the intent remains as per Land Court decision recommendation.</p>
<p>(v) specific surveys targeting breeding be undertaken to provide details on locations and habitat values in breeding areas;</p>	<p>Addition of:</p> <p>'(j) specific surveys that must be undertaken during the BTF breeding season and include nest location and assessment of the habitat attributes associated with the breeding locations. The survey method and effort must be sufficient to accurately describe the BTF breeding requirements with consideration to spatial and temporal variation of resources for up to 10 years; and'</p>	<p>Wording inserted to include Land Court recommended conditions –</p> <p>'(v) specific surveys targeting breeding be undertaken to provide details on locations and habitat values in breeding areas'.</p> <p>The usage of 'must' is more definitive and the required effort is quantified so that accurate information informs the management requirements to ensure the conservation of the species across the mining lease area and approved offset areas.</p> <p>Expert advice was that provided to EHP that the BTF is possibly locally nomadic with its movements changing according</p>

		to spatial and temporal variation in resources. Therefore it was recommended that multiple years of surveys would be required to develop management actions to account for this variation. Advice recommended effort for three times the generation time of the BTF (3.5 years), which is approximately 10 years (as per Garnett et. al. 2010).
(vi) persons undertaking the survey/monitoring should be experienced ecologists with sound understanding of the BTF and its habitats;	Addition of: '(k) survey and monitoring must be undertaken by experienced ecologists'.	Wording inserted to include Land Court recommendation – '(vi) persons undertaking the survey/monitoring should be experienced ecologists with sound understanding of the BTF and its habitats;' The usage of 'must' is more definitive.
(vii) any future revisions of the current survey and monitoring programs should be developed in consultation with researchers from the BTF recovery team and independently peer reviewed.	Addition of : '(d) all revisions of the survey and monitoring program must be carried out in consultation with the BTF recovery team; and (e) any revision must be independently peer reviewed.'	Wording inserted to include Land Court recommendation – '(vii) any future revisions of the current survey and monitoring programs should be developed in consultation with researchers from the BTF recovery team and independently peer reviewed.' The usage of 'must' is more definitive.
(b) The research management plan include provision for funding a research project to determine the correlation between water source, woody habitat and <i>Poaceae</i> food resources across the MLA areas and the proposed offset areas, to determine the interrelationships between these factors.	Addition of: '18 The baseline research program must fund a research project to determine the relationship between water sources, woody habitat and the BTF food sources within the mining lease area and approved offset areas to determine the inter-relationships among these factors.'	Wording inserted to include Land Court recommendation – '(b) The research management plan include provision for funding a research project to determine the correlation between water source, woody habitat and <i>Poaceae</i> food resources across MLA areas and the proposed offset areas, to determine the interrelationships between these factors.' Wording modified, but the intent is the same. The usage of 'must' is more definitive.
(c) The research management plan include a provision that the Ten Mile	Addition of: '19 The baseline research plan	Wording inserted to include Land Court recommendation –

Bore and its surrounds be investigated to determine whether that area maintains an important function in sustaining the BTF population.	<p>under I6 must:</p> <ul style="list-style-type: none"> a) Establish whether Ten Mile Bore and surrounds are high value habitat for the species; and b) Establish management actions that maintain the BTF population at Ten Mile Bore and surrounds.' 	<p>'(c) The research management plan include a provision that the Ten Mile Bore and its surrounds be investigated to determine whether that area maintains an important function in sustaining the BTF population.'</p> <p>Wording has been modified, but the intent is the same. The usage of 'must' is more definitive.</p>
Other EA Changes		
'Environmental Authority effective date: 9 February 2016	Environmental Authority effective date: upon grant of Mining Leases 70505, 70506 and 70441	The mining leases are yet to be granted. Under section 200 of the EP Act, an EA for a resource activity cannot take effect before the day the relevant tenure is granted to the applicant.
A8, A13	Reference to "from grant of Mining Leases 70505, 70506 and 70441" rather than from issuing of EA.	The requirements of these conditions do not take effect until the mining leases are granted.
E3, E5, H2, H3, I2	Dates updated to reflect issue date of the EA.	Timeframes were worded to be a determined time from date of issuance, which in this case is the 2 nd February 2016.
I1	Insertion of phrase "as approved".	The proponent requested this change as the Carmichael Coal Project Biodiversity Offset Strategy has not yet been approved by the Commonwealth and Queensland governments therefore a final version number is not available.
E8, E14, I1, I2, I3, I4, I5, J3, J11	All references to "State Significant Biodiversity Values" changed to "Matters of State Environmental Significance".	References updated to comply with terminology under the Queensland <i>Environmental Offset Act 2014</i> .
Appendix 1: Definitions	<p>Inserted:</p> <p>'suitably qualified and experienced person' in relation to the BTF species management plan means a person who has professional qualifications, training or skills or experience relevant to bird ecology and can give authoritative assessment, advice and analysis about performance relevant to the</p>	Definition inserted to define the qualifications of the suitably qualified and experienced person mentioned in I6.

	subject matters using relevant protocols, standards, methods or literature.'	
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2.0 LEGISLATION

Environmental Protection Act 1994 (current as at 14 march 2013)

Chapter 5 Environmental authorities and environmentally relevant activities

Part 5 Decision stage

Subdivision 4 – Final decision on application

194 Final decision on application

(1) This section applies if-

- (a) the administering authority referred the application to the Land Court under section 185 and an objects decision is made about the application; or
- (b) the administering authority referred the application to the Land Court under section 185 because of an objection notice but, before an objections decision is made about the application, all objection notices for the application are withdrawn.

The application was referred to Land Court on 1 October 2014 and an objections decision was made on 15 December 2015 to take effect as of 4:00pm on 17 December 2015, therefore s194 applies to this application.

(2) The administering authority must decide —

- (a) if a draft environmental authority was given for the application -
 - (i) that the application be approved on the basis of the draft environmental authority for the application; or
 - (ii) that the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or
 - (iii) that the application be refused; or

The assessing officer recommends that the application be approved with the stated conditions from the Land Court objection decision, as described in this RSA.

(3) The administering authority must make a final decision on the application –

- (a) if the MRA or State Development Minister is given a copy of the objections decision under section 192 – within 10 business days after the end of the longer period within which either Minister must give advice relating to the application under section 193; or
- (b) otherwise – within 10 business days after receipt by the authority of the notice under section 182(4) that the last remaining objection notice for the application was withdrawn.

The end of the period for the MRA or SD Minister to give an advice was 18 January 2016. The MRA Minister advised EHP that no advice could be provided and SD Minister did not provide correspondence, therefore the decision is due by 2 February 2016.

(4) In making the decision, the administering authority must –

- (a) have regard to –
 - (i) the objections decision, if any; and
 - (ii) all advice, if any, given by the MRA Minister or the State Development Minister to the administering authority under section 193; and
 - (iii) if a draft environmental authority was given for the application – the draft environmental authority; and

In making final decision on the EA, EHP has considered the Land Court objections decision and Draft EA only as no advice was received from the Ministers of MRA or State Development.

195 Issuing environmental authority

If the administering authority decides to approve an application or make a decision under section 170(2)(b) or 171(2)(b), it must issue an environmental authority to the applicant –

- (a) If the application for the authority is referred to the Land Court under section 185 – within 5 business days after a final decision is made under section 194 (2).

The Environmental Authority will be issued by 9 February 2016.

3.0 RECOMMENDATION

It is recommended that the delegate issue the attached EA EPML01470513 for the Carmichael Mine under s195 of the EP Act (version current as at 14 March 2013).

Juliana McCosker

Team Leader (Assessment)

Signed: [Redacted Signature] sch4p4(6) Personal information

Date: 2 February 2016

Reviewed & Endorsed By	
Delegate Kate Bennink A/Delegate	
Signed: [Redacted Signature] sch4p4(6) Personal information	
Date: 2 February 2016	