



## Statement of Reasons for Approval under the *Environment Protection and Biodiversity Conservation Act 1999*

I, RACHEL SHORT, Branch Head, Environment Assessments (Victoria and Tasmania) and Post Approvals, Department of Climate Change, Energy, the Environment and Water (**department**), provide the following statement of reasons for my decision of 22 February 2024 as delegate for the Minister for the Environment and Water (the **Minister**), under subsection 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), to approve, subject to conditions, the proposed action by Lower Murray Urban and Rural Water Corporation (the **proponent**) the building and operation of three regulating structures (K10 Regulator, K10 Causeway Regulator, Bitterang Containment Bank Regulator), the building of 1.8 km of raised access tracks (containment banks/levees), and maintenance of 16.9 km of existing access tracks to allow the extra inundation of Chalka North Area and Lake Boolca Area (EPBC 2020/8632) (the **proposed action**).

### Legislation

- 1) Legislation relevant to my decision is set out in Annexure A.

### Background

- 2) The Hattah Lakes North Floodplain Restoration Project (**proposed action**) is located in north-west Victoria, approximately 400 km north-west of Melbourne and 60 km south of Mildura. The proposed action proposes to return a more natural flood regime to 1,130 ha of the Hattah Lakes Floodplains Complex (the **proposed action area**), within Hattah-Kulkyne National Park and Murray-Kulkyne Park.
- 3) The referral is one of nine referrals submitted by the proponent as part of the Victorian Murray Floodplain Restoration Projects (**VMFRP**). The VMFRP is considered a larger action and also includes: Belsar-Yungera Floodplain Restoration Project (EPBC: 2020/8744), Nyah Floodplain Restoration Project (EPBC: 2020/8648), Vinifera Floodplain Restoration Project (EPBC: 2020/8647), Burra Creek Floodplain Restoration Project (EPBC: 2020/8686), Gunbower National Park Floodplain Restoration Project (EPBC: 2020/8771), Guttrum and Benwell Floodplain Restoration Project (EPBC: 2020/8754), Lindsay Island Floodplain Restoration Project (EPBC: 2020/8765) and Wallpolla Island Floodplain Restoration Project (EPBC: 2020/8750) (**larger VMFRP action**). Each project within the larger VMFRP action was assessed or is under assessment by an accredited assessment process pursuant to the *Environment Effects Act 1978* (Vic) (**Environment Effects Act**).
- 4) The proposed action has two main phases: the *construction phase* and the *operational phase*. The *construction phase* will impact 18.9 ha of native vegetation. Impacts identified during the *operational phase* predominantly related to water quality impacts both in the Murray River and across the floodplains. During the assessment process, concerns were

raised regarding the residual significant impact to protected matters both for individual referrals and the cumulative impact of the larger VMFRP action, during both the *construction and operational phases*.

### Project action context

- 5) The larger VMFRP action of floodplain restoration projects assessed in Victoria are part of the Murray-Darling Basin Authority (**MDBA**) Sustainable Diversion Limit Adjustment Mechanism (**SDLAM**) projects. The SDLAM projects were assessed and approved through the MDBA in 2017 to assist in the water delivery targets of the Murray-Darling Basin Plan.
- 6) As such, the nine referrals have been under tight timeframes and consideration of some of the complexities were postponed to the end of the assessment process. In particular, the cumulative impacts on protected matters of the larger VMFRP action was completed prior to the Environment Effects Statement (**EES**) assessment documentation (**EES documentation**) being published for all of the referrals.
- 7) The Minister reached an agreement with most of the Basin States in August 2023. In December 2023, the Parliament passed the *Water Amendment (Restoring Our Rivers) Act 2023*. This Act changed the delivery dates of SDLAM projects from June 2024 to December 2026.
- 8) The larger VMFRP action currently has four of the nine proposed actions ‘paused’ at the assessment stage, as these were unlikely to meet the previous June 2024 completion date.
- 9) The cumulative impacts of the larger VMFRP action have been considered in the context of the nine proposed actions, the five completed assessments and as individual proposed actions to assess the risk of impacts and acceptability of the proposed actions.

### Procedural history

#### *Referral history and assessment approach*

- 10) A valid referral was received on 22 April 2020 for the proposed action. On 19 May 2020, a delegate of the then Minister for the Environment determined the proposed action was a controlled action pursuant to s75(1) of the EPBC Act, with the following controlling provisions: listed threatened species and communities (ss 18 & 18A) and Ramsar wetlands (ss 16 & 17B).
- 11) At the time, no assessment approach decision was made. The Victorian Department of Environment, Land, Water and Planning (**DELWP**) noted that they expected the bilateral agreement to apply but that the pathway for the bilateral assessment had not been confirmed.
- 12) On 17 December 2020, the Victorian Minister for Planning informed the department that the Victorian Assessment Bilateral Agreement between the Commonwealth and the State of Victoria (**Bilateral Agreement**) would apply. In accordance with the Bilateral Agreement, the proposed action would be assessed by an accredited process, being the EES, under the *Environment Effects Act 1978* (Vic).

- 13) On the 6 July 2023, the Victorian Assessments section of the department received from the Victorian Government Department of Transport and Planning the final State Minister's Assessment Report (the **Minister's report**) and the associated Standing Inquiry Advisory Committee (**SIAC**) report.

***Request for further information***

- 14) On 5 July 2023 and 28 July 2023, the department requested further information from the proponent during the approval decision statutory timeframe, to which the proponent responded. Specifically, the department requested information regarding impacts to flyways, including canopy cover impacts, and the direct and indirect impact (i.e. possible death of a tree but not removal) to hollow bearing trees. On 3 August 2023 the proponent responded providing the further information requested.

***Proposed decision and comments***

- 15) On 22 January 2024, I made a proposed decision to approve the proposed action, with conditions. On the same day, I wrote to the following parties inviting comments on my proposed decision:
- The proponent;
  - Senator the Hon. Murray Watt, then Minister for Agriculture, Fisheries and Forestry;
  - The Hon. Linda Burney MP, then Minister for Indigenous Australians;
  - The Hon. Sonya Kilkeny MP, Victorian Minister for Planning, through the Minister's delegated contact.
- 16) The responses to the invitations are dealt with in my reasons below.

***Approval decision***

- 17) On 22 February 2024, I approved, pursuant to sections 130(1) and 133 of the EPBC Act, the taking of the proposed action, for the purposes of sections 18 and 18A, and 16 and 17B of the EPBC Act, subject to conditions.
- 18) The approval will be in effect until 30 June 2049 to ensure that the offsets are managed in such a manner as to provide compensation for the residual impacts from the proposed action and that the proposed inundation/cycles can be monitored and assessed. The department advised and, I agreed, that impacts from the *construction phase* should be adequately offset after a 25-year period and compliance of the *operational phase* of the proposed action would be adequately managed under state and MDBA obligations after the 25-year approval period.

***Evidence or other material on which my findings were based***

- 19) In making my decision on 22 February 2024 under subsection 130(1) and section 133 of the EPBC Act as to whether to approve the proposed action, I considered the final approval decision brief prepared by the department, including the following attachments (**approval decision brief**):

Attachment A: Updated documents from proposed decision

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- A1: Response to proponent comments
- A2: Decision notice with track changes

### Attachment B: Responses to invitation for comment on proposed decision

- B1: Proponent response table
- B2: Proponent response email
- B3: Minister for Agriculture response
- B4: Minister for Indigenous Affairs response
- B5: Murray-Darling Basin Authority response
- B6: Department of Transport and Planning comment response

### Attachment C: Notice of decision

### Attachment D: Letters to relevant parties

- D1: Letter to the proponent
- D2: Letter to Commonwealth – Minister for Agriculture
- D3: Letter to Commonwealth – Minister for Indigenous Affairs
- D4: Letter to the State Minister

### Attachment E: Copy of Proposed Approval Decision Brief

- E1: Proposed Approval Decision Brief
- E2: Attachment A1: State Minister's assessment report
- E3: Attachment A2: Standing Independent Advisory Committee report
- E4: Attachment B: Legal considerations report
- E5: Attachment C: Proposed approval decision notice
- E6: Attachment D1: Letter to the proponent
- E7: Attachment D2: Letter to Commonwealth – Minister for Agriculture
- E8: Attachment D3: Letter to Commonwealth – Minister for Indigenous Affairs
- E9: Attachment D4: Letter to the State Minister
- E10: Attachment E1: Response to request for further information
- E11: Attachment E2: Response to proposed conditions
- E12: Attachment E1: Office of Water Science – Line area advice on final EES documents
- E13: Attachment E2: Species policy team
- E14: Attachment F3: Compliance and Enforcement Branch
- E15: Attachment G1: Regent Parrot – Recovery Plan
- E16: Attachment G2: Murray cod – Recovery plan
- E17: Attachment G3: Winged peppercreep – Recovery plan
- E18: Attachment G4: Australian painted snipe – Recovery plan
- E19: Attachment G5: Painted honeyeater – Recovery plan
- E20: Attachment G6: Buloke Woodlands of the Riverina and Murray Darling Depression Bioregions – Recovery plan
- E21: Attachment G7: Silver perch – Conservation advice
- E22: Attachment G8: Corben's bat – Conservation advice

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- E23: Attachment G9: Australian painted snipe – Conservation advice
- E24: Attachment G10: Painted honeyeater – Conservation advice
- E25: Attachment G11: Threat Abatement Plan – rabbit
- E26: Attachment G12: Threat Abatement Plan – feral pigs
- E27: Attachment H1: Ramsar - Ecological character description
- E28: Attachment H2: Ramsar - River Red Gum Parks Management Plan

### Reasons for my decision

- 20) In deciding whether to approve the proposed action and what conditions to attach to an approval, I took into account all information I had on relevant impacts that the proposed action would have or would likely have on any matter protected by the controlling provisions for the action (being sections 18 and 18A, and 16 and 17B of the EPBC Act).
- 21) I agreed with the department that the documents set out at paragraph 19) above provided sufficient information to decide whether or not to approve the proposed action.

### Mandatory Considerations – s136(1)(a)

- 22) In deciding whether or not to approve the taking of the proposed action and what conditions to attach to an approval, I considered matters relevant to each matter protected by a provision of Part 3 that were a controlling provision for the proposed action, as required by s 136(1)(a) of the EPBC Act, so far as they were not inconsistent with any other requirement of Subdivision B of Division 1 of Part 9 of the EPBC Act.
- 23) The referral was determined a controlled action under the following controlling provisions of the EPBC Act:
  - Wetlands of international importance (Ramsar wetlands) (sections 16 and 17B)
  - Listed threatened species and ecological communities (sections 18 and 18A)
- 24) The proposed action was assessed by the Victorian Government by an Environment Effects Statement (EES) under the Victorian *Environment Effects Act 1978*. The Minister's report and the SIAC report were included as attachments to the brief.
- 25) The Minister's report makes the following conclusions in relation to the matters protected by the controlling provisions.

Controlling Provision	Relevant section of Minister's report and state conclusions	State's conclusion on acceptability of impacts
Wetlands of international importance (sections 16 and 17B)	Appendix A A1 – Ramsar wetlands <ul style="list-style-type: none"><li>• Hattah-Kulkyne Lakes Ramsar site is upstream of the action area and unlikely to be impacted by the action</li><li>• Cumulative impacts from the larger VMFRP action (9 referrals) on all Ramsar sites (4 sites) could be appropriately mitigated</li></ul>	Acceptable
Listed threatened species and communities (sections 18 and 18A)	Appendix A A2 – listed threatened species and communities <ul style="list-style-type: none"><li>• Most threatened species or communities considered in the assessment were either unlikely to be impacted by the action or appropriately</li></ul>	Acceptable

Controlling Provision	Relevant section of Minister's report and state conclusions	State's conclusion on acceptability of impacts
	<p>mitigated to reduce potential impacts from the action such that these impacts would not be unacceptable.</p> <ul style="list-style-type: none"> <li>• State indicated that the construction of the action and the direct removal of vegetation would be unlikely to have residual significant impacts for the Regent Parrot (<i>Polytelis anthopeplus monarchoides</i>).</li> <li>• Cumulative impacts from the larger VMFRP action (9 referrals) to protected fish species, Murray cod (<i>Maccullochella peelii peelii</i>) and Silver perch (<i>Bidyanus bidyanus</i>) in particular, were considered. The State concluded that cumulative adverse impacts are unlikely to be significant with the proposed mitigation measures.</li> </ul>	

26) I agreed with the conclusions of the Minister's report in relation to the following matters. The Minister's report conclusions have been summarised below, which I noted, including the department's additional analyses for species.

**Listed threatened species and communities**

27) The Minister's report and EES documentation considered the following species may be significantly impacted by the proposed action:

- Regent Parrot (*Polytelis anthopeplus monarchoides*) – Vulnerable
- Murray cod (*Maccullochella peelii peelii*) – Vulnerable
- Silver perch (*Bidyanus bidyanus*) – Critically endangered
- Winged Peppercreess (*Lepidium monoplocoides*) – Endangered
- Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions – Endangered
- Flat-headed Galaxias (*Galaxias rostratus*) – Critically endangered
- South-eastern long-eared bat/Corben's Long-eared Bat (*Nyctophilus corbeni*) – Vulnerable
- Australian painted snipe (*Rostratula australis*) – Endangered
- Painted Honeyeater – (*Grantiella picta*) – Vulnerable

**Assessment 1**

**Regent Parrot (*Polytelis anthopeplus monarchoides*) – Vulnerable**

***Overview of State assessment and Department analysis***

28) The Minister's report stated that the species occurs within the project area (i.e. the buffered proposed action area), and that the proposed action would result in:

- removal of 18.9 ha of potential foraging habitat
- no clearance and limited disturbance of potential breeding habitat (0.11 ha of potential breeding habitat was identified near an existing access track proposed to be used for access purposes, with noise and dust impacts predicted but no removal).

29) I noted that the Regent Parrot is a highly mobile species that typically nests in hollows of River Red Gum (*Eucalyptus camaldulensis*) within 120 m of water during August to February. Preferred hollows are in very large River Red Gums and can take a minimum of 160 years to become suitable. Preferred foraging during breeding season is in mallee woodland up to 20

km from nesting areas. Non-breeding season movements are not well known but the species does not reside within the breeding area outside of the breeding season.

- 30) I noted that the National Recovery Plan for the Regent Parrot (eastern subspecies) *Polytelis anthopeplus monarchoides* for the species identifies three key habitats critical to the survival of the species. These are:
- Breeding and nesting habitat, typically within 120 m of rivers
  - Mallee woodlands for foraging within 20 km of breeding and nesting habitat
  - Treed corridors and known flyways between breeding habitat and mallee woodlands
- 31) I noted that the department requested further information from the proponent regarding the likely impacts to foraging habitat to determine whether it was inconsistent with the recovery plan. The EES documentation had stated that there were no mallee woodlands within the proposed action area, the Minister's report agreed with this information.
- 32) I noted that on 5 July 2023 and 28 July 2023 the department requested further information, that the proponent provided, which detailed the impacts to treed corridors and known flyways for the species. This information provided adequate information for me to determine whether impacts to the foraging habitat of the species would be acceptable.
- 33) The department accepted, which I agreed with, the finding in the Minister's report, that there would be no clearing and limited disturbance to the potential breeding habitat for the Regent Parrot in the proposed action area. I noted that the Minister's report found that this proposed action on its own would be unlikely to have a significant impact on the Regent Parrot, with implementation of the proposed environmental delivery standards, incorporating amendments from the SIAC, as no removal of breeding habitat is proposed.

***Relevant impacts of the proposed action***

- 34) I considered that the main impacts to the Regent Parrot identified were direct impacts during the *construction phase* to populations that may lead to mortality and disturbance through vegetation clearing and noise.
- 35) I noted that the *construction phase* of the proposed action will impact 18.9 ha of native vegetation including 150 large trees, of which 77 are hollow-bearing, with 119 large trees being directly removed. I noted that reducing the availability of hollow bearing trees could reduce foraging, perching and roosting, and result in habitat fragmentation.
- 36) I acknowledged that the mid-Murray River population of the Regent Parrot is considered an important population. The proponent disagreed and suggested that each individual proposed action area of the larger VMFRP action contained its own individual population. I noted that the Minister's report disagreed with the proponent and stated that the mid-Murray population was considered one population in the recovery plan.

***Overview of State assessed avoidance and mitigation measures***

- 37) I noted that the construction mitigation recommendations in the Minister's report included:
- a) that removal/lopping/felling of active nesting trees, if required, must be done outside of the breeding season.

- b) scheduling construction activities to avoid active construction within 350 m of active nesting trees during the breeding season.
- c) a Native Flora and Fauna Management Sub-Plan for:
  - i. vegetation removal activities,
  - ii. terrestrial fauna management, and
  - iii. construction rehabilitation management.
- d) the development of a Construction Environmental Management Plan (CEMP) to manage construction noise and vibrations.

38) I acknowledged that given the low risk of potential impact to the species and the potential for cumulative disturbance for the species, specific conditions to mitigate impacts to this species were necessary.

***Proposed Offsets***

39) I noted that no offset was proposed for the Regent Parrot for this proposed action.

***Department proposed conditions and proposed outcomes***

40) I noted that the department proposed conditions to limit the impact on Regent Parrot during the *construction phase*. These conditions focused on the avoidance and mitigation of direct impacts from clearing, and any indirect impacts to Regent Parrot during the *construction phase* of the proposed action (see conditions 5 and 7).

41) I noted that the proposed outcomes of the conditions are to limit the direct mortality to individuals during the *construction phase* and the indirect impact of noise and human disturbance during the breeding and nesting season to known flyways and nesting locations that could be abandoned and impact on the population (see condition 5).

42) I noted that the department proposed conditions to support the recommendations of the Minister's report as the state had not yet formally developed conditions of approval by the time of my decision. Where these are necessary for the protection of Regent Parrot, the department recommended including an overarching condition which requires the proponent to comply with the recommendations of conditions in the Minister's report (see condition 7).

43) I noted the potential benefit of hydrological flows onto the floodplain could lead to an improvement in condition of suitable habitat for the species. However, incorrect, or prolonged inundation events could lead to tree dieback and a decline in suitable habitat or very large hollow bearing trees for the species. The proposed conditions included that stags must remain in situ, as this will reduce competition for hollows and may enable suitable hollows for Regent Parrot to form as the stags age (see condition 3).

***Department conclusion***

44) For the reasons given above, I considered that the proposed action would not have a residual significant impact on the Regent Parrot.

45) While consideration was given to the cumulative impacts to the Regent Parrot from the larger VMFRP action, I agreed with the department's recommendation that the potential impacts from this proposed action to Regent Parrot would be limited to the loss of breeding

habitat and to breeding disturbance during the *construction phase* and would be managed at each individual proposed action as required.

- 46) I concluded that approving the proposed action with conditions would not result in an unacceptable impact to the Regent Parrot, and that the conditions on the approval would ensure that any impacts on the Regent Parrot from this proposed action were acceptable.

## **Assessment 2**

### **Murray cod (*Maccullochella peelii*) – Vulnerable**

### **Silver perch (*Bidyanus bidyanus*) – Critically endangered**

#### ***Overview of State assessment and Department analysis***

- 47) The Minister's report discussed Murray cod and Silver perch within Appendix A, section A2. The Minister's report agreed with the proponent that suitable habitat for the species occurs within the proposed action area.
- 48) The EES documentation identified both species are present in Chalka Creek, the Murray River and some of the Hattah Lakes complex which form part of the proposed action area.
- 49) I noted as follows in relation to the Murray cod and Silver perch:
- a) Murray cod and Silver perch are both in-channel specialists and the Murray River population is considered an important population.
  - b) Murray cod favours permanent flowing rivers and creeks with instream woody debris and hydraulic complexity, although the species occupies a broad range of flowing and standing waters. Murray cod is known to use floodplains, particularly under high flow conditions.
  - c) Silver perch prefers rapid flow although occurs in a variety of river habitat that is both fast and slow flowing. Silver perch are considered to rarely use floodplains.
  - d) The SIAC report considered public submissions that raised concerns for potential significant impacts on threatened fish species from altered flooding regimes and potential water quality changes. The SIAC report considered that the EES documentation had adequately considered potential impacts and that the proposed action was unlikely to result in a significant impact to threatened fish species with the implementation of mitigation measures.
  - e) The SIAC report and Minister's report considered cumulative effects on the species and agreed with the proponent that with mitigation measures in place and that cumulative impacts from the larger VMFRP action were unlikely.
  - f) The EES documentation considered that the proposed action would have a slight improvement on Murray cod by increased foraging opportunities when floodplains were inundated and improved connectivity and habitat quality.

#### ***Relevant impacts of the proposed action***

- 50) I noted that the main impacts on the Murray cod and Silver perch assessed were:
- a) potential barriers to movement in the construction and operation stages,

- b) water quality deterioration,
  - c) an increase in invasive species, particularly carp,
  - d) altered flooding/inundation regimes,
  - e) removal of woody debris and snags during construction.
- 51) The Minister's report concluded that residual significant impacts are unlikely from the impacts assessed if the mitigation measures are implemented that have been proposed by the proponent and recommended in the Minister's report.
- 52) I agreed with the department's recommendation that the residual significant impacts from the *construction phase* are unlikely if the proposed and recommended mitigations measures were implemented.
- 53) I noted that the department disagreed with the Minister's report that residual significant impacts from the *operational phase* of the project have been adequately mitigated in line with the recovery plan for Murray cod and I agreed. The National Recovery Plan for the Murray Cod *Maccullochella peelii peelii* states that cumulative low-level impacts could be considered a significant impact. The potential impacts of return flows from the *operational phase* to the Murray River may impact on these species both as a result of this action and cumulatively as a result of the larger VMFRP action. I noted that residual impacts from the *operational phase* would mostly occur in the Murray River channel located in NSW.
- 54) I noted that the risk from return flows is considered low. However, the consequence could be catastrophic for both species (i.e. fish kills/decreased spawning events). Continuous monitoring of the receiving environment is considered an important mitigation measure to ensure that water quality parameters are known before discharge and that best practice science can be applied to mitigate the impact to these species, particularly during breeding seasons.
- 55) The department advised me that the impact to suitable habitat for an important population across the larger VMFRP action should be taken into account and that the species could occur at all of the nine projects.
- 56) Therefore, I considered the department's recommended conditions of approval, that align to conditions of approval for other related referrals regarding the larger VMFRP action, to monitor and adaptively manage the low to medium level impacts for the proposed action in order to reduce the risk of cumulative impacts and/or request an offset if adverse impacts from the proposed action to the species occur during the approval timeframe. For these reasons, I considered the department's recommendation was not inconsistent with the Recovery Plan for the species.

**Overview of State assessed avoidance and mitigation measures**

- 57) I noted that the *construction phase* mitigation recommendations in the Minister's report included:
- a) development and implementation of a *Native Flora and Fauna Management Sub-Plan* that includes handling and salvage protocols for aquatic fauna, replacing woody debris and snags into waterways.

- b) development and implementation of an *Aquatic fauna management plan* that mitigates impacts to coffer dam construction that includes undertaking works in dry conditions if possible, outside of fish migration periods, screens and filters on pumps to avoid entrainment, flow-through pumping to maintain water quality on both sides of the coffer dam, and monitoring of water quality.
  - c) development and implementation of a *Construction Environmental Management Plan* to characterise and manage acid sulfate soils.
- 58) I also noted that the *operational phase* mitigation measures in the Minister's report included:
- a) development of a *Pest Plant and Animal Monitoring and Management Plan* to monitor pest species and adaptively manage.
  - b) *Operational groundwater management plan* that monitors groundwater, surface water and salinity.
  - c) *Surface water management* measures, in particular:
    - i) an operation plan that seeks to avoid, minimise and manage where practical low dissolved oxygen events (e.g. blue green algae and blackwater), erosion, stranding of native fish and increased carp.
    - ii) a plan for the design of regulators to facilitate the passage of native fish.
  - d) The implementation of an *Operation Environmental Management Plan* to inform adaptive management of water quality impacts during managed inundation events.
- 59) I agreed that given the risk of potential impact to the species during both *construction and operational phases*, the potential for cumulative disturbance for the species, and the location of impacts to the species both in NSW and Victoria; that the above measures, and the inclusion of specific conditions by the department to mitigate impacts to this species were necessary.
- 60) I also had regard to the cumulative impacts of the larger VMFRP action. I agreed with the department that, where the recovery plan states that cumulative low-level impacts could be considered a significant impact, the larger VMFRP actions are likely to have a significant adverse impact on the species.

**Proposed Offsets**

- 61) I noted that no offsets were proposed for Murray cod or Silver perch.

**Department proposed conditions and proposed outcomes**

- 62) The department proposed conditions to limit the impact on Murray cod and Silver perch that I accepted. The conditions focused on the avoidance and mitigation of direct and indirect impacts to Murray cod and Silver perch during the *construction and operational phases* of the proposed action.
- 63) At the time of my decision, the state had not yet formally developed conditions of approval. Where these are necessary for the protection of Murray cod and Silver perch, I agreed with the department's recommendation to include an overarching condition which requires the

proponent to comply with the state recommendations of conditions (see conditions 4, 7 and 8).

- 64) I considered that the proposed outcomes of the conditions proposed were to limit the direct and indirect impact to the species through altered hydrological flows and adverse changes to water quality for the species (see condition 12 and 13).
- 65) I further considered individual conditions were proposed to mitigate and avoid harm to Murray cod and Silver perch during *construction phase*, in the event that the construction of infrastructure related to the water regulators are undertaken during wet conditions. These conditions relate to the minimisation of death to individual fish at construction sites and limiting the potential impact to the population by construction activities limiting the connectivity of the species to breeding and/or spawning areas during the breeding season (see condition 4).
- 66) I noted that the MDBA has the overarching obligations for managing water within the Murray-Darling Basin. At the time of my decision, the MDBA had not formally developed conditions of approval. However, I agreed with the department's recommendation to include an overarching condition which requires the proponent to comply with MDBA conditions that are necessary for the protection of Murray cod and Silver perch (see condition 11).
- 67) I noted that the proposed action would alter the hydrology of the floodplains, associated anabranches and creeks, and alter the water quality within the Murray River. Therefore, I considered that the proposed conditions were necessary to achieve the desired environmental outcome to minimise the risk of disturbance to breeding and spawning, fish kills and population impacts and decline to the species from the larger VMFRP action by monitoring and minimising the impacts to the species at each proposed action area.
- 68) To support monitoring of the desired environmental outcomes, that is monitor return flows from the floodplains into the Murray River (NSW) and creeks containing important populations, the department has proposed conditions for monitoring and managing floodplain, groundwater and salinisation impacts of the proposed action (see conditions 14 to 17, conditions 20 to 23, and conditions 25 to 28).

#### **Department conclusion**

- 69) The Minister's report considered that there would not be a significant impact on Murray cod or Silver perch, provided the recommendations from the Minister's report were adopted.
- 70) I considered that the impact to Murray cod and Silver perch for these species, both in Victoria and NSW, and across the larger VMFRP action should be taken into account as the species is present at all of the nine projects that comprise the larger VMFRP action.
- 71) While consideration should be given to the cumulative impacts, I agreed with the department's assessment that the possible impacts to Murray cod and Silver perch would be limited, specifically to:
  - a) breeding and disturbance during the *construction phase* of the project, and
  - b) changes in water quality and dispersal during the *operational phase*.

- 72) I agreed that these impacts could lead to declines for both species, particularly given that the receiving environment is known as a spawning hotspot for both species.
- 73) I agreed with the Minister's report that impacts to the species can be avoided and mitigated to an adequate level, and imposed conditions proposed for each individual proposed action to ensure that such measures would be implemented.
- 74) The department's recommended conditions of approval, which align to conditions of approval for the larger VMFRP actions, and which require the proponent to monitor, adaptively manage and report upon the low to medium level impacts of the proposed action, and the avoidance and mitigation measures it implements, were necessary and appropriate to cover both NSW and Victorian waterways. I agreed that approval, with the conditions, would not be inconsistent with the *National Recovery Plan for the Murray cod Maccullochella peelii peelii*, or unacceptable.
- 75) I considered that approving this action, with conditions, would not result in an unacceptable impact to Murray cod and Silver perch.

### **Assessment 3**

#### **Winged Peppercreess (*Lepidium monoplocoides*) - Endangered**

##### ***Overview of State assessment and Department analysis***

- 76) I noted that Minister's report discussed Winged peppercreess within Appendix A, section A2. I noted that the Minister's report agreed with the proponent that suitable habitat for the species occurs within the project area. In this regard, the EES documentation identified that 14.66 ha of potentially suitable habitat occurred within the construction footprint (31 ha), and 1,009 ha of potentially suitable habitat was identified within the maximum inundation area.
- 77) Winged peppercreess is an arid to semi-arid species that usually occurs in areas that are seasonally flooded or prone to waterlogging.
- 78) I noted that the SIAC report considered a public submission from landowners, Raakajlim property, located on the northern edge of the Hattah Kulkyne National Park and within the maximum inundation area. The owners stated that Winged peppercreess is present on their property. The SIAC report and Minister's report recommended the development of a Winged peppercreess sub-plan. I noted that the Minister's report stated that the proposed sub-plan is to validate whether the species or its habitat occurs on the property and to assess and mitigate potential impacts to the species through the operation of the proposed action, particularly the potential effects of inundation.
- 79) A further public submission was considered by the SIAC report regarding the negative impacts the proposed action may have on the species. The SIAC report noted the concerns that the species is not known to use riparian areas and that the beneficial outcome for the species may be neutral rather than positive (specifically stated for Belsar-Yungera Floodplain Restoration Project). The SIAC report concluded for both projects (i.e., this proposed action and the Belsar-Yungera Floodplain Restoration Project) that the likely benefit to the species had been potentially overstated by the proponent.

***Relevant impacts of the proposed action***

- 80) I considered that the impacts to Winged peppercross comprised direct impacts during the *construction phase* to populations that may lead to mortality and altered hydrology during *operation phase* that may decrease the suitable habitat for the species. The Minister's report considered construction impacts would not significantly impact on Winged peppercross and that the risk to the species would be limited. However, I also noted that the Minister's report stated that the assessment of the impacts in the maximum inundation area, specifically the Raakajlim property where land owners have identified the species, is not adequate and should be investigated further.
- 81) I also noted that the Minister's report considered that there were limitations to the knowledge of hydrological change and impacts to the species. Considering the knowledge gap, and that all populations of the Winged peppercross were an important population such that serious environmental damage could occur due to a decrease in habitat suitable for the species or direct mortality, I applied the precautionary principle.
- 82) I considered that the impact to the potential habitat for the species across the larger VMFRP action should be taken into account, noting that the species could occur at all of the nine projects

***Overview of State assessed avoidance and mitigation measures***

- 83) I took into account that the *construction phase* mitigation recommendations supported by the Minister's report included:
- a) delineating no-go zones to prevent direct impact to populations during construction.
  - b) weed, pest animal and pathogen management and monitoring and reporting requirements.
  - c) biosecurity check/inspections of all vehicles entering the Construction Footprint for plant material, seeds and soils containing organic matter.
  - d) develop and implement a sub-plan of the Operations Environmental Management Plan to identify, assess and mitigate any potential effects of inundation on Winged peppercross on the Raakajlim property.
- 84) While I accepted the Minister's report's assessment that there was a 'limited' risk of potential impact to the species, and there was also a potential for cumulative disturbance for the species, I was satisfied that the inclusion of specific conditions to mitigate impacts to this species were necessary and would maintain impacts at an acceptable level.

***Proposed Offsets***

- 85) I noted that no offsets were proposed for Winged Peppercross.

***Department proposed conditions and proposed outcomes***

- 86) The department proposed conditions, and I agreed they were necessary, to limit the impact on Winged peppercross. The conditions focused on the avoidance and mitigation of direct impacts to Winged peppercross during the *construction phase* of the project.
- 87) The intent of the outcomes for the proposed conditions were to limit the direct impact to the species at known locations during *construction phase*. I noted that the State had

recommended a condition for the ongoing monitoring of Winged Peppercross to mitigate potential indirect impacts during inundation events.

- 88) Further consideration of the potential benefit of hydrological flows onto the floodplain were noted in the Minister's report that identified that they could lead to an increase in biomass for the species, however that incorrect or prolonged inundation events could also lead to a decline for the species. The implementation of a monitoring program for the species is to monitor for any detrimental impacts to known populations.
- 89) Considering the potential impacts and applying the precautionary principle, the inclusion of conditions for monitoring of impacts were necessary for adaptive management to inundation flows to mitigate any impact or irreversible harm from prolonged inundation to the species in the action area.

***Department conclusion***

- 90) I noted that the Minister's report considered the impacts of the proposed action would not significantly impact on Winged peppercross and that the risk to the species would be limited.
- 91) I noted that the SIAC report concluded that significant impacts to the species were unlikely, provided the recommended mitigation measures were incorporated.
- 92) The department recommended, and I agreed, with the Minister's report that impacts to the species can be avoided and mitigated to an adequate level.
- 93) I considered that approving this action, with conditions, would not result in an unacceptable impact to Winged peppercross.

**Assessment 4**

**Corben's long-eared bat/South-eastern long-eared bat (*Nyctophilus corbeni*) – Vulnerable**

***Overview of State assessment and Department analysis***

- 94) I noted that the Minister's report discussed Corben's long-eared bat within Appendix A, section A2. The Minister's report agreed with the proponent that it is possible the species may be present within the project area and that suitable habitat for the species is present.
- 95) I noted that the Minister's report outlined the targeted surveys undertaken for the species and indicated they were appropriate. The surveys did not record the species as being present. The Minister's report stated that the species has been recorded 25 km from the project area in Hattah State Forest and that it is likely for the species to occur.
- 96) I noted that the Minister's report stated that while the SIAC report did not explicitly consider the impacts of the proposed action on the species, it found that the construction impacts to listed terrestrial fauna species and the proposed mitigation and management measures are appropriate and that the proposed action's operations are unlikely to impact on the terrestrial fauna.
- 97) I noted that the Minister's report agreed with the proponent and SIAC report conclusions that the proposed action is unlikely to have a significant impact on the species, given the small extent of the construction works relative to habitat availability across the broader landscape.

- 98) I considered the public submissions received through the SIAC process raised concerns on hollow dependant species, that included Corben's long-eared bat. The Minister's report indicated that 77 hollow bearing trees would be removed through the *construction phase* of the project.
- 99) I agreed with the department's recommendation that the assessment for this species has been adequate.

***Relevant impacts of the proposed action***

- 100) I considered that the main impacts to the Corben's long-eared bat identified in the Minister's report was native vegetation clearing during the *construction phase* that may lead to death or injury and reduce available habitat for the species.

***Overview of State assessed avoidance and mitigation measures***

- 101) I considered that the construction mitigation recommendations within the Minister's report included:
- a) implementing measures to minimise noise, vibration and lighting impacts to minimise disturbance to nocturnal species.
  - b) pre-clearing surveys of trees to be impacted to reduce death and injury.
- 102) I also noted that the Minister's report identified that a hollow replacement program during the *construction phase* may benefit the species by reducing competition. The proponent and SIAC report disagreed with this recommendation. The department advised, and I agreed, that as the species typically roosts in fissures and cavities rather than hollows, a hollow replacement program would not mitigate impacts of tree clearing for the species.
- 103) Though the risk of potential impact to the species is low, there is the potential for cumulative disturbance for the species. The department recommended, and I agreed that specific conditions to mitigate impacts to this species, if present, during the construction period were necessary (as I set out below).

***Proposed Offsets***

- 104) I noted that no offsets were proposed for Corben's long-eared bat.

***Department proposed conditions and proposed outcomes***

- 105) The department proposed conditions, that I applied, to minimise the risk of injury or death to protected matters, that included Corben's long-eared bat during clearing or construction. These included:
- a) the requirement to conduct pre-clearing surveys to identify the presence of the Corben's long-eared bat and to relocate the individual/s to appropriate nearby habitat.
  - b) no clearing of vegetation outside the disturbance footprint.
  - c) no clearing or felling of dead trees in the action area.
  - d) to reduce impacts of lighting, noise and vibration during construction.
- 106) I considered that the proposed action will remove and disturb Corben's long-eared bat habitat through clearing and construction activities. Therefore, I considered that the proposed conditions are necessary or convenient to achieve the desired environmental

outcome to minimise the risk of disturbance, injury and/or death from the larger VMFRP action by minimising the impacts to the species at each project area.

***Department conclusion***

- 107) I noted that the Minister's report considered the impacts of the proposed action would not significantly impact on Corben's long-eared bat and that the risk to the species would be limited. I also noted that the Minister's report indicated that cumulative impacts for the larger VMFRP action were not considered as the species was recorded as present only at Gunbower Floodplain Restoration Project.
- 108) While I gave consideration to the cumulative impacts, I agreed that the possible impacts to Corben's long-eared bat (from this proposed action and cumulatively) would be limited, and acceptable. Furthermore, I considered that impacts to the species can be avoided and mitigated to an adequate level.
- 109) I considered that approving the proposed action would not result in an unacceptable impact to Corben's long-eared bat.

**Assessment 5**

**Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions - Endangered**

***Overview of State assessment and Department analysis***

- 110) I noted that the Minister's report discussed Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions (**BWRMDDB**) Threatened Ecological Community (TEC) within Appendix A, section A2. The Minister's report agreed with the proponent that two patches of BWRMDDB totalling almost 0.78 ha were present within the 'area of investigation' along access tracks. No vegetation was proposed to be cleared in these areas of the access tracks and the Minister's report agreed with the EES documentation that there would be no significant impacts to BWRMDDB.
- 111) I also noted that the EES documentation relied on the BWRMDDB being synonymous with Victorian Ecological Vegetation Classes (EVCs), in particular EVC 97 Semi-arid Woodland and EVC 98 Semi-arid Chenopod Woodland. For the BWRMDDB TEC the use of proxy EVCs is not recognised as an acceptable or appropriate method in the species recovery plan.
- 112) I noted that the department's Environmental Report Tool (**ERT**) reports at the time of referral, and at the approval decision stage, suggest that the BWRMDDB does occur in the proposed action area. The EES documentation outlined that the BWRMDDB was 'unlikely' to occur. I noted that the department requested further information from the proponent that required more specific information relating to the determination of presence of the BWRMDDB within the proposed action area and further discussion on possible impacts.
- 113) The proponent responded, outlining that the proposed action area was extensively ground-truthed in areas modelled to have proxy EVCs and in areas where no vegetation community modelling was available. The EVCs modelled and discrete patches observed were on sandy rises persisting as dune systems sitting above the floodplain or on alluvial terraces and are prone to flooding. The proponent stated that these areas are likely to benefit from the proposed hydrological regimes within the maximum inundation area.

114) The department considered, and I agreed, that the information provided for assessment of BWRMDDB was acceptable to determine whether this TEC would be significantly impacted by the proposed action.

***Relevant impacts of the proposed action***

115) I considered that the impacts to the BWRMDDB are:

- a) native vegetation clearing during the *construction phase*;
- b) hydrological changes during *operation phase* resulting in soil saturation, water table rises, salinisation impacts.

116) Given the low risk of potential impact to the BWRMDDB and that the significance of the impact was considered low, I considered that no specific conditions were required for this TEC.

***Overview of State assessed avoidance and mitigation measures***

117) I noted that, if identified, patches of BWRMDDB would be avoided through the *construction phase*, where possible. Otherwise, no further avoidance and mitigation measures were specifically proposed for BWRMDDB.

118) I considered given the low risk of potential impact to the BWRMDDB and that the significance of the impact was considered low, that no specific conditions were required for this TEC.

***Proposed Offsets***

119) I noted that no offsets were proposed for BWRMDDB.

***Department proposed conditions and proposed outcomes***

120) The department recommended and I accepted that specific conditions for BWRMDDB were not required.

***Department conclusion***

121) I noted that the Minister's report considered the proposed action would not significantly impact on BWRMDDB, and that the risk to the community would be limited. I agreed with this assessment and concluded that any such impacts would be acceptable.

122) I concluded that approval of the proposed action would not be inconsistent with the recovery plan, or the Threat abatement plan for competition and land degradation by rabbits.

**Assessment 6**

***Other species***

123) I noted that the Minister's report stated that the critically endangered Flat-headed Galaxias (*Galaxias rostratus*), the endangered Australian painted snipe (*Rostratula australis*) and the vulnerable Painted Honeyeater (*Grantiella picta*) were unlikely to be impacted by the proposed action.

124) With regard to the Flat-headed Galaxias, I also acknowledged that, to the extent that there were any impacts, a native fish exit strategy protocol would be required which is intended to

allow native fish (like the Flat-headed Galaxias) to safely navigate onto and off the floodplain.

- 125) In relation to the Australian Painted Snipe and Painted Honeyeater, I agreed with the Minister's report that impacts to these species were unlikely noting the particular Environmental Delivery Standards (EDS) that were to be in place.
- 126) I therefore concluded that it was unlikely that approval of the proposed action would have a significant impact on these species, nor would approval be inconsistent with any of the relevant recovery plans or threat abatement plans.

#### **Conclusion for listed threatened species and ecological communities**

- 127) I noted that the Minister's report concluded that the residual impacts to threatened species and communities are unlikely to be significant. In particular, the Minister's report identified Belsar-Yungera Floodplain Restoration Project (EPBC 2020/8744), not this action, as being likely to require an offset under the EPBC Act.
- 128) I noted that the Minister's report concluded that residual impacts on EPBC Act-listed species and communities could be acceptably managed provided that the recommended management and mitigation measures were implemented.
- 129) I agreed with the conclusion in the Minister's report and have applied conditions to avoid, manage and mitigate residual impacts to threatened species and communities.

#### **Wetlands of international importance**

##### **Assessment 7**

##### **Hattah-Kulkyne Lakes Ramsar site**

##### ***Overview of State assessment and Department analysis***

- 130) The Hattah-Kulkyne Lakes Ramsar site is listed under the Convention on Wetlands of International Importance especially as Waterfowl Habitat. I noted that the Hattah-Kulkyne Lakes Ramsar site is located 900 m upstream of the project area, and there is no direct impact pathway between the proposed action area and the Hattah-Kulkyne Lakes Ramsar site (or species which occur within the Ramsar site).
- 131) I found that the Minister's report adequately considered the potential impacts to the Hattah-Kulkyne Lakes Ramsar site and agreed with the proponent that the impact to the Ramsar site would not be significant. I agreed with the conclusion in the Minister's report.
- 132) I noted that the SIAC report considered public submissions about potential impacts on Ramsar sites from this proposed action and potential cumulative impacts from the larger VMFRP action. Evidence was provided to the SIAC enquiry that there would be no change to water delivery to the Hattah-Kulkyne Lakes Ramsar site and no changes to the existing infrastructure that delivers water to the Ramsar site. The evidence presented explained that downstream Ramsar sites, such as the Riverland Ramsar site, are greater than 100 km downstream of the proposed action area and that all Ramsar sites along the Murray River and associated wetlands would receive priority during environmental watering planning and delivery processes.

133) I noted that the SIAC enquiry accepted the evidence that there would be no effect on the water regime or water quality at the Hattah-Kulkyne Lakes Ramsar site. The Minister's report supported the findings of the SIAC report that surface water impacts had been adequately assessed and the risks on the Hattah-Kulkyne Lakes Ramsar site were low and acceptable.

134) I noted that, during the assessment, the department sought and received advice from the wetlands team who supported the conclusions drawn in the EES documentation.

135) I noted that the Hattah-Kulkyne Ramsar site management plan is the River Red Gum Parks Management Plan that is a broad strategic guide for managing and protecting five national parks and more than 100 other parks and reserves that comprise the management plan area in northern Victoria. The management plan includes a strategic plan to restore river and floodplain flows closer to natural through the return of frequency and inundation patterns suitable to riverine flora and fauna.

136) I noted that the specific goals of the management plan include:

- Rivers and wetlands are healthy and well-managed; supporting environmental, social, cultural and economic values that are able to be enjoyed by all communities.
- Collaborative management of the flood-dependent ecosystems ensures appropriate water regimes that improve ecosystem biodiversity, ecological functioning, water quality and health, and provide for uses that depend on environmental condition.

137) I noted that the updated ecological character description (ECD) for the Hattah-Kulkyne Ramsar site, published in 2023, stated that the Hattah Lakes North Floodplain Restoration project would benefit the broader Hattah Lakes complex including the Ramsar site.

#### ***Relevant impacts of the proposed action***

138) I considered that the impact from the proposed action was potential for changes in hydrological regime of water into the Hattah-Kulkyne Lakes Ramsar site. I noted that the ECD lists four critical components and processes for the Hattah-Kulkyne Lakes Ramsar site, these are:

- hydrology,
- lake bed herbland vegetation,
- fish, and
- waterbirds

139) I noted that the EES documentation, Minister's report and SIAC report considered that the proposed action would be unlikely to result in impacts to the Hattah-Kulkyne Lakes Ramsar site, because as explained above, the Hattah-Kulkyne Lakes Ramsar site is upstream of the proposed action area.

#### ***Overview of State assessed avoidance and mitigation measures***

140) I noted that no avoidance and mitigation measures, or proposed offsets, were specifically proposed for the Hattah-Kulkyne Lakes Ramsar site.

**Conclusion**

- 141) Overall, I agreed with the Minister's report and SIAC report that it was unlikely that there would be a significant impact on the Hattah-Kulkyne Lakes Ramsar site.
- 142) I accepted that the proposed action would not result in an unacceptable impact to the Hattah-Kulkyne Lakes Ramsar site.

**Social and economic matters - section 136(1)(b)**

- 143) Under subsection 136(1)(b) of the EPBC Act, in deciding whether or not to approve a proposed action and what conditions to attach to the EPBC Act approval, I am required to consider economic and social matters. In considering those matters, under s 136(2) of the EPBC Act I am required to take into account a number of factors. In the present case, the factors in s 136(2)(a), (b), (e) and (f) are relevant, and I have considered them in my reasons below.
- 144) I noted that the EES documentation outlined a number of economic and social matters that the proponent concluded would be delivered as part of the action, these included:
- a) an increase in vegetation cover that would lead to a reduction of erosion and a reduced impact for exposure and disturbance to archaeological sites (and associated Aboriginal cultural heritage).
  - b) improve the health of living scarred trees and therefore prolong their lifespan.
  - c) the EES documentation identified that the Hattah Lakes North project areas are highly valued for activities including camping, bushwalking, bird watching, canoeing, trail-bike riding and horse riding.
  - d) the EES documentation estimated that approximately 5,000 recreational visitors to Hattah Lakes North wetland system each year, which would bring an estimated economic value of \$800,000 per year.
  - e) generation of economic activity during construction of approximately \$29 million for Hattah Lakes North.
- 145) I noted that the Minister's report stated that the SIAC report concluded that the EES assessment of social and economic effects was adequate and that effects on social and economic matters can be managed acceptably with the implementation of the proposed recommendations and mitigation measures.
- 146) I noted that Aboriginal cultural heritage was discussed in Section 6.5 of the Minister's report. Aboriginal cultural heritage impacts and benefits were addressed in the EES documentation within Chapters 11 and 16 of the EES documentation and in the Aboriginal Cultural Heritage specialist study appended to the EES documentation.
- 147) I noted that the SIAC's report discussed Aboriginal cultural heritage in Section 10.
- 148) I noted that the Minister's report stated:
- a) that a cultural heritage management plan (**CHMP**) (No. 14330) had been prepared that covered the *construction phase* of the action.
  - b) there was no CHMP for the *operational phase* of the action.

- c) that the proponent's obligations under the *Victorian Aboriginal Heritage Act 2006* for effects from the operation would need to be addressed separately.
- 149) I noted that further CHMPs may be required to meet the obligations of the *Victorian Aboriginal Heritage Act 2006*.
- 150) I agreed with the Ministers report that the mechanisms in the *Aboriginal Heritage Act 2006* would be appropriate to ensure environmental effects associated with Aboriginal cultural heritage, including ancestral remains, will be able to be acceptably managed during operations.
- 151) I noted that section 6.6 of the Minister's report provides an overview of the other social and environmental impacts including soils, historic heritage, agriculture, air quality, bushfire, land use, landscape and visual, noise and vibration, traffic and transport, and social and business. In this regard:
- a) State historical heritage sites in the proposed action area include Moonah Track and Wattle Track Charcoal Pits (VHI H73280002), and Crawford's Home Station/Kulkyne Homestead (currently proposed for consideration to the Victorian Heritage Inventory).
  - b) Land use impacts included the inundation of private land used for farming, this would restrict traffic and transport during some inundation events. Further, these would require landowner approval.
- 152) The Minister's report supported the conclusion of the SIAC report, that all effects on other social and environmental matters, including those in the paragraph above, could be mitigated and avoided with the implementation of recommended changes to the EDSs. I accepted this conclusion.
- 153) I noted that the *Water Act 2007* provides the legislative framework for regulation of water charge and water market rules across the Murray-Darling Basin. It provided for the establishment of the Murray-Darling Basin Authority (MDBA) with the functions and powers needed to ensure that the basin's water resources are managed in an integrated and sustainable way under the *Murray-Darling Basin Agreement Act 2006*. VMFRP is being implemented as part of Victoria's obligations under the Basin Plan and would need to operate in accordance with the requirements for environmental watering under the *Water Act 2007* and the *Victorian Water Act 1989*.
- 154) I noted that the Minister's report and EES documentation outlined the benefits to the environment from the project. The project benefits may provide environmental benefits that meet the objectives stated in Part 1, section 3 of the EPBC Act. In particular:
- a) Such a decision provided for the long-term protection of the environment by the projects intent to return more natural flows to the floodplain areas. Especially for aspects of the environment that are linked with Hattah-Kulkyne Lakes Ramsar site and threatened species and ecological communities that are known to occur or have the potential to occur within the proposed action area.
  - b) Such a decision promoted the ecologically sustainable development through the conservation and ecologically sustainable use of natural water resources in the Murray

Darling Basin and the support of initiatives developed under the Murray-Darling Basin Plan.

- c) Such a decision did not specifically provide for the protection and conservation of heritage, although these aspects have been considered within the EES documentation.
- d) Such a decision promoted a cooperative approach to protection and management of the environment through the support of key agencies to manage the action in the short and long term through their approval and condition processes.

155) I noted that alternatives to the action were not considered through the assessment process. The projects that formed the larger VMFRP action were developed under the Murray-Darling Basin Plan and were the proposals accepted by that agency under the SDLAM. The SIAC enquiry determined that alternatives to the proposed action were outside the scope of the assessments and the department and I agreed with this determination.

156) I took into account that the public submissions at the time of referral, assessment and approval stages did highlight that the proposed action may not be the most effective way of achieving the project objectives, in relation to environmental, social and economic matters.

157) I agreed with the SIAC report and Minister's report that project alternatives were outside the scope of the assessment of the action.

158) I noted that the Minister's report concluded that there is a reasonable expectation for overall biodiversity improvement and benefit in the long term from the proposed action. However, there were limitations in information presented in the EES documentation, and the SIAC report and Minister's report recommended further analysis should be undertaken to understand the response of vegetation communities across the inundation area.

159) I further noted that the Minister's report also noted that while aquatic and semi-aquatic species would improve along with the floodplain functioning in general, species that had increased in biomass and diversity under drier conditions across the floodplain would be impacted.

160) I agreed with the proponent and the Minister's report that the intent of these projects is to improve the ecology of the floodplain environments and to improve ecological function of floodplains.

**Principles of ecologically sustainable development - section 136(2)(a)**

161) The principles of ecologically sustainable development (ESD) are set out in section 3A of the EPBC Act. One of those principles of ESD, the precautionary principle, is also set out in section 391(2) of the EPBC Act. I am required to take the following principles of ESD into account:

- a) *Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*
- b) *If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*

- c) *The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- d) *The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- e) *Improved valuation, pricing and incentive mechanisms should be promoted.*

162) In making my decision, I have taken into account the principles of ESD. In particular I:

- a) took into account the briefing material from the department, the Minister's report and supporting documentation and the EES documentation contained information on both the long-term and short-term considerations on economic, environmental and social issues that are relevant to the decision.
- b) took into account the precautionary principle when deciding whether to approve the taking of the action. I noted the department's recommendation in the approval decision brief that the precautionary principle did not apply, because:
  - a. while the action could pose threats of serious or irreversible harm to protected matters, in particular the Regent Parrot through the *construction phase* impacts on habitat, Winged peppercross through altered hydrology, Murray cod, Silver perch and the downstream Ramsar sites through operational impacts to water quality;
  - b. that, the conditions for avoidance and mitigation measures are current best practice for freshwater management for Murray cod and Silver perch, and as such provide scientific certainty, and the monitoring requirement for Winged peppercross would reduce irreversible harm and were reasons for not postponing the measures to prevent environmental degradation;
- c) considered that the intent of the proposed action was to restore floodplains to ensure that the health, diversity and productivity of the environment is maintained into the future. The recommended conditions of approval allow for the proposed action to be delivered and operated in a sustainable way to protect listed threatened species and communities and the environment more broadly for future generations.
- d) noted that the department considered the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for the proposed action and the larger VMFRP action, and the advice and recommendations reflected that consideration. I also considered these issues.
- e) agreed with the department considers that the costs of avoidance, mitigation and offset measures for the relevant impacts provide appropriate pricing and incentive mechanisms for the protection of the environment.

**Assessment report - section 136(2)(b)**

163) In accordance with section 136(2)(b), and as evidenced by the discussion above, I had regard to the Minister's report in making my decision.

164) The department informed me that it also took into account the assessment and conclusions of the Minister's report in making its recommendation to me

**Relevant comments - section 136(2)(f), section 131AA(6)**

165) In considering the matters set out in s 136(1) of the EPBC Act, I took into account:

- the comments given to me in response to my invitations under s 131.
- The relevant comments provided by the proponent under s 131AA.

166) There were no substantive comments in response to my proposed decision from those invited under section 131. The Minister for Indigenous Australians provided guidance to be passed on to the proponent to support ongoing engagement with local indigenous groups following any approval.

167) The department received comment from the Victorian state government to the proposed conditions of approval. Comments received from state agencies were minor and related to formatting and editorial issues.

168) The department has drafted the conditions of approval to ensure appropriate environmental outcomes are achieved whilst acknowledging the involvement of other relevant regulatory bodies involvement and minimising duplication.

169) During the consultation period, under section 131AA, the proponent provided a number of comments regarding:

- the over-reach of the conditions regarding the compliance of state and agency conditions as they relate to protected matters.
- the publication of the CEMP.
- the feasibility and financial cost of the monitoring as condition.
- the area of responsibility of the action, particularly in the Murray River main channel.

170) I considered that the proponent's comments were addressed in detail by the department. In this regard, I noted that the comments did not seek to amend the environmental outcomes proposed, rather to ensure clarity to wording and amendments to timeframes to assist compliance. The proponent also made minor stylistic and formatting suggestions and identified some duplication.

171) During consultations, the proponent noted the justifications from the department and proposed a number of alternative options to support administrative delivery of the conditions. The proponent advised that all concerns had been adequately resolved, other than their request not to require publication of the CEMP. While I acknowledged the concern, I noted that the publication of management plans is a standard position by the department and no change to this condition was made.

**Other matters for decision making**

172) I noted that the following threatened species and communities were listed after the controlled action decision, and, consistent with s 136(5) and s 158A, were not considered as part of my decision:

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- Southern Pygmy perch (Murray-Darling lineage) (*Nannoperca australis*) – Vulnerable – listed 31 April 2021;
- Plains mallee box woodlands of the Murray Darling Depression, Riverina and Naracoorte Coastal Plain Bioregions – Critically endangered – listed 10 June 2021;
- Mallee Bird Community of the Murray Darling Depression Bioregion – Endangered – listed 7 December 2021;
- Grey Snake (*Hemiaspis damelii*) – Endangered – listed 5 October 2022;
- Major Mitchell's Cockatoo (eastern) (*Lophochroa leadbeateri leadbeateri*) – Endangered – listed 31 March 2023;
- Southern Whiteface (*Aphelocephala leucopsis*) – Vulnerable – listed 31 March 2023;
- South-eastern Hooded Robin (*Melanodryas cucullata cucullata*) – Endangered – listed 31 March 2023;
- Blue-winged Parrot (*Neophema chrysostoma*) – Vulnerable – listed 31 March 2023;
- Diamond Firetail (*Stagonopleura guttata*) – Vulnerable – listed 31 March 2023;
- Murray Mallee Striated Grasswren (*Amytornis striatus howei*) – Endangered – listed 5 July 2023.
- Sharp-tailed Sandpiper (*Calidris acuminata*) – Vulnerable – listed 5 January 2024
- Latham's Snipe (*Gallinago hardwickii*) – Vulnerable – listed 5 January 2024
- Black-tailed Godwit (*Limosa limosa*) – Endangered – listed 5 January 2024

### Person's environmental history – section 136(4)

173) Pursuant to s 136(4) of the EPBC Act, when deciding whether to approve the taking of an action by a person, and what conditions to attach to that approval, I may consider whether the person is a suitable person to be granted an approval, having regard to:

- the person's history in relation to environmental matters; and
- if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- if the person is a body corporate that is a subsidiary of another body or company (the parent body)—the history in relation to environmental matters of the parent body and its executive officers.

174) I noted the department's Compliance and Enforcement Branch were consulted on the proponent's environmental history. On 16 August 2023, the Compliance and Enforcement Branch stated that no adverse history has been identified relating to contravention of national environmental law and that they are not aware of any contravention of state laws associated for Lower Murray Urban and Rural Water Corporation. I noted that the department's Compliance and Enforcement Branch has no other evidence that would suggest that the person proposing to take the action is either unable or unwilling to implement the proposed conditions.

**Ramsar wetlands – section 138**

175) In deciding whether or not to approve the proposed action for the purposes of section 16 or 17B, and what conditions to attach to such an approval, I must not act inconsistently with Australia's obligations under the Ramsar Convention.

***Ramsar Convention***

176) The Ramsar Convention's broad aims are to halt the worldwide loss of wetlands and to conserve, through wise use and management, those that remain. This requires international cooperation, policy making, capacity building and technology transfer.

177) I considered that that approval of the proposed action would be consistent with the aims of the Ramsar Convention. In this regard, the approval requires information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to Ramsar Wetlands.

178) I considered that the proposed action is to construct water management infrastructure to restore a more natural flood regime to the Hattah Lakes North area. The proposed conditions are aimed to enable collaborative management of the areas between agencies and maintain or mitigate adverse impacts to the ecological functioning and water quality. I considered that approving the proposed action was therefore consistent with the management plan for the Hattah-Kulkyne Lakes Ramsar site and broader northern Victoria area relevant to the management plan.

**Threatened species and endangered communities – section 139**

179) Section 139(1) of the EPBC Act provides that in deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, I must not act inconsistently with Australia's obligations under:

- the Biodiversity Convention; or
- the Apia Convention; or
- CITES; or
- a recovery plan or threat abatement plan made or adopted under ss 269A and 270B, respectively.

180) Further, s 139(2) provides that if the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community, in deciding whether to approve the taking of the action I must have regard to any approved conservation advice for the species or community.

***Biodiversity Convention***

181) I considered that the objectives of the Biodiversity Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

182) I noted the department's advice that the Biodiversity Convention has been considered in, and is not inconsistent with, the recommended approval which requires avoidance, mitigation and management measures for listed threatened species and communities. The recommended approval requires information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

183) In making my decision, I also gave particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action and the cumulative impacts of the larger VMFRP action.

#### ***Apia Convention***

184) The Convention on the Conservation of Nature in the South Pacific (Apia Convention) encourages the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystems occurring therein (particular attention being given to endangered species), as well as superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value.

185) The Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, Australia's obligations under the Convention have been taken into consideration. I considered that the recommendations of the Minister's report and the department's advice to me are not inconsistent with the Convention which has the general aims of conservation of biodiversity.

#### ***International trade in endangered species***

186) The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

187) I considered that the recommendations of the Minister's report are not inconsistent with CITES as the proposed action does not involve international trade.

#### ***Recovery Plans and Threat Abatement Plans***

188) The Recovery Plans relevant to the action and assessment were:

- Department of Agriculture, Water and the Environment (2021). *National Recovery Plan for the Painted Honeyeater (Grantiella picta)*. Department of Agriculture, Water and the Environment, Canberra.
- Baker-Gabb, D., & V.G. Hurley (2011). *National Recovery Plan for the Regent Parrot (eastern subspecies) Polytelis anthopeplus monarchoides*. Department of Sustainability and Environment, Melbourne
- National Murray Cod Recovery Team (2010). *National Recovery Plan for the Murray Cod Maccullochella peelii peelii*. Department of Sustainability and Environment, Melbourne.
- Mavromihalis, J. (2010). *National Recovery Plan for the Winged Peppercress Lepidium monoplacoides*. Department of Sustainability and Environment, Melbourne.

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- Cheal, D., A. Lucas & L. Macaulay (2011). National recovery plan for the Buloke Woodlands of the Riverina and Murray Darling Depression Bioregions. Department of Sustainability and Environment.
- Department of Climate Change, Energy, the Environment and Water (2022). *National Recovery Plan for the Australian Painted Snipe (Rostratula australis)*.

189) The above listed Recovery Plans were provided as attachments to my decision brief. The EES documentation and Minister's report provided a discussion of the Recovery Plans in respect of listed threatened species and community where relevant. I considered the discussion, where relevant, to the Recovery Plans of listed threatened species and community (see discussions above in Assessment 1 – 6).

190) The Threat Abatement Plans relevant to the action were:

- Department of the Environment and Energy (2016). *Threat abatement plan for competition and land degradation by rabbits*. Canberra, ACT: Commonwealth of Australia.
- Department of the Environment and Energy (2017). *Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs (Sus scrofa) (2017)*. Canberra, ACT: Commonwealth of Australia.

191) The Threat Abatement Plans were provided as attachments to my decision briefing documentation. The EES documentation and the Minister's report provided a discussion of the Threat Abatement Plans, where necessary, regarding pest management, and the proposed monitoring and mitigation measures for pest species.

192) I considered that the assessments by the proponent, the state and the department all considered relevant Recovery Plans and Threat Abatement Plans. I considered that approval of this action would not be inconsistent with the above obligations.

### **Conservation Advice**

193) The approved conservation advices relevant to the action were:

- Department of the Environment (2015). *Conservation Advice Grantiella picta painted honeyeater*. Canberra: Department of the Environment.
- Department of the Environment (2013). *Conservation Advice Bidyanus bidyanus (silver perch)*. Canberra: Department of the Environment.
- Threatened Species Scientific Committee (2015). *Conservation Advice Nyctophilus corbeni south-eastern long-eared bat*. Canberra: Department of the Environment.
- Department of Sustainability, Environment, Water, Population and Communities (2013). *Approved Conservation Advice for Rostratula australis (Australian painted snipe)*. Canberra: Department of Sustainability, Environment, Water, Population and Communities.

194) As noted above, these approved conservation advices were provided as attachments to the decision brief.

195) I had regard to the approved conservation advice relevant to the proposed action and gave consideration to the likely impacts of the proposed action on listed threatened species and endangered ecological communities.

**Bioregional plans – section 176(5)**

196) Pursuant to s 176(5) of the EPBC Act, in making my decision I am required to have regard to any relevant bioregional plan.

197) The department advised that there are no bioregional plans relevant to the action as the action is not located within or near an area designated by a bioregional plan.

**Conditions of approval – section 134**

198) Section 134(1) of the EPBC Act allows for conditions to be attached to the approval of the action if I am satisfied that the condition is necessary or convenient for:

- a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
- b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

199) I noted that the conditions of approval were drafted to ensure appropriate environmental outcomes are achieved, whilst acknowledging other relevant regulatory bodies' involvement and minimising duplication. In particular, the conditions sought to achieve a balance with the role of the Victorian state approval process and the MBDA approval process being the regulatory body for water management in the Murray-Darling Basin.

**State conditions**

200) I considered the likely scope and severity of the impacts to MNES, and the proposed avoidance and mitigation measures, and determined that it is likely the action will not result in a significant residual adverse impact on Regent Parrot.

201) I noted that there was likely a residual adverse cumulative impact from the larger VMFRP action on MNES both from individual actions and cumulatively across the larger VMFRP action, in particular, Regent Parrot, Murray cod, Silver perch, Winged Peppercress and Corben's long-eared bat.

202) I agreed with the Minister's report recommendations in relation to the imposition of State to management plans proposed by Victoria. At the time of my decision, the state had not yet formally developed conditions of approval and, as such there was a risk that the recommendations in the Minister's report would not be the final conditions of state approvals. The Minister's report considered in section 5 the planning framework and environmental management of the projects.

203) I noted that the department agreed with the Minister's report that the governance structure for the proposed action is complex. I considered that, instead of duplicating state conditions, that it was appropriate to impose conditions that will require the proponent to comply with conditions recommended in the Minister's report, where they relate to MNES, and allow the department to retain an ongoing compliance role for the proposed action for 25 years.

- 204) The proposed action's *operational phase* will continue after the 25-year period of this approval. However, the department recommended, and I accepted, that a compliance role by the department would not be required once the establishment of monitoring, reporting and review cycles across all watering regimes have been assessed for unintended consequences.
- 205) Where the department considered that the recommendations were necessary for the protection of threatened species identified in Assessment 1 to 5 (above), I applied conditions to the approval that either:
- a) require the proponent to comply with the state recommendations for mitigation measures, or
  - b) outline the requirements of reporting and monitoring that are necessary to be met, noting that where the state reporting and monitoring meet those requirements, submission of state approved documents in relation to the requirements may be regarded as acceptable by the department.
- 206) I considered that recommendations in the Minister's report were suitable for the protection of threatened species in Assessment 1 to 6 (above) and Ramsar wetlands in Assessment 7 (above), and it is convenient to rely on state agency conditions of approval. Specifically, I considered that the following documents would be adequate once approved by the state:
- the CEMP.
  - Environmental management framework containing associated environmental delivery standards.
  - heritage management plans for local heritage values.
  - bushfire emergency response plan.

#### **Agency conditions**

- 207) I considered the likely scope and severity of the impacts to MNES, and the proposed avoidance and mitigation measures, and determined that it is likely the proposed action will result in a residual adverse cumulative impact from the larger VMFRP action on Murray cod and Silver perch.
- 208) I accepted the department's advice that there are likely to be conditions of approval imposed by the Murray Darling Basin Authority. I agreed with the department's recommendation that the likely conditions and management plans as they relate to the *Murray-Darling Basin Agreement Act 2006* are suitable to manage the significant impacts to matters of national environmental significance resulting from the action and cumulative from the larger VMFRP action. Specifically, considering that:
- water quality impacts in the Murray River in-channel both from an individual action and the larger VMFRP action will be managed acceptably by the MDBA who have the mechanisms to manage impacts, for example the Salinity Interception Scheme.
  - operation of the floodplains will rely on environmental water that will have a complex governance structure to which the MDBA is best placed to protect, repair or mitigate protected matters.

209) I noted that the governance structure for the proposed action is complex. The department considers and I agreed that, instead of duplicating agency conditions, that it is appropriate and convenient to impose conditions that will require the proponent to comply with conditions of the agency, where they relate to MNES, and allow the department to retain an ongoing compliance role for the proposed action for 25 years.

**Department's recommended Conditions**

210) I agreed with the department's consideration of the likely scope and severity of the impacts to MNES, and the proposed avoidance and mitigation measures, and determined that it is likely the proposed action will result in a significant residual adverse impact on Winged peppercreed, Murray cod and Silver perch. The department has also considered the conditions imposed or likely to be imposed by Victoria and MDBA, as described in the above paragraphs. The department considers that the recommended conditions described are sufficient to manage the residual impacts to matters of national environmental significance resulting from the proposed action although there remains an unacceptable risk that recommended conditions will not be finalised and lead to significant residual impacts.

211) I considered that it is necessary or convenient to apply approval conditions to the proposed action. The key conditions relating to protected matters have been discussed under each controlling provision.

212) As detailed in the assessment sections above, all conditions attached to this report (at Appendix C) are necessary or convenient to protect and/or repair and mitigate damage on a matter protected by provision of Part 3 for which this proposed approval has effect.

213) Specifically, the purpose and intent of the conditions are stated in the environmental objective (condition 1) to avoid and mitigate harm to protected matters.

214) For clarity, convenience and efficiency, this has been achieved through the alignment with potential state and agency conditions where possible. Necessary requirements for the protection of MNES were reflected in:

- the action specifications (conditions 2 and 3) that limit the proposed approved action to the area that has been assessed and is necessary to protect MNES outside the assessed area.
- the receiving environment monitoring and reporting program (conditions 14 to 19) that provide the monitoring requirements to repair and/or mitigate damage to protected matters through water quality impacts from return flows to the Murray River. These have been aligned with agency conditions as discussed above.
- the groundwater monitoring and reporting program (conditions 20 to 24) that provide the monitoring requirements to repair and/or mitigate damage to protected matters through changed hydrology in across the floodplain, including salinisation impacts. These have been aligned with state and agency conditions as discussed above.
- the ecology monitoring and reporting program (conditions 25 to 30) that provide the monitoring requirements to repair and/or mitigate damage to protected matters through the proposed action across the floodplain and the receiving environment for erosion,

vegetation responses to hydrological change and the condition of protected fishes. These have been aligned with state and agency conditions as discussed above.

- the whole of action watering and ecology review (conditions 31 to 35) that provide the assessment and adaptive management improvements to repair and/or mitigate damage to protected matters from the proposed action. These have been aligned with state and agency conditions as discussed above.

**Additional considerations for conditions**

215) In my discussion for Assessment 1 to 4 (above) in relation to each species, I have explained the specific conditions I considered necessary or convenient. Where the conditions were relevant to more than 1 species, or the proposed action generally, I have explained those under the sections for State, Agency or Departmental conditions.

***Conditions likely to be imposed under a law of state or another law of the Commonwealth on the taking of the action - s 134(4)***

216) In accordance with section 134(4) of the EPBC Act, in deciding whether to attach a condition to an approval, I must consider any relevant conditions that have been imposed, or which I consider are likely to be imposed, under a law of a state or self-governing territory or another law of the Commonwealth on the taking of the action.

217) I am aware that conditions are likely to be imposed on the taking of this action under a law of a State or self-governing Territory or another Commonwealth agency. I considered the likelihood of these and incorporated these considerations into the proposed conditions of this approval, as discussed above.

***Information provided by the person proposing to take the action or by the designated proponent of the action - s 134(4)(aa)***

218) In accordance with section 134(4)(aa) of the EPBC Act, in deciding whether to attach a condition to an approval, I must consider information provided by the person proposing to take the action or by the designated proponent of the action.

219) Documentation provided by the designated proponent was attached to the decision brief which I considered. Comments from the proponent were taken into account in forming the conditions, as further outlined above.

***The desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition - s 134(4)(b)***

220) In accordance with section 134(4)(b) of the EPBC Act, in deciding whether to attach a condition to an approval, I must consider the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

221) The condition imposing a requirement for the creation and implementation of the Receiving Environment Monitoring Program focused monitoring efforts on upstream and downstream of the proposed action area. This reduced the need for broadscale surface water monitoring across the inundation extent of the action area. I considered this to minimise the cost to the

approval holder and as a practical approach to the monitoring of impacts from outflows of the projects and those impact pathways at highest risk to Murray cod and Silver perch.

222) As noted above, the conditions are focused on the reduction of duplication and the alignment with management and compliance with various agencies that will make the delivery of the *construction phase* and *operational phase* more practical and streamlined for the approval holder. The department will retain oversight of conditions for protected matters where gaps exist between other agencies and where there remains an element of risk for residual impacts or the delivery of offsets under the EPBC Act.

## Conclusion

223) Pursuant to s 136(5) of the EPBC Act, in deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, I must not consider any matters that I am not required or permitted to consider under Division 1, Part 9 of the EPBC Act. In making my decision to approve the proposed action, and the conditions to attach to that approval, I did not consider any matters that I am not required or permitted to consider.

224) In light of my findings above, I decided to approve, subject to conditions, the taking of the proposed action under ss 18 and 18A (Listed threatened species and communities) and ss 16 and 17A (Wetlands of international importance) of the EPBC Act.

225) The approval will be in effect for 25-years until 30 June 2049 to ensure that the offsets are managed in such a manner as to provide compensation for the residual impacts from the proposed action.

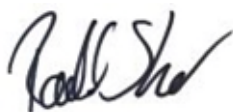
226) As a floodplain restoration proposed action, I acknowledge that the proposed action is intended to continue the inundation of the floodplains beyond the 25-year period, and as such, there will not be a decommissioning of the infrastructure of the proposed action following the expiry of the approval. However, I consider that impacts from the *construction phase* should be adequately offset after 25-years and compliance of the operational component of the proposed action will be adequately managed under state and MDBA obligations after the 25-year period.

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<b>name and position</b>	Rachel Short Branch Head Environment Assessments (Vic and Tas) and Post Approvals Environment Regulation Division
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**signature**



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<b>date of decision</b>	28 May 2026
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## ANNEXURE A

Section 130 of the EPBC Act relevantly provides:

*Basic rule*

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

*Notice of extension of time*

- (4) If the Minister specifies a longer period for the purposes of subsection (1A), he or she must:
  - (a) give a copy of the specification to the person proposing to take the action; and
  - (b) publish the specification in accordance with the regulations.

Section 131 of the EPBC Act provides:

- (1) Before the Minister (the Environment Minister) decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
  - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and
  - (b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.
- (2) A Minister invited to comment may make comments that:
  - (a) relate to economic and social matters relating to the action; and
  - (b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

Section 131AA of the EPBC Act relevantly provides:

- (1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
  - (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
    - (i) the decision the Minister proposes to make; and
    - (ii) if the Minister proposes to approve the taking of the action – any conditions the Minister proposes to attach to the approval; and

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- (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- (2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
- (a) a copy of whichever of the following documents applies to the action:
    - (i) an assessment report;
    - (ii) a finalised recommendation report given to the Minister under subsection 93(5);
    - (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
  - (b) any information relating to economic and social matters that the Minister has considered; and
  - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
  - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- (3) The Minister is not required to provide under subsection (2):
- (a) information that is in the public domain; or
  - (b) a copy of so much of a document as is in the public domain; or
  - (c) in the case of information referred to in paragraph (2)(b) or (c) – any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

Section 131A of the EPBC Act provides:

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may publish on the Internet:

- (a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and
- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

Section 133 of the EPBC Act relevantly provides:

*Approval*

- (1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.
- (1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

*Content of approval*

- (2) An approval must:
  - (a) be in writing; and
  - (b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
  - (c) name the person to whom the approval is granted; and
  - (d) specify each provision of Part 3 for which the approval has effect; and
  - (e) specify the period for which the approval has effect; and
  - (f) set out the conditions attached to the approval.

*Persons who may take action covered by approval*

- (2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
  - (a) the holder of the approval;
  - (b) a person who is authorised, permitted, or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

*Notice of approval*

- (3) The Minister must:
  - (a) give a copy of the approval to the person named in the approval under paragraph 133(2)(c); and
  - (b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

*Notice of refusal of approval*

- (7) If the Minister refuses to approve for the purposes of a controlling provision the taking of an action by the person who proposed to take the action, the Minister must give the person notice of the refusal.

Section 134 of the EPBC Act provides:

*Condition to inform persons taking action of conditions attached to approval*

- (1A) An approval of the taking of an action by a person (the first person) is subject to the condition that, if the first person authorises, permits, or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:
- (a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
  - (b) that the other person complies with any such condition.

For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

*Generally*

- (1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
- (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
  - (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

*Conditions to protect matters from the approved action*

- (2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
- (a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or
  - (b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

*Examples of kinds of conditions that may be attached*

- (3) The conditions that may be attached to an approval include:
- (aa) conditions requiring specified activities to be undertaken for:

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- (i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
  - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and
- (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
- (a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:
- (i) to comply with this Act and the regulations; and
  - (ii) not to contravene a condition attached to the approval; and
  - (iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
- (b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
- (c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
- (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and
- (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

This subsection does not limit the kinds of conditions that may be attached to an approval.

*Certain conditions require consent of holder of approval*

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
- (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
  - (b) a condition referred to in paragraph (3)(ab).
- (3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:
- (a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
  - (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition and cannot withdraw that consent.

*Conditions attached under paragraph (3)(c)*

- (3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
- (a) as in force at a particular time; or
  - (b) as is in force or existing from time to time;
- even if the instrument does not yet exist at the time the approval takes effect.

*Considerations in deciding on condition*

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:
- (a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and
  - (aa) information provided by the person proposing to take the action or by the designated proponent of the action; and
  - (b) the desirability of ensuring as far as practicable that the condition is a cost effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

*Effect of conditions requiring compliance with conditions specified in another instrument*

- (4A) If:

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- (a) a condition (the principal condition) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the other conditions) specified in an instrument of a kind referred to in that paragraph; and
- (b) the other conditions are in excess of the power conferred by subsection (1);

the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

### *Validity of decision*

- (5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

Section 136 of the EPBC Act provides:

### *Mandatory considerations*

- (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
  - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
  - (b) economic and social matters.

### *Factors to be taken into account*

- (2) In considering those matters, the Minister must take into account:
  - (a) the principles of ecologically sustainable development; and
  - (b) the assessment report (if any) relating to the action; and
  - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action – the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
  - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
    - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
    - (ii) the recommendation report relating to the action given to the Minister under section 95C; and
  - (c) if Division 5 (public environment reports) of Part 8 applies to the action:
    - (i) the finalised public environment report relating to the action given to the Minister under section 99; and

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- (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
  - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
  - (ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action – the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan, or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3) – the information in the notice.

### *Person's environmental history*

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:
  - (a) the person's history in relation to environmental matters; and
  - (b) if the person is a body corporate – the history of its executive officers in relation to environmental matters; and
  - (c) if the person is a body corporate that is a subsidiary of another body or company (the parent body) – the history in relation to environmental matters of the parent body and its executive officers.

### *Minister not to consider other matters*

- (5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

Section 139 of the EPBC Act provides in part:

- (2) If:

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- (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
- (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.