

STATEMENT OF REASONS FOR DECISION ON NOT CONTROLLED ACTION UNDER THE  
*ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

I, MARK FLANIGAN, Assistant Secretary, Policy and Compliance Branch, Approvals and Wildlife Division, Department of the Environment and Heritage, a delegate of the Minister for the Environment and Heritage for the purposes of section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), provide the following statement of reasons for my decision of 6 May 2005 that the proposed action by Bowen Central Coal Management Pty Ltd to develop the Isaac Plains Coal Project, northeast of Moranbah, Queensland (EPBC 2005/2070), is not a controlled action under the EPBC Act.

**Legislation**

1. Section 68 of the EPBC Act provides:

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

2. Section 74 of the EPBC Act relevantly provides:

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the Environment Minister) must:
  - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
  - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.
- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must:
  - (a) inform the appropriate Minister of the State or Territory; and
  - (b) invite the Minister to give the Environment Minister comments within 10 business days on whether the proposed action is a controlled action; if the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).
- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
  - (a) the referral; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

3. Section 75 of the EPBC Act provides:

- (1) The Minister must decide:
  - (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
  - (b) which provisions of Part 3 (if any) are controlling provisions for the action.

- (1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
- (a) in response to the invitation (if any) under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
  - (b) within the period specified in the invitation.
- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
- (a) the Minister must consider all adverse impacts (if any) the action:
    - (i) has or will have; or
    - (ii) is likely to have;on the matter protected by each provision of Part 3; and
  - (b) must not consider any beneficial impacts the action:
    - (i) has or will have; or
    - (ii) is likely to have;on the matter protected by each provision of Part 3.

### **Background**

4. The proposed action was referred under section 68 of the EPBC Act by Bowen Central Coal Management Pty Ltd. The referral was received by the Department on 7 April 2005. The referral indicated that, in the view of Bowen Central Coal Management Pty Ltd, the proposed action is not a controlled action.
5. The proposed action involves the development of an open cut coal mine in the northern section of the coal exploration permit area known as EPC755. The proposed site lies in the central Queensland coalfields, approximately 7km north east of Moranbah, in the Belyando Shire. The mining lease area (MLA) occupies approximately 2,145ha. Coal mining operations will occur at a rate of 1.9 million tonnes per annum and coal will be crushed, sized and washed on site prior to transport via rail to the Dalrymple Bay Coal Terminal for export. Infrastructure associated with mining operations within the MLA will directly affect approximately 530ha. Such infrastructure will include pits, access roads, water management dams and levees, coal handling and preparation plants, and a rail loop. Power to the mine site will be supplied by three existing power lines, which are located within an easement of the western boundary of the MLA.
6. In accordance with subsection 74(3) of the EPBC Act, the referral, together with an invitation for public comment, was published on the Department's web site on 7 April 2005 for 10 days public comment.
7. One public submission was received from the Proserpine/Whitsunday Branch of the Wildlife Preservation Society of Queensland. This submission raised concerns regarding the loss of habitat for threatened and migratory species and impacts upon the Shoalwater and Corio Bays Ramsar site, and considered that the proposal should be a controlled action.
8. The Queensland Minister for the Environment was informed of the referral in letters dated 7 April 2005, pursuant to section 74(2) of the EPBC Act, and invited to provide comment on whether the proposed action is a controlled action. No comments were received.
9. On 6 May 2005 I decided that the proposed action is not a controlled action.

Evidence or other material on which my findings were based

10. The evidence or other material upon which my findings were based are listed below:

- a brief from the Department, dated 4 May 2005, including the following:
  - a copy of the referral for the proposed action and associated figures and maps;
  - a copy of a paper titled *Environmental Management Overview Strategy* by Matrix Consulting, March 2005;
  - a copy of a paper titled *Isaac Plains Project, Flora & Fauna Assessment* by Ecotone Environmental Services Pty Ltd, February 2005;
  - a copy of the public comment submitted on the referral; and
  - advice from the Department relating to the potential impacts of the proposed action on matters protected under the EPBC Act.

Findings on material questions of fact and reasons for my decision

11. I found that there is no likelihood of the proposed action having a significant impact on a matter protected by any provision of Part 3 of the EPBC Act other than, potentially, sections 18 and 18A (Listed threatened species and ecological communities), and sections 20 and 20A (Listed migratory species).
12. I formed the view that significant impacts on the heritage values of the Great Barrier Reef World Heritage Area or on the ecological character of the Shoalwater and Corio Bays Ramsar site are not likely given the nature and location of the proposed action. In this respect, I found that the mine area is within the catchment of the Isaac River, which flows south into the sea at Rockhampton (a distance of about 300 kilometres). I considered that the nature of any indirect impacts on world heritage values or the ecological character of a Ramsar site associated with the referred action are speculative.
13. I found that the proposed site is located within a cattle-grazing property in the Fitzroy Basin. I found that *Brigalow* (*Acacia harpophylla* dominant and co-dominant) is likely to have occurred previously within the site, but has been cleared to develop pastureland. I therefore found that, as this community has not been recorded from the proposed action site, significant impacts on the community are not likely. I found that, in comparison to adjacent vegetated areas, the proposed site is likely to provide limited potential habitat for listed threatened species, which are known to occur in the general region.
14. I found that fauna surveys carried out in the area have recorded the presence of the listed vulnerable Squatter Pigeon (Southern) (*Geophaps scripta scripta*) several times and that approximately 45ha of potential habitat for the Squatter Pigeon will be cleared by the proposed action. I found that this species is reported as relatively common in the area, and utilises habitat areas within and adjacent to the action site, such as woodland and continuous riparian woodland along Smoky Creek. I found that extensive areas of similar suitable habitat will remain in the locality and that none of the riparian habitats, which are likely to be of most importance to the pigeon, will be significantly disturbed (apart from clearing of a small area for a crossing on Smoky Creek). I therefore found that a significant impact on this species is not likely.
15. I found that the listed vulnerable Yakka Skink (*Egernia rugosa*) and Brigalow Scaly-foot (*Paradelma orientalis*) are both known to occur in the Brigalow Belt Bioregion, however, neither species was recorded from within the site. I found that, based on the information available, important populations of these species are not likely to be present on the site and that the proposed action will not result in the loss of significant areas of habitat for these species such that a significant impact will occur or is likely.

16. I found that the listed vulnerable King Blue-grass (*Dichanthium queenslandicum*) has been recorded approximately 10km from the border of the proposed site, but that it has not been recorded within the site. I found that the endangered Finger Panic Grass (*Digitaria porrecta*) is distributed over approximately 1000km within the Brigalow Belt South Biogeographic Region, however, surveys did not detect its presence at the proposed site. I found that significant impacts on these species are not likely.
17. I found that a number of listed migratory species may occasionally occur within, or overfly, the site of the proposed action. I found that the site does not contain habitat likely to be important in supporting an important population of any listed migratory species and that the proposed action is therefore not likely to have a significant impact on listed migratory species.
18. In making my decision on whether the proposed action is a controlled action, I took account of the precautionary principle and public comments received on the referral from the Proserpine/Whitsunday Branch of the Wildlife Preservation Society of Queensland.
19. In light of my findings set out above, I decided on 6 May 2005 that the proposed action is not a controlled action.



.....  
MARK FLANIGAN

21 / 6 / 2005