



APPROVAL

Moolarben Coal Operations Open Cut Optimisation Modification, NSW (EPBC 2017/7974)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the EPBC Act). Note that section 134(1A) of the EPBC Act applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Moolarben Coal Operations Pty Ltd
ACN or ABN of approval holder	ACN 077 939 569
Action	To modify and extend the Moolarben Coal Project (Stage 1 and Stage 2), 40 km north of Mudgee, NSW [See EPBC Act referral 2017/7974].

Proposed Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

Controlling Provisions

Sections 18 and 18A (Listed threatened species and communities)	Approve
Sections 24D and 24E (Coal seam gas or large coal mining development impacts on water resources)	Approve

Period for which the approval has effect

This approval has effect until 31 December 2050.

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

Decision-maker

Name and position	Mike Smith A/g Assistant Secretary Environment Approvals and Wildlife Trade Branch
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Signature



Date of decision 6.9.19

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

To limit the impacts of the action on protected matters:

1. The approval holder must undertake the **Moolarben Coal Project** within the **development footprint**.

To compensate for the impacts of the action on listed threatened species and communities:

2. The approval holder must comply with Condition 34A of Schedule 3 of the **NSW Consolidated Project Approvals** to implement the supplementary offset strategy, by retiring the required number of credits specified in Table 12A.
3. The approval holder must comply with Conditions 35A of the **NSW Consolidated Project Approvals** to secure the credits and/or area at the Gilgal Offset Area (as identified at Attachment B) under a **Biodiversity Stewardship Agreement**, unless otherwise agreed in writing by the **Minister**. The approval holder may seek agreement from the **Minister** to use an alternative mechanism to secure the credits and/or area, subject to the additional rules at Condition 20. The approval holder must submit a copy of the **Biodiversity Stewardship Agreement** to the **Minister** within ten business days of an agreement being made.
4. The approval holder must provide for the long-term security of the **Area 2 (extract) offset area** as identified at Attachment B), by 30 June 2020. The approval holder must submit details of the security mechanism to the **Minister** within ten business days of the mechanism being made.
5. The approval holder must enhance existing native vegetation in the **Area 2 (extract) offset area**, in accordance with the biodiversity offset strategy required by Condition 34 of the **NSW Consolidated Project Approvals**, and in accordance with the **Biodiversity Management Plan** required by Condition 36 of Schedule 3 of the **NSW Consolidated Project Approvals**.
6. The approval holder must comply with Condition 35B of Schedule 3 of the **NSW Consolidated Project Approvals** to develop suitable rehabilitation performance and completion criteria for the rehabilitation of OC2 and/or OC3, to generate the required number of residual credits specified in Table 12A of Schedule 3.
7. Unless the approval holder retires the residual credits in accordance with Condition 8, the approval holder must undertake progressive rehabilitation of OC2 and OC3, so as to meet the rehabilitation performance and completion criteria developed in accordance with Condition 6, and in accordance with an **approved Rehabilitation Management Plan**.

The approval holder must also comply with Condition 35C of Schedule 3 of the **NSW Consolidated Project Approvals** to retire the residual credits if the performance and completion criteria are not achieved in the specified timeframe in Condition 35C, subject to the additional rules at Condition 20.

8. The approval holder may retire the residual credits earlier than the specified timeframe in Condition 35C in accordance with Condition 35D of Schedule 3 of the **NSW Consolidated Project Approvals**, subject to the additional rules at Condition 20. If the approval holder chooses to retire credits early, the approval holder must notify the **Department** within 30 business days of retiring the credits.

Note: the EPBC Act **protected matters** relevant to the credits in Table 12A of the **NSW Consolidated Project Approvals** are identified in Attachment C.

To manage the impacts of the action on listed threatened species and communities:

9. The approval holder must comply with Condition 36 of Schedule 3, and Conditions 3 and 5 of Schedule 5, of the **NSW Consolidated Project Approvals** to prepare and implement a **Biodiversity Management Plan** for the **Moolarben Coal Project**.
10. The **Biodiversity Management Plan** implemented in accordance with Condition 9 must be approved by the Department as adequately providing for the management of **protected matters** on the **site** and in the offset areas.

To manage the impacts of the action on water resources:

11. The approval holder must comply with Condition 33 of Schedule 3, and Conditions 3 and 5 of Schedule 5, of the **NSW Consolidated Project Approvals** to prepare and implement a revised Water Management Plan for the **Moolarben Coal Project**.
12. The approval holder must comply with the timing and content requirements of Condition 32A of Schedule 3 of the **NSW Consolidated Project Approvals** for the completion of an Independent Water Quality Study (IQWS).
13. The approval holder must ensure that the performance measures recommended in the IQWS are incorporated in a revised version of the Water Management Plan within 12 months of the IQWS being completed, and must implement the revised Water Management Plan.
14. The approval holder must comply with condition 33A of the **NSW Consolidated Project Approvals** to prepare and implement a Brine Management Plan.

Part B – Standard administrative conditions

Notification of date of commencement of the action

15. The approval holder must notify the **Department** in writing of the date of **commencement of works in OC3**, within ten business days after the date of **commencement of works in OC3**.
16. The approval holder must notify the Department in writing of the date of **commencement of operation of the water treatment facility**, within ten business days after the date of **commencement of operation of the water treatment facility**.

Compliance records

17. The approval holder must maintain accurate and complete **compliance records**.
18. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's** website or through the general media.

Preparation and publication of plans

19. The approval holder must:
 - a. Submit the **Biodiversity Management Plan** electronically to the **Department** for approval by the **Minister**.
 - b. Publish each **plan** on its website within 20 business days of the date the **plan** is approved by the **Minister** and/or **Secretary**.
 - c. Exclude or redact **sensitive ecological data** from **plans** published on its website or provided to a member of the public.

Rules for retiring credits

20. The approval holder must use one or a combination of the following methods to retire the credits required for protected matters:
- a. Retire like-for-like biodiversity credits within the meaning of the *Biodiversity Conservation Act 2016* (NSW).
 - b. Make payments into an offsets fund that has been developed by the NSW Government and that has been endorsed by the **Minister**. The financial contribution or payments into an offset fund must be determined by converting biodiversity credits to an equivalent dollar value through the NSW offsets payment calculator. The approval holder must submit evidence to the **Minister** of any payments, within ten business days of the payment being made.
 - c. Fund a biodiversity conservation action within the meaning of the *Biodiversity Conservation Act 2016* (NSW). The financial contribution to biodiversity conservation actions must be determined by converting biodiversity credits to an equivalent dollar value through the NSW offsets payment calculator. The approval holder must submit to the **Minister** evidence of any payments within ten business days of the payment being made.

Annual compliance reporting

21. The approval holder must prepare a **compliance report** each year. The timing for preparing the compliance report must be consistent with the requirements of Condition 4 of Schedule 5 of the **NSW Consolidated Project Approvals**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Department**. The approval holder must:
- a. Publish each **compliance report** on its website within one month of being approved by the **Secretary**.
 - b. Notify the **Department** by email that a **compliance report** has been published on its website within five business days of the date of publication.
 - c. Exclude or redact **sensitive ecological data** from **compliance reports** published on its website.
 - d. Where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within five business days of publication.

Note: **Compliance reports** may be published on the **Department's** website.

Reporting non-compliance

22. The approval holder must notify the **Department** in writing of any non-compliance with the conditions or non-compliance with the commitments made in **plans** that relate to **protected matters**. The notification must be given no later than two business days after becoming aware of the non-compliance. The notification must specify:
- a. The condition which is or may be in breach.
 - b. A short description of the non-compliance.
23. The approval holder must provide to the **Department** the details of any non-compliance with the conditions or commitments made in **plans** that relate to **protected matters** no later than ten business days after becoming aware of the non-compliance, specifying:
- a. Any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future.
 - b. The potential impacts of the non-compliance.
 - c. The method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

24. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
25. For each **independent audit**, the approval holder must:
 - a. Provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**.
 - b. Only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**.
 - c. Submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
26. The approval holder must publish the audit report on its website within ten business days of receiving the **Department's** approval of the audit report and keep the audit report published on its website until the end date of this approval.

Revision of action management plans

27. The approval holder may, at any time, apply to the **Minister** for a variation to the **Biodiversity Management Plan** approved by the **Minister** under condition 10, or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the **EPBC Act**.
28. The approval holder may revise the **Biodiversity Management Plan** approved by the **Minister** under condition 10, or as subsequently revised in accordance with these conditions, without submitting it for approval under section 143A of the **EPBC Act**, if the taking of the action in accordance with the revised **Biodiversity Management Plan** would not be likely to have a **new or increased impact**.
29. If the approval holder revises the **Biodiversity Management Plan** without submitting it for approval, the approval holder must:
 - a. notify the **Department** in writing that the approved action management plan has been revised and provide the **Department** with:
 - i. An electronic copy of the revised **Biodiversity Management Plan**.
 - ii. An explanation of the differences between the approved action management plan and the revised **Biodiversity Management Plan**.
 - iii. The reasons the approval holder considers that taking the action in accordance with the revised **Biodiversity Management Plan** would not be likely to have a **new or increased impact**.
 - iv. Written notice of the date on which the approval holder will implement the revised **Biodiversity Management Plan**.
30. If the **Minister** gives a notice to the approval holder that the **Minister** is satisfied that the taking of the action in accordance with the revised **Biodiversity Management Plan** would be likely to have a **new or increased impact**, then:
 - a. Condition 28 does not apply, or ceases to apply, in relation to the revised **Biodiversity Management Plan**.
 - b. The approval holder must implement the **Biodiversity Management Plan** specified by the **Minister** in the notice.

31. At the time of giving the notice under condition 30, the **Minister** may also notify that for a specified period of time, condition 28 does not apply for one or more specified action management plans.

Note: conditions 28-31 are not intended to limit the operation of section 143A of the EPBC Act which allows the approval holder to submit a revised action management plan, at any time, to the **Minister** for approval.

Notification of change to conditions

32. The approval holder must notify the **Department** in writing of any proposed change to the conditions of the **NSW Consolidated Project Approvals** referred to in the conditions of this approval, no later than two weeks after formally proposing a change or becoming aware of a change being proposed. The approval holder must also notify the **Department** in writing of any change to the conditions of the **NSW Consolidated Project Approvals** referred to in the conditions of this approval, within two weeks of a change being finalised.

Completion of the action

33. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

34. In these conditions, except where contrary intention is expressed, the following definitions are used:

Area 2 (extract) offset area means the 'Modification 14 (EPBC 2017/7974) Offset Area' labelled 'Area 2 (Extract)' identified on the map at [Attachment B](#). The Area 2 (Extract) of approximately 51 ha is part of Area 2 required by Condition 24 of the **NSW Consolidated Project Approvals**.

Approved Rehabilitation Management Plan means the plan required to be prepared and implemented under Condition 68 of Schedule 3 of the **NSW Consolidated Project Approvals**, in the form approved by the **Secretary** at that time.

Biodiversity Management Plan means the plan required to be prepared and implemented under condition 33 of Schedule 3 of the **NSW Consolidated Project Approvals**, in the form approved by the **Secretary** and/or **Minister** at that time.

Biodiversity Stewardship Agreement means a 'biodiversity stewardship agreement' within the meaning of the *Biodiversity Conservation Act 2016* (NSW).

Clearing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance).

Commencement of operation of the water treatment facility means the first instance of any water being produced from the water treatment facility that is then released offsite. Water treatment operations commence following commissioning.

Commencement of works in OC3 means the first instance of any specified activity associated with the action in the 'Open Cut Mining Area' labelled 'OC3' as identified on the map at Attachment A including **clearing** or **construction**.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance reports means written reports:

- i. Providing accurate and complete details of compliance, and non-compliance with the conditions and the **plans**.
- ii. Consistent with the Department's *Annual Compliance Report Guidelines* (2014).
- iii. Including a shapefile of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period.
- iv. Annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Construction means the erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on-site; the alteration, maintenance, repair or demolition of any building or structure; any excavation, grading or breaking of the ground (including pile driving); the laying of pipes and other prefabricated materials in the ground; but excluding the installation of temporary fences and signage.

Department means the Australian Government agency responsible for administering the EPBC Act.

Development footprint means any of the 'Existing / Approved Development' areas identified on the map at Attachment A.

Independent audit(s) means an audit conducted by an independent and **suitably qualified person** as detailed in the Department's *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2015)

Moolarben Coal Project means all actions that are approved under the **NSW Consolidated Project Approvals**, and subject to EPBC Act approvals 2007/3297, 2008/4444, 2013/6929, and this 2017/7974.

Minister means the Australian Government Minister administering the EPBC Act including any delegate thereof.

New or increased impact means a new or increased environmental impact or risk relating to any **protected matter**, when compared to the likely impact of implementing the action management plan that has been approved by the **Minister** under condition 11, including any subsequent revisions approved by the **Minister**, as outlined in the Department's *Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals* (2017).

NSW Consolidated Project Approvals means Project Approval 05_0117 for the Moolarben Coal Project Stage 1, and Project Approval 08_0135 for the Moolarben Coal Project Stage 2, under section 75J of the *Environmental Planning and Assessment Act 1979* (NSW), as modified on 19 June 2019. Where condition numbers of the **NSW Consolidated Project Approvals** are referenced in these conditions, it is a reference to the condition numbers of Project Approval 05_0117.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, and/or implemented by the approval holder and published on its website, in accordance with these conditions.

Protected matter(s) means a matter protected under a controlling provision in Part 3 of the EPBC Act for which this approval has effect.

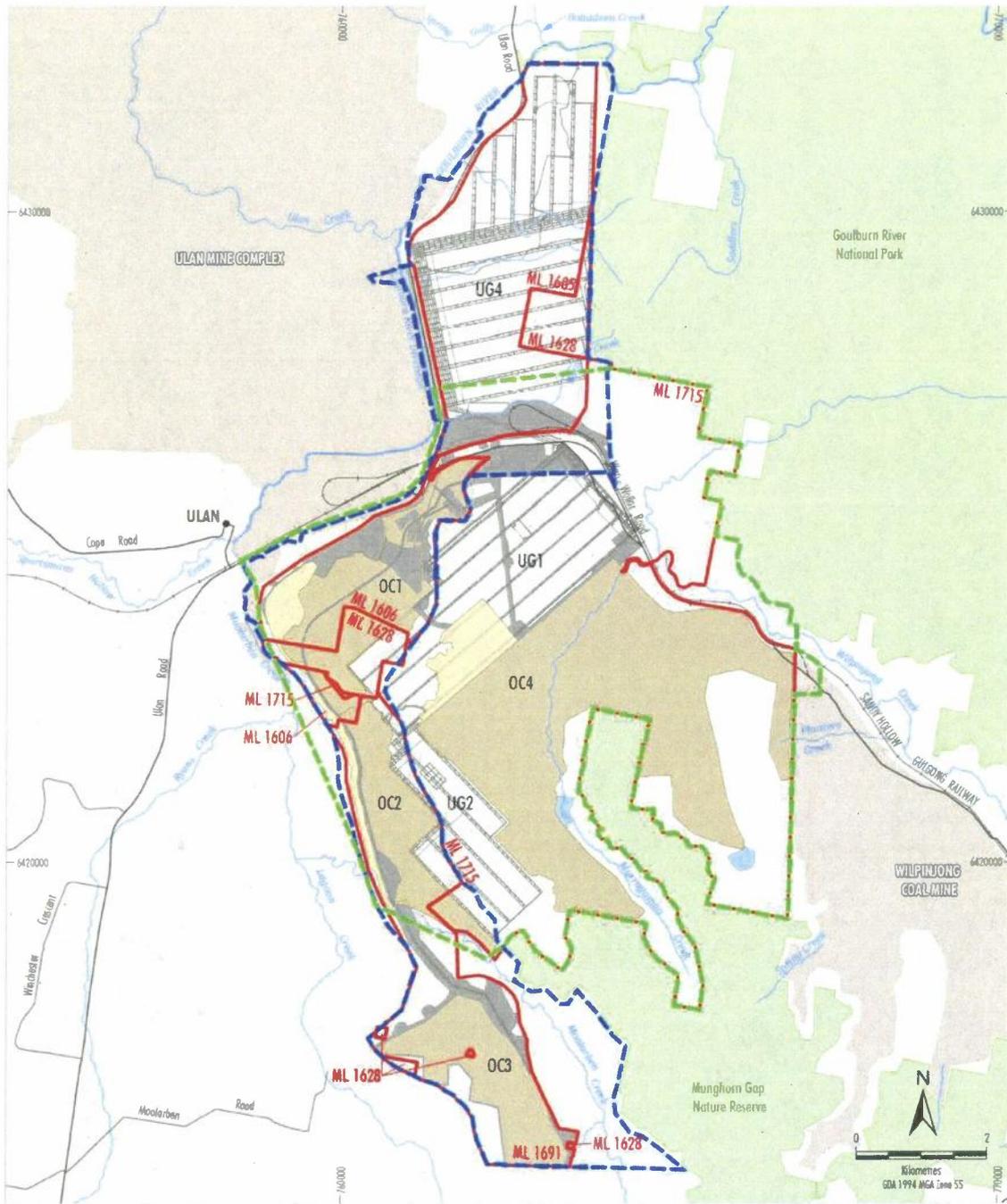
Sensitive ecological data means 'sensitive ecological data' as defined in the Department's *Sensitive Ecological Data – Access and Management Policy V1.0* (2016)

Secretary means 'Secretary' as defined in the **NSW Consolidated Project Approvals**.

Site means anywhere within the 'Approved Stage 1 Project Boundary' and/or 'Approved Stage 2 Project Boundary' identified on the map at Attachment A.

Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

Attachment A – General Layout of Project



- LEGEND**
- NSW National Parks and Wildlife Service
 - Other Mining Operations
 - Mining Lease Boundary
 - Existing/Approved Development
 - Open Cut Mining Area
 - Out-of-pit Employment
 - Surface Infrastructure Area
 - Clean Water Diversion Infrastructure
 - Underground Longwall Layout
 - Haul Road
 - Road Realignment (not yet constructed)

- Approved Stage 1 Project Boundary
- Approved Stage 2 Project Boundary

Source: MCO (June 2017); NSW Dept of Industry (2017); NSW Land & Property Information (2017); Office of Environment and Heritage NSW (2017)


MOOLARBEN COAL
MOOLARBEN COAL COMPLEX
 Indicative General Arrangement

Attachment B – Gilgal Offset Area and Area 2 (extract) Offset Area



- LEGEND**
- NSW National Parks and Wildlife Service
 - Modification 14 (EPBC 2017/7974) Offset Area
 - Railway

NOTE:
 Only a portion of the Gilgal Property is required to satisfy the offset requirements of Modification 14 (EPBC 2017/7974). MCO would only retire offset credits required to satisfy the offset liability for the Modification.

Source: MCO (2018); NSW Land & Property Information (2018); Office of Environment and Heritage NSW (2018); Orthophoto Mosaic: MCO (April 2016 - May 2012)


Moolarben Coal Complex
 Moolarben Coal Mine Project
 Modification 14 (EPBC 2017/7974) Offset Areas

Attachment C – EPBC Act protected matters relevant to the credits in Table 12A of the NSW Consolidated Project Approvals

Vegetation Community (PCT / BVT)	Protected Matter	Area cleared	Credits required	Credits Satisfied by Offset Area 2 (Extract)	Gilgal Property Credits (Area)	Residual Credits
Ecosystem Credits						
PCT 281	BGW, LPB	1.5 ha	53	18	35 (5 ha)	-
PCT 618	BGW, LPB, SP, PH, CLB, STQ	3.5 ha	112	39	0	73
PCT 1176	CHVEFW, LPB	2 ha	108	108	0	-
PCT 1606	LPB, SP, PH, CLB, STQ	3 ha	190	40	150 (14 ha)	-
PCT 1629	LPB, SP, PH, CLB, STQ	13 ha	827	416	411 (53 ha)	-
PCT 1661	LPB, SP, PH, CLB, STQ	4 ha	237	33	204 (22.5 ha)	-
PCT 1669	LPB, SP, PH, CLB, STQ	4.5 ha	233	0	233 (27 ha)	-
PCT 1696	LPB	7.5 ha	354	23	0	331
Species Credits						
Regent Honeyeater (<i>Anthochaera phrygia</i>)		31 ha	2,371	803	1,568 (221 ha)	-
Koala (<i>Phascolarctos cinereus</i>) (combined populations of Qld, NSW and the ACT)		4 ha	94	17	64 (9 ha)	13
Brush-tailed Rock-wallaby		37 ha	960	267	693 (98 ha)	-

BGW = White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland

CHVEFW = Central Hunter Valley Eucalypt Forest and Woodland

LPB = Large-eared Pied Bat (*Chalinolobus dwyeri*)

SP = Swift Parrot (*Lathamus discolor*)

PH = Painted Honeyeater (*Grantiella picta*)

CLB = Corben's Long-eared Bat (*Nyctophilus corbeni*)

STQ = Spot-tailed Quoll (*Dasyurus maculatus maculatus*) (SE mainland population)

