



Warkworth Mining Limited

EPBC 2002/629 and EPBC 2009/5081

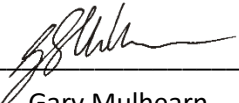
Annual Compliance Report 1 February 2022 to 31 January 2023

Date of Submission: 3 May 2023

Declaration of accuracy

In making this declaration, I am aware that sections 490 and 491 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents.

I declare that all the information presented in this compliance report is technically accurate.

Signed  _____
Full name Gary Mulhearn
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Date 3 May 2023

Document Title	Version	Date effective	Comment
Annual Compliance Report (EPBC2002/629 and EPBC2009/5081)	1	3 May 2023	Submitted to DCCEEW

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List of Attachments

ATTACHMENT A: Regional Offset Management Plan Annual Report 2022

ATTACHMENT B: Local Offset Management Plan Annual Report 2022

ATTACHMENT C: EPBC 2009/5081 Compliance Register (Condition 17)

1. Introduction

1.1 Objective

This annual Compliance Report has been prepared in accordance with the *Annual Compliance Report Guidelines* (Commonwealth of Australia 2014) to satisfy Condition 4 of the EPBC 2002/629 Approval and Condition 15 of the EPBC 2009/5081 Approval, for the period 1 February 2022 to 31 January 2023 (reporting period). Both Approvals are held by Warkworth Mining Limited (WML) which is operated by Coal & Allied (NSW) Pty Ltd, a wholly owned subsidiary of Yancoal Australia Limited (YAL).

1.2 Background

WML holds development consent SSD-6464 to construct and operate an open cut coal mine, located approximately 15 kilometres southwest of Singleton in the Hunter Valley, NSW. The Commonwealth Minister for the Environment, under provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), has issued two approvals to WML to construct, operate and extend the open cut coal mine, the first in February 2004 (EPBC 2002/629) and the second in August 2012 (EPBC 2009/5081).

The EPBC 2002/629 approval (as varied) requires WML to offset the impact upon Matters of National Environmental Significance (MNES) by protecting and managing no less than 1,586 hectares (ha) of habitat for the Regent Honeyeater (*Anthochaera phrygia*) and Swift Parrot (*Lathamus discolor*).

The EPBC 2009/5081 approval (as varied) requires WML to offset the MNES by protecting and managing a total of no less than 2,626 ha, of habitat for the Regent Honeyeater (*Anthochaera phrygia*) and Swift Parrot (*Lathamus discolor*). There are also conditions relating to water management and rehabilitation on the mine site.

The Offset Areas for each of the EPBC approvals are presented in **Table 1**.

Table 1 Location and size of the EPBC Offset Areas

Locality	Biodiversity Area	Offset Area (ha)	EPBC2002/629	EPBC2009/5081 Phase 1	EPBC2009/5081 Phase 2
Local	Southern (Putty Road Offset Area)	94		94	
	Southern	892			892
	Southern Total	986		94	892
	Northern	341			341
Regional	North Rothbury	41			41
	Goulburn River	1,066	1,066		
	Bowditch	520	520		
	Bowditch	82			82
	Putty	383			383
	Seven Oaks	519			519
	Condon View	345			345
Total		4,282	1,586	94	2,602

2. Condition Compliance

2.1 EPBC 2002/629

EPBC2002/629 Condition Number	Condition	Compliance status	Evidence/Comments (Goulburn River BA, Bowditch BA)
1	<p>By no later than 31 July 2020, the person taking action must register the Biodiversity Management Areas identified in the map at Attachment A under a legally secured offset mechanism. The mechanism must provide enduring protection of no less than</p> <p>a) 1,586 ha of suitable habitat for <i>Anthochaera phrygia</i> (regent honeyeater) and <i>Lathamus discolor</i> (swift parrot).</p> <p>Evidence of registration must be provided to the Department within 30 days of registration of the legally binding covenant.</p>	Pending	<p>A request was sent to the Department of the Environment and Energy (DoEE) on 7 December 2017 to extend the due date for a legally binding conservation covenant over the biodiversity areas beyond 17 February 2018. The request was sought on the basis of aligning the timeframe with the NSW Project Approval SSD 6464. DoEE advised by email on 28 February 2018, that given the request was submitted well in advance of 17 February 2018, that no non-compliance would be recorded. After additional consultation and correspondence with DoEE and the NSW Office of Environment and Heritage (OEH), further information was sent to DoEE on 11 September 2018 which noted that WML has been working with the OEH to secure the offsets as Biodiversity Stewardship Agreement (BSA's) pursuant to the Biodiversity Conservation Act 2016. As this Act commenced in August 2017, many of the systems, processes and transitional arrangements were being developed by OEH and the newly created Biodiversity Conservation Trust (BCT). WML had consulted with OEH and developed a timeline to step through the process to register the BSA's, and an extension request was sent to DoEE based on the proposed timeline.</p> <p>Approval from DoEE was received on 14/10/2018, with reference to the 7 December 2017 extension request, for the variation to condition 1 to extend the timeframe by which legally binding covenants must be registered over the offset sites to 31 July 2020.</p> <p>Due to ongoing difficulties in reaching agreement with the NSW Biodiversity and Conservation Division (BCD) on whether the proposed offsets properties meet the species and ecosystem credit retirement requirements of the MTW State Approvals a further extension was sought. MTW sent a letter (dated 24 July 2020) to Department of Agriculture, Water and the Environment (DAWE) requesting an extension of the timeframe to secure the offset areas until 31 July 2021. DAWE responded on 3 August 2020 acknowledging that MTW had contacted DAWE to remedy the potential breach of conditions of approval and that due to the high volume of approval requests it would take some time to respond to this request. DAWE responded to MTW on 7 October 2020 that the proposed timeframe for completion of the legally binding conservation mechanism process was too short and recommended that MTW review</p>

EPBC2002/629 Condition Number	Condition	Compliance status	Evidence/Comments (Goulburn River BA, Bowditch BA)
2	<p>To offset the impacts to the regent honeyeater and swift parrot, the person taking the action must submit to the Minister for approval an Offset Management Plan (OMP) for all of the Biodiversity Management Areas by no later than 13 April 2014.</p> <p>The OMP must include, but not be limited to, the following information:</p>	Compliant	<p>the schedule for completion. This request is still being progressed as MTW has not been able to reach agreement with NSW Department of Planning and Environment (DPE) and BCD on the mechanism/timing for retiring credits and securing the offsets.</p> <p>MTW submitted an administrative modification to NSW development consent SSD-6464 on 29 April 2021 to clarify biodiversity offset requirements for the Warkworth Continuation Project and to facilitate in-perpetuity conservation of biodiversity offset land. The Department of Planning and Environment (DPE) requested additional information on 9 August 2021 and further information on 11 October 2021, MTW provided responses to these requests on 2 September 2021 and 20 December 2021, respectively. Through these interactions DPE has suggested MTW enter into a Biodiversity Stewardship Agreement (BSA) as a mechanism to retire “credits” and to provide “in perpetuity” security. MTW maintain opposition to entering into a BSA because the BCAM credits calculated in 2015 under the BBAM as modified by the Upper Hunter strategic Assessment do not translate to credits calculated under the new BAM, which would be required to satisfy a BSA. MTW is continuing to propose securing of the offset lands through the registering of positive and restrictive covenants on title. This is the only mechanism that MTW are aware of which provides security in perpetuity without requiring MTW to incur significant additional and unnecessary survey costs and without the need to fund a “total fund deposit”. Registering covenants on title has been accepted by DPE as being appropriate at several Yancoal mines to provide long term security of biodiversity offset land.</p> <p>Further to a meeting in June 2021 between representatives from Yancoal and Department of Agriculture, Water and the Environment (DAWE) and in light of the ongoing discussions with DPE, MTW formally requested a variation to Warkworth Mine approvals EPBC 2002/629 and EPBC 2009/5081 to allow for an extension of the timeframe to secure the Warkworth Mine’s offset areas until 31 July 2023. Background information and justification for MTW’s request was provided with the application in October 2021 to assist with the DAWE’s consideration of the variation request.</p> <p>Regional Offset Management Plan (ROMP) submitted to the Environment Assessment Branch of Department of Environment (DoE) for Minister approval 14 April 2014 (13 April 2014 was a Sunday). Regional OMP approved by Minister 06 August 2014.</p> <p>The Independent Audit completed in 2015 indicated that separate Offset Management Plans for Bowditch and Goulburn River BAs would be preferable. In addition, separate plans are required for the legally binding mechanism. Therefore, in February 2017 individual plans were submitted to the Department for approval. In</p>

EPBC2002/629 Condition Number	Condition	Compliance status	Evidence/Comments (Goulburn River BA, Bowditch BA)
			<p>response to comments received from the Department of Environment and Energy (DoEE), a further three versions of the individual plans were submitted during 2017. The final revision, submitted to DoEE in December 2017, was approved on 16 February 2018.</p>
			<p>The Goulburn River and Bowditch BA Management Plans were revised and submitted to DPE for approval in July 2022. The revisions were approved by DPE on 12 August 2022.</p>
2a	<p>a textual description and map to clearly define the location and boundaries of all of the Biodiversity Management Areas. This must be accompanied with the offset attributes and a shapefile</p>	Compliant	Section 2.1 MP Location and Description
2b	<p>details of management actions to protect and enhance the extent and condition of habitat values of the offset areas including but not limited to rehabilitation, weed control, fire management, erosion and sediment control, management of livestock and restrictions on access of no less than 1,586 hectares of habitat for the regent honeyeater and swift parrot</p>	Compliant	Section 3 Objectives, Key Performance Indicators and Completion Criteria and Section 4 Conservation Management Actions of the MP.
2c	<p>the timing, responsibilities and performance criteria for management actions</p>	Compliant	Section 4 Conservation Management Actions of the MP.
2d	<p>a monitoring plan including the undertaking of ecological surveys by a qualified ecologist to assess the success of the management actions against identified milestones and objectives</p>	Compliant	Section 5 Monitoring of the MP.
2e	<p>a process to report, to the department, the management actions undertaken in the offset areas and the outcome of those actions, including identifying any need for improved management</p>	Compliant	Section 1.3 Function of the MP.
2f	<p>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</p>	Compliant	Section 4 Conservation Management Actions of the MP.
2g	<p>details of parties responsible for management, monitoring and implementing the plan, including their position or status as a separate contractor.</p>	Compliant	Section 1.3.2 Key Stakeholders and Roles.

EPBC2002/629 Condition Number	Condition	Compliance status	Evidence/Comments (Goulburn River BA, Bowditch BA)
	The approved OMP must be implemented. The person taking the action must publish the approved OMP on their website within 1 month of the OMP being approved by the Minister. The approved OMP must remain published until the expiry of the approval or until such time as agreed in writing by the Minister.	Compliant	<p>The <i>Regional Offset Management Plan Annual Report 2021 (Attachment A)</i> provides a summary of the management and monitoring activities completed in 2021.</p> <p>Approved Regional Offset Management Plan was originally published on Rio Tinto Coal Australia website on 5 September 2014 and is now published on the Yancoal Australia Insite website at the link below.</p> <p>https://insite.yancoal.com.au/asset/download/150/ff0efb/warkworth-regionaloffsetmanagementplan-062014-1.pdf</p> <p>The Regional Offset Management Plan has now been superseded by individual management plans for the relevant Biodiversity Areas. The current Offset Management Plans are published on the Yancoal MTW website at the link below:</p> <p>https://www.mtwcoal.com.au/page/environment/environmental-management-plans/</p>
	Note: For clarity, the Biodiversity Management Areas in condition 1 and identified on the map in Attachment A can accommodate offset requirements for more than one species habitat within the one area, if a qualified ecologist verifies that suitable habitat is present and includes specific habitat requirements for the relevant species.		
3	The Compliance Report (referred to in condition 4) due in 2015, and Compliance Reports due in each subsequent fifth year until the expiry of the approval, must be audited by an independent auditor. Prior to the commencement of each audit, the independent auditor and the audit criteria must be approved by the Department.	Compliant	<p>The 2015 Compliance Report was audited in 2015 by an independent auditor (Peter Horn), approved by DoE on 24 July 2015.</p> <p>The Independent Audit report was sent to DoE on 20 October 2015.</p> <p>The 2019 Compliance Report was audited by an independent auditor (Hansen Bailey), approved by DPE on 27 – 30 April 2020.</p> <p>The Independent Audit Report was sent to DoE on 17 July 2020.</p> <p>The next audit is due in 2023.</p>
4	Within three months of every 12 month anniversary of the Commencement of Construction, the person taking the action must publish a report (the Compliance Report) on their website addressing compliance with each of the conditions of this approval, including implementation of any plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the department at the same time as	Compliant	This report. Commencement of Construction June 2004.

EPBC2002/629 Condition Number	Condition	Compliance status	Evidence/Comments (Goulburn River BA, Bowditch BA)
	the Compliance Report is published. The person taking the action must also notify any non-compliance with this approval to the department in writing within 2 business days of becoming aware of the non-compliance. The person taking the action must continue to annually publish the Compliance Report until such time as agreed in writing by the Minister.		
5	If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans, as specified in the conditions, the person taking the action must submit to the department for the Minister's written approval a revised version of that plan. The varied activity shall not commence until the Minister has approved the revised plan in writing. If the Minister approves the revised plan that plan must be implemented in place of the plan originally approved.	Compliant	Individual management plans were submitted to the Department for approval in February 2017 and subsequent revisions were submitted in December 2017. The final revisions were approved on 16 February 2018. The Goulburn River and Bowditch BA Management Plans were revised and submitted to DPE for approval in July 2022. The revisions were approved by DPE on 12 August 2022.
6	If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and communities or listed migratory species to do so, the Minister may require that the person taking the action make specified revisions to a management plan specified in the conditions and submit the revised plan for the Minister's written approval. The revised approved plan must be implemented. Unless the Minister has approved the revised plan the person taking the action must continue to implement the originally approved plan, as specified in the conditions.	Compliant	Comments on the individual management plans were received from DoEE on 13/04/2017 and 22/06/2017. Agreed changes were made to the revised management plans submitted in December 2017.

2.2 EPBC 2009/5081

EPBC2009/5081 Condition Number	Condition	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
1	<p>To offset the impact on the foraging habitat for <i>Anthochaera Phrygia</i> (regent honeyeater) and <i>Lathamus discolor</i> (swift parrot), the person taking the action must register a legally binding conservation mechanism over 94ha of land, as illustrated in the map at Attachment A as the Phase 1 Offset. The conservation mechanism must provide enduring protection for the Phase 1 Offset (Putty Road) and must be registered by 31 July 2020.</p> <p>Evidence of registration must be provided to the Department within 30 days of registration of the legally binding conservation mechanism.</p>	Pending	<p>A request was sent to DoEE on 7 December 2017 to extend the due date for a legally binding conservation covenant over the biodiversity areas beyond 17 February 2018. The request was sought on the basis of aligning the timeframe with the NSW Project Approval SSD 6464. DoEE advised by email on 28 February 2018, that given the request was submitted well in advance of 17 February 2018, that no non-compliance would be recorded. After additional consultation and correspondence with DoEE and the NSW Office of Environment and Heritage (OEH), further information was sent to DoEE on 11 September 2018 which noted that WML has been working with the OEH to secure the offsets as Biodiversity Stewardship Agreement (BSA's) pursuant to the Biodiversity Conservation Act 2016. As this Act commenced in August 2017, many of the systems, processes and transitional arrangements are being developed by OEH and the newly created Biodiversity Conservation Trust (BCT). WML had consulted with OEH and developed a timeline to step through the process to register the BSA's, and an extension request was sent to DoEE based on the proposed timeline.</p> <p>Approval from DoEE was received on 14/10/2018, with reference to the 7 December 2017 extension request, for the variation to condition 1 to extend the timeframe by which legally binding covenants must registered over the offset sites to 31 July 2020.</p> <p>Due to ongoing difficulties in reaching agreement with the NSW Biodiversity and Conservation Division (BCD) on whether the proposed offsets properties meet the species and ecosystem credit retirement requirements of the MTW State Approvals a further extension has been sought. MTW sent a letter (dated 24 July 2020) to Department of Agriculture, Water and the Environment (DAWE) requesting an extension of the timeframe to secure the offset areas until 31 July 2021. DAWE responded on 3 August 2020 acknowledging that MTW had contacted DAWE to remedy the potential breach of conditions of approval and that due to the high volume of approval requests it would take some time to respond to this request. DAWE responded to MTW on 7 October 2020 that the proposed timeframe for completion of the legally binding conservation mechanism process was too short and recommended that MTW review the schedule for completion. This request is still being progressed as MTW has not been able to reach agreement with NSW Department of Planning and Environment (DPE) and BCD on the mechanism/timing for retiring credits and securing the offsets.</p>

EPBC2009/5081 Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
		<p>MTW submitted an administrative modification to NSW development consent SSD-6464 on 29 April 2021 to clarify biodiversity offset requirements for the Warkworth Continuation Project and to facilitate in-perpetuity conservation of biodiversity offset land. The Department of Planning and Environment (DPE) requested additional information on 9 August 2021 and further information on 11 October 2021, MTW provided responses to these requests on 2 September 2021 and 20 December 2021, respectively. Through these interactions DPE has suggested MTW enter into a Biodiversity Stewardship Agreement (BSA) as a mechanism to retire “credits” and to provide “in perpetuity” security. MTW maintain opposition to entering into a BSA because the BCAM credits calculated in 2015 under the BBAM as modified by the Upper Hunter strategic Assessment do not translate to credits calculated under the new BAM, which would be required to satisfy a BSA. MTW is continuing to propose securing of the offset lands through the registering of positive and restrictive covenants on title. This is the only mechanism that MTW are aware of which provides security in perpetuity without requiring MTW to incur significant additional and unnecessary survey costs and without the need to fund a “total fund deposit”. Registering covenants on title has been accepted by DPE as being appropriate at several Yancoal mines to provide long term security of biodiversity offset land.</p> <p>Further to a meeting in June 2021 between representatives from Yancoal and Department of Agriculture, Water and the Environment (DAWE) and in light of the ongoing discussions with DPE, MTW formally requested a variation to Warkworth Mine approvals EPBC 2002/629 and EPBC 2009/5081 to allow for an extension of the timeframe to secure the Warkworth Mine’s offset areas until 31 July 2023. Background information and justification for MTW’s request was provided with the application in October 2021 to assist with the DAWE’s consideration of the variation request.</p>
<p>2</p> <p>To offset the impacts on the foraging habitat of the regent honeyeater and swift parrot, the person taking the action must submit to the Minister for approval an Offset Management Plan (OMP) for the Phase 1 Offset identified in Attachment A by no later than 13 April 2014.</p> <p>The OMP must include, but not be limited to the following:</p>	Compliant	<p>Draft Putty Road Offset - Offset Management Plan (OMP) submitted to Department of Environment and Energy (DoEE) 14 April 2014 (13 April was a Sunday). DoEE approval of Putty Road Offset OMP dated 4 July 2014. In February 2017 a Southern BA Offset Management Plan was submitted to the Department for approval, as it contains the Phase 1 Offset (Putty Road Offset Area) and the Phase 2 Offset. This plan is to be used as part of the legally binding mechanism to secure both the Phase 1 and 2 Offsets. A revised version of the Southern BA Management Plan was submitted to DoEE in December 2017 to address comments provided by DoEE on the February 2017 version. The Southern BA Management Plan was approved by DoEE on 16 February 2018.</p> <p>The Southern BA Management Plan was reviewed and submitted in November 2020. The revisions were approved by DPE on 20 July 2021.</p>

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
2a	Compliant	The Southern BA Management Plan was reviewed and submitted in July 2022. The revisions were approved by DPE on 12 August 2022.
		Section 2.1 Location and description of the MP
2b	Compliant	Section 3 Objectives, Key Performance Indicators and Completion Criteria and Section 4 Conservation Management Actions of the MP.
2c	Compliant	Section 4 Conservation Management Actions of the MP.
2d	Compliant	Section 5 Monitoring of the MP.
2e	Compliant	Section 1.3.2 Key Stakeholders and Roles.
2f	Compliant	Section 4 Conservation Management Actions and Section 6 Risk Assessment of the MP.
2g	Compliant	Section 1.3.2 Key Stakeholders and Roles.
	Compliant	Implementation of the conservation management strategies and monitoring as described in the Putty Road OMP and the broader Local OMP is supported by their Annual Reports. The Local OMP describes the management of the area surrounding the Putty Road Offset, this area is referred to as the Southern Biodiversity Area.
The approved OMP must be implemented. Note: Offset areas can accommodate offset requirements for more than one species habitat within the one area, if a qualified ecologist verifies that suitable habitat is present and includes specific habitat requirements for the relevant species.		

EPBC2009/5081 Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
<p>3</p> <p>Prior to Commencement of Construction of Phase 2 of the action, the person taking the action must submit to the Minister details of at least 2,532 hectares of suitable habitat for the Regent Honeyeater and Swift Parrot (Phase 2 Offset) to offset impacts on foraging habitat for these two species.</p> <p>The details of offset sites must include offset attributes and shapefiles and ecological assessment reports. If the offset sites are different to those offset sites previously approved under the approval granted on 9 August 2012, the new offset sites must be submitted to the Minister for approval.</p>	Compliant	<p>The <i>Local Offset Management Plan Annual Report 2022 (Attachment B)</i> provides a summary of the management and monitoring activities completed in 2022.</p> <p>Submission of the Phase 2 offsets details was on the 12 January 2016.</p> <p>Approval of Phase 2 offsets was 17 February 2016.</p>
<p>4</p> <p>To offset the impacts on the foraging habitat of the Regent Honeyeater and Swift Parrot, the person taking the action must register a legally binding conservation mechanism on all Phase 2 offsets by 31 July 2020.</p> <p>Evidence of registration must be provided to the Department within 30 days of registration of the legally binding conservation mechanism.</p>	Pending	<p>A request was sent to DoEE on 7 December 2017 to extend the due date for a legally binding conservation covenant over the biodiversity areas beyond 17 February 2018. The request was sought on the basis of aligning the timeframe with the NSW Project Approval SSD 6464. DoEE advised by email on 28 February 2018, that given the request was submitted well in advance of 17 February 2018, that no non-compliance would be recorded. After additional consultation and correspondence with DoEE and the NSW Office of Environment and Heritage (OEH), further information was sent to DoEE on 11 September 2018 which noted that WML has been working with the OEH to secure the offsets as Biodiversity Stewardship Agreement (BSA's) pursuant to the Biodiversity Conservation Act 2016. As this Act commenced in August 2017, many of the systems, processes and transitional arrangements are being developed by OEH and the newly created Biodiversity Conservation Trust (BCT). WML had consulted with OEH and developed a timeline to step through the process to register the BSA's, and an extension request was sent to DoEE based on the proposed timeline.</p> <p>Approval from DoEE was received on 14/10/2018, with reference to the 7 December 2017 extension request, for the variation to condition 4 to extend the timeframe by which legally binding covenants must be registered over the offset sites to 31 July 2020.</p>

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
		<p>Due to ongoing difficulties in reaching agreement with the NSW Biodiversity and Conservation Division (BCD) on whether the proposed offsets properties meet the species and ecosystem credit retirement requirements of the MTW State Approvals a further extension has been sought. MTW sent a letter (dated 24 July 2020) to Department of Agriculture, Water and the Environment (DAWE) requesting an extension of the timeframe to secure the offset areas until 31 July 2021. DAWE responded on 3 August 2020 acknowledging that MTW had contacted DAWE to remedy the potential breach of conditions of approval and that due to the high volume of approval requests it would take some time to respond to this request. DAWE responded to MTW on 7 October 2020 that the proposed timeframe for completion of the legally binding conservation mechanism process was too short and recommended that MTW review the schedule for completion. This request is still being progressed as MTW has not been able to reach agreement with NSW Department of Planning and Environment (DPE) and BCD on the mechanism/timing for retiring credits and securing the offsets</p> <p>MTW submitted an administrative modification to NSW development consent SSD-6464 on 29 April 2021 to clarify biodiversity offset requirements for the Warkworth Continuation Project and to facilitate in-perpetuity conservation of biodiversity offset land. The Department of Planning and Environment (DPE) requested additional information on 9 August 2021 and further information on 11 October 2021, MTW provided responses to these requests on 2 September 2021 and 20 December 2021, respectively. Through these interactions DPE has suggested MTW enter into a Biodiversity Stewardship Agreement (BSA) as a mechanism to retire “credits” and to provide “in perpetuity” security. MTW maintain opposition to entering into a BSA because the BCAM credits calculated in 2015 under the BBAM as modified by the Upper Hunter strategic Assessment do not translate to credits calculated under the new BAM, which would be required to satisfy a BSA. MTW is continuing to propose securing of the offset lands through the registering of positive and restrictive covenants on title. This is the only mechanism that MTW are aware of which provides security in perpetuity without requiring MTW to incur significant additional and unnecessary survey costs and without the need to fund a “total fund deposit”. Registering covenants on title has been accepted by DPE as being appropriate at several Yancoal mines to provide long term security of biodiversity offset land.</p> <p>Further to a meeting in June 2021 between representatives from Yancoal and Department of Agriculture, Water and the Environment (DAWE) and in light of the ongoing discussions with DPE, MTW formally requested a variation to Warkworth</p>

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
5	Compliant	<p>Mine approvals EPBC 2002/629 and EPBC 2009/5081 to allow for an extension of the timeframe to secure the Warkworth Mine's offset areas until 31 July 2023. Background information and justification for MTW's request was provided with the application in October 2021 to assist with the DAWE's consideration of the variation request.</p> <p>The OMP is to be revised to include the approved Phase 2 offsets on or before 17 February 2017.</p> <p>Plans were submitted for approval on 15 February 2017 for the Southern, Northern, North Rothbury, Seven Oaks, Condon View and Putty BAs.</p> <p>The Southern and Northern BA Plans were reviewed and submitted November 2020. The revisions were approved by DPE on 20 July 2021.</p> <p>The Southern, Northern, North Rothbury, Seven Oaks, Condon View and Putty BA Management Plans were reviewed and submitted in July 2022. The revisions were approved by DPE on 12 August 2022.</p>
Re-establishment of Woodland in Biodiversity Management and Offset Areas		
6	Compliant	<p>Draft Putty Road Offset REP submitted to DoE 2 February 2015.</p> <p>Comments were received on the 18 July 2016.</p> <p>WML sought approval to address these comments in the Southern BA Management Plan, which was submitted on 15 February 2017. This plan includes a compliance table to show that all elements of this condition are met.</p> <p>The <i>Local Offset Management Plan Annual Report 2022 (Attachment B)</i> provides a summary of the management and monitoring activities completed in 2022.</p>

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)	
<ul style="list-style-type: none"> b. documentation including mapping of current environmental values relevant to MNES of the re-establishment areas; c. where revegetation through planting seedlings and/or seeds is intended, details of appropriate species and ratios of species relevant to historically occurring listed migratory and listed threatened species' habitat; d. the source and provenance of the seeds and/or seedlings which will be used; e. measures to address threats to MNES including but not limited to grazing pressure and damage by livestock and adverse impacts from feral animals and weeds; f. measures to provide fire management regimes appropriate for the MNES; g. measures to manage the MNES in accordance with the recommendations of the approved recovery plan for the migratory and threatened species; h. monitoring measures including ecological surveys to measure the establishment and ongoing success of the revegetation based on a comparison with high quality habitat for the MNES; i. performance measures and reporting requirements against identified objectives, including trigger levels for contingency measures to be taken to ensure performance measures and objectives are met; and j. identify persons responsible and arrangements for implementing the REP and for reporting on performance. 			
<p>The approved REP must be implemented.</p>			
7	The approved REP, as described in condition 6, must be revised by the person taking the action to include at least those activities as	Compliant	The REP is to be revised to include the approved Phase 2 offsets on or before 16 February 2017.

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
		<p>The Management Plans submitted for the Southern, Northern, North Rothbury, Seven Oaks, Condon View and Putty BAs on 15 February 2017 for approval. These plans contained the requirements of the REP and include a compliance table to show that all elements of this condition are met.</p>
8	Compliant	<p>As a precautionary approach, the person taking the action must within 6 months of the date of this approval, or such other timeframe as specified in writing by the Minister, provide to the Minister any NSW Government approved water management plans which apply to the approved action.</p> <p>Water Management Plan (WMP) approved by NSW regulator 10 September 2014. A copy of the WMP was sent to DoEE on 15 September 2014. No request has been received by DoEE to provide further copies of the WMP.</p> <p>The Water Management Plan was revised and submitted to NSW Department of Planning and Environment (DPE) on 2/12/2015 following the WML and MTO Continuation Approvals. It was subsequently approved on 29/1/2016. A minor revision to update monitoring programmes was completed on 21/3/2016. A major revision was submitted to DPE on 16/5/2017, following the incorporation of stream and riparian health monitoring in Wollombi Brook and Loders Creek. The plan was approved 26 June 2017. The WMP was revised and submitted to DPE on 30 November 2017 to reflect the change to Yancoal ownership. The plan was approved 12 February 2018. The WMP was revised and submitted to DPE on 27 July 2018 following the Annual Review submission. Changes were made on 18 September 2018 in response to DP&E feedback and the revised plan was approved 20 September 2018.</p> <p>The WMP was reviewed and submitted to DPE on 30 April 2020 to include revised water management classifications following regulatory feedback and updates to HRSTS content. The revised plan was approved 13 May 2020.</p> <p>The WMP was reviewed and submitted to DPE on 28 July 2020 to include updated monitoring programmes revised triggers. An additional update was submitted on the 31 October 2021 and included the monitoring programmes revised triggers and surface water and groundwater monitoring location plans, and the incorporation of DPE feedback on rehabilitation runoff and water management infrastructure figures. Updates were also made to HRSTS licence discharge limits to align with current Environmental Protection Licences and change website references. The revised plan was approved 15 November 2021.</p> <p>The latest version of the WMP can be found at https://www.mtwcoal.com.au/page/environment/environmental-management-plans/</p>

EPBC2009/5081 Condition Number	Condition	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
9	<p>The person taking the action must within 6 months of the date of this approval, or such other timeframe as specified by the Minister, provide to the Minister a report on:</p> <ul style="list-style-type: none"> a. any updated modelling of surface and groundwater impacts that have been undertaken in preparing the water management plans b. how the water management plans have addressed groundwater and surface water impacts on nationally listed threatened species and ecological communities 	Compliant	These conditions are addressed in the WMP (refer Condition 8).
10	<p>If, after receiving the water management plans described in condition 8 and the report in condition 9, the Minister is not satisfied the water management plans adequately address impacts on listed threatened species and ecological communities, the Minister may require in writing that the person taking the action provide additional information within a specified timeframe.</p>	Not triggered	
11	<p>The person taking the action must, within 12 months of the Commencement of Construction of Phase 1, and within 12 months of the Commencement of Construction of Phase 2, submit to the Minister for approval a Mine Site Rehabilitation Plan (MSRP) for the progressive rehabilitation and revegetation of no less than 32ha woodland of mined areas for Phase 1 and 2,303ha of woodland habitat on mined areas for Phase 2.</p> <p>The MSRP must include, at a minimum, the following information:</p> <ul style="list-style-type: none"> a. the desired outcomes/objectives of implementing the MSRP b. details of the vegetation communities to be rehabilitated and the timing of progressive rehabilitation c. a process to progressively report to the department the rehabilitation management actions undertaken and the outcome of those actions, and the mechanisms to be used to identify the need for improved management d. a description of the potential risks to successful management and rehabilitation on the project site, and a description of the 	Compliant	<p>The Mine Site Rehabilitation Plan (MSRP) was contained within the Mining Operations Plans; a copy of which was submitted to DoEE 2 February 2015.</p> <p>Feedback was received from DoEE on the 18 July 2016.</p> <p>Approval was received to address these comments in the next revision of the Mining operations Plan. The revised Mining Operations Plan was submitted to DoEE for approval on 23 May 2019. Approval from DoEE was received on 11 March 2020.</p> <p>The revised Mining Operations Plan was submitted to DoEE on 18 November 2021. Approval from DoEE was received on 30 November 2021.</p> <p>Rehabilitation Management Plans are required to be prepared under the new standard rehabilitation conditions on mining leases. The Rehabilitation Management Plan was prepared on 28 July 2022. This document takes the place of the Mining Operations Plan.</p> <p>MTW is waiting for a response from Resources Regulator on the associated Rehabilitation Objectives Statement and Final Landform and Rehabilitation Plan. In response to this feedback, an updated Rehabilitation Management Plan will be prepared and submitted to Department of Climate Change, Energy, the Environment and Water (DCCEEW)..</p>

EPBC2009/5081 Condition Number	Condition	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
	<p>contingency measures that would be implemented to mitigate these risks</p> <p>e. details of parties responsible for reviewing and implementing the plan</p> <p>f. details of long term management and protection of the mine site</p> <p>The approved MSRP must be implemented.</p>		
12	<p>The person taking the action must submit to the Minister for approval a Mine Closure Plan (MCP) at least 6 months prior to the closure of the mine. The approved MCP must be implemented.</p> <p>Note: The person taking the action may develop a single mine rehabilitation plan to align with the requirements of this approval and those of the NSW Government.</p>	Not triggered	
13	<p>All survey data collected for the project must be collected and recorded so as to conform to data standards notified from time to time by the department. When requested by the department, the person taking the action must provide to the department all species and ecological survey data and related survey information from ecological surveys undertaken for MNES. This survey data must be provided within 30 business days of request, or in a timeframe agreed to by the department in writing. The department may use the survey data for other purposes.</p>	Compliant	<p>All survey data is retained by WML, the offset data is stored within the Biodiversity Offset Portal. Access to the portal was provided to DoEE in 2015.</p> <p>No requests for survey data have been received.</p>
14	<p>Within 14 days after the Commencement of Construction of Phases 1 and 2, the person taking the action must advise the department in writing of the actual date of Commencement of Construction.</p>	Compliant	<p>Phase 1 construction commenced on 3 February 2014 and WML notified DoEE in writing on 13 February 2014.</p> <p>Phase 2 construction commenced on 16 February 2016 and WML notified DoEE in writing on 16 February 2016.</p>
15	<p>Within 3 months of every 12 month anniversary of the Commencement of Construction of Phase 1, the person taking the action must publish a report (the Compliance Report) on their website addressing compliance with each of the conditions of this approval, including implementation of any plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of</p>	Compliant	<p>Compliance report due before 3 May each year (based on date of commencement of construction 3 February 2014).</p> <p>2022 Compliance Report published on Yancoal MTW website 3 May 2023.</p>

EPBC2009/5081 Condition Condition Number	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
		<p>this approval must be provided to the department at the same time as the Compliance Report is published. The person taking the action must also notify any non-compliance with this approval to the department in writing within 2 business days of becoming aware of the noncompliance.</p> <p>The person taking the action must continue to annually publish the Compliance Report until such time as agreed in writing by the Minister.</p>
16	Not triggered	<p>Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the 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.</p>
17	Compliant	<p>Where the conditions require the person taking the action to submit a plan for the Minister's approval, the person taking the action must maintain a register recording:</p> <ul style="list-style-type: none"> a. the date on which each plan was approved by the Minister b. if a plan has not been approved by the Minister, the date on which it was, or is expected to be, submitted to the Minister. c. the dates on which reports on the outcomes of reviews have been approved by the Minister d. the dates on which the subsequent reviews are due <p>The register must be submitted to the department at the time as the Compliance Report, as described at condition 15.</p>
18	Not triggered	<p>If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans, as specified in the</p>

EPBC2009/5081 Condition Number	Condition	Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
	<p>conditions, the person taking the action must submit to the department for the Minister's written approval a revised version of that plan. The varied activity shall not commence until the Minister has approved the revised plan in writing. If the Minister approves the revised plan that plan must be implemented in place of the plan originally approved.</p>		
19	<p>If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and communities or listed migratory species to do so, the Minister may require that the person taking the action make specified revisions to a management plan specified in the conditions and submit the revised plan for the Minister's written approval.</p> <p>The revised approved plan must be implemented. Unless the Minister has approved the revised plan the person taking the action must continue to implement the originally approved plan, as specified in the conditions.</p>	Not triggered	
20	<p>If, at any time after 5 years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.</p>	Not triggered	<p>The action has commenced as per the Commencement of Construction (3 February 2014)</p>
21	<p>The person taking the action must maintain accurate records substantiating all activities and outcomes associated with or relevant to the above conditions of approval, including measures taken to implement the management plans required by this approval, and make them available upon request to the department.</p> <p>Such records may be subject to audit by the department or an independent auditor appointed and/or approved by the department, and used to verify compliance with the conditions of approval. Summaries of audits will be posted on the department's website. The results of audits may also be publicised through the general media.</p>	Compliant	<p>Records of activities and outcomes are maintained by WML.</p>

EPBC2009/5081 Condition Condition Number		Compliance status	Evidence/Comments (Southern BA, Northern BA, Putty BA, Condon View BA, Seven Oaks BA, Bowditch BA, North Rothbury BA)
22	Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all plans referred to in these conditions of approval on their website. Each plan must be published on the website within 1 month of being approved. The person taking the action must notify the department within 5 business days of publishing the plan on their website and the plan must remain on the website for the period this approval has effect.	Compliant	All approved plans have been published on the Yancoal MTW website.

3. New environmental risks and potential threats to Matters of National and State Environmental Significance

No new environmental risks have been identified during the reporting period.

ATTACHMENT A:

Regional Offset Management Plan

Annual Report 2022

ATTACHMENT B:

Local Offset Management Plan Annual Report 2022

ATTACHMENT C: EPBC 2009/5081 Compliance Register (Condition 17)

EPBC 2009/5081 Compliance Register (Condition 17)

Condition	Documents	Date due (as per Approval)	Date submitted	Date approved	Date Plan on website	Date DoEE notified	Date review due
2	Putty Road Offset Management Plan	13-Apr-2014	14-Apr-2014	04-Jul-2014	31-Jul-2014	31-Jul-2014	within 12 months of the approval of the Phase 2 Offset (refer Condition 5)
5	Southern BA Management Plan	17-Feb-2017	15-Feb-2017 14-Dec-2017 (revised version) 13-Nov-2020 (revised version) 28-Jul-2022 (revised version)	30-Apr-2018 20-Jul-2021 12-Aug-2022	28-Feb-2019 22-Jul-2021 10-Nov-2022	N/A	12-Aug-2026
6	Re-Establishment Management Plan	03-Feb-2015	02-Feb-2015	Not yet received	N/A	N/A	within 12 months of the Commencement of Construction of Phase 2
7	Putty, Seven Oaks, Goulburn River, Bowditch and North Rothbury Biodiversity Area Management Plans	17-Feb-2017	15-Feb-2017 14-Dec-2017 (revised versions) 28-Jul-2022 (revised version)	16-Feb-2018 (DoEE) 30-Apr-2018 (DPE)	28-May-2018 27-Sep-2018	N/A	12-Aug-2026
	Northern Management Plan		15-Feb-2017 14-Dec-2017 (revised version) 13-Nov-2020 (revised version) 28-Jul-2022 (revised version)	16-Feb-2018 (DoEE) 25-Sep-2018 (DPE) 20-Jul-2021	27-Sep-2018 22-Jul-2021	N/A	12-Aug-2026
	Condon View Biodiversity Area Management Plan		15-Feb-2017 10-Oct-2017 (revised version) 28-Jul-2022 (revised version)	12-Aug-2022	4-Nov-2022	N/A	
8	Water Management Plan	03-Aug-2014	15-Sep-2014 (following approval by NSW regulator 10-Sep-2014) 30-Apr-2020 (revised version). 28-Jul-2020 (revised version)	20-Sep-2018 (DPE) 13-May-2020 (DP&E) 15-Nov-2021	27-Sep-2018 13-May-2020 3-Feb-2022 (most recent version)	15-Sep-2014	N/A

Condition	Documents	Date due (as per Approval)	Date submitted	Date approved	Date Plan on website	Date DoEE notified	Date review due
11	Mine Site Rehabilitation Plan (Phase 1)	03-Feb-2015	02-Feb-2015	Not yet received	N/A	N/A	within 12 months of the Commencement of Construction of Phase 2
	Mine Site Rehabilitation Plan (Phase 2)	17-Feb-2017	23-Jan-2019 (following approval by NSW regulator 14-Dec-2018)	11-Jun-2019 (DPE) 11-Mar-2020 (DAWE)	N/A	N/A	N/A
			18-Nov-2021.	30-Nov-2021	19-Jan-2022	2-Aug-2022	
			28-Jul-2022	N/A for New RMP process	11-Aug-2022	Within 30 days of approval of a rehabilitation outcome document.	
12	Mine Closure Plan	6 months prior to mine closure	N/A	N/A	N/A	N/A	N/A
15	Compliance Report	03-May-2015 (and annually thereafter)	28-Apr-2015	N/A	28-Apr-2015	28-Apr-2015	03-May-2016
		03-May-2016	03-May-2016	N/A	03-May-2016	03-May-2016	03-May-2017
		03-May-2017	01-Jun-2017	N/A	10-Jun-2017	01-Jun-2017	03-May 2018
		03-May-2018	03-May-2018	N/A	03-May-2018	03-May-2018	03-May 2019
		03-May-2019	03-May-2019	N/A	03-May-2019	03-May-2019	03-May 2020
		03-May-2020	03-May-2020	N/A	03-May-2020	03-May-2020	03-May 2021
		03-May-2021	03-May-2021	N/A	03-May-2021	03-May-2021	03-May-2022
		03-May-2022	03-May-2022	N/A	03-May-2022	03-May-2022	03-May-2023
03-May-2023	03-May-2023	N/A	03-May-2023	03-May-2023	03-May-2024		