



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

I, Kate Gowland, Branch Head, Environment Assessments NSW and ACT Branch, provide the following statement of reasons for my decision of 16 March 2023, under subsection 130(1), section 133 and section 134 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to approve, subject to conditions, the reinstatement and operation of two public ferry wharves and associated infrastructure at La Perouse and Kurnell, about 14 km south of the Sydney central business district (**proposed action**).

LEGISLATION

1. Relevant legislation is set out in Annexure A. This legislation does not form part of my reasons but is provided as contextual background to my decision.

BACKGROUND

Description of proposed action

2. Transport for NSW (**the proponent**) proposes to reinstate and operate two public ferry wharves and associated infrastructure at La Perouse and Kurnell, in the Randwick City and Sutherland Shire local government areas, respectively, about 14 km south of the Sydney central business district (EPBC Act referral 2020/8825). The wharves will provide waterborne access to the Kamay Botany Bay National Park for passenger ferries, tourism-related commercial vessels, and recreational vessels.
3. The key features of the proposed action include:
 - a. Demolition of the existing viewing platform at Kurnell
 - b. Construction of temporary ancillary works including access roads, compound areas stockpiles, fencing and temporary building platforms (including a temporary causeway at Kurnell and temporary crane platform at La Perouse)
 - c. Relocation of swing moorings at La Perouse
 - d. Construction of two wharves on piles, one at La Perouse and one at Kurnell that would include:
 - i. A berth for passenger ferries (to cater for ferries between 15 metres to 40 metres in length)
 - ii. A multi-user berth for commercial and recreational vessels (to cater for small vessels between two metres and 20 metres long)
 - iii. Sheltered waiting areas and associated furniture located on the wharves
 - iv. Signage and lighting
 - e. Landside paving and landscaping at the entrance to the wharves

- f. New footpaths connecting the entrance of the wharves to the existing footpaths
 - g. Reconfiguration of existing car parking areas at La Perouse to increase the number of spaces, and associated footpath changes to accommodate these additional car parking spaces
 - h. Bicycle racks near the La Perouse wharf
 - i. Installation of utilities to service the wharves including power and water.
4. Works are expected to take 13 months. Once works are completed, it is expected that a regular ferry service would operate and take about 20 minutes to travel between La Perouse and Kurnell. The final ferry service and schedule would be confirmed by a future operator.

Description of the environment

5. There are several areas defined in relation to the proposed action:
- a. Proposed action area/project area/development footprint: the area where impacts from the proposed action will occur.
 - b. Desktop study area: 3 kilometres (km) buffer around the proposed action area (1,639 hectares (ha)).
 - c. Marine study area: where marine surveys were undertaken.
 - d. Terrestrial study area: where terrestrial surveys were undertaken.
 - e. Ferry swept path envelope: the proposed swept ferry path was excluded from the desktop study area because marine biodiversity within this area would not be impacted by the proposed action due to the water depth and lack of associated activity and development in this area. However, the potential impacts from vessel and ferry movement were considered in the assessment of the proposed action.

Procedural history

6. On 10 December 2020 the Department received a valid referral from the proponent under section 68 of the EPBC Act.
7. On 12 January 2021, a delegate of the Minister determined that the proposed action was a controlled action, on the basis that the proposed action is likely to have a significant impact on National Heritage places and listed threatened species and communities (**controlled action decision**). On the same date, the delegate agreed that the proposed action would be assessed by the NSW Government under the bilateral agreement between the Commonwealth of Australia and the State of NSW relating to environmental assessment, made in 2015 under section 45 of the EBPC Act (**bilateral agreement**).
8. Following the controlled action decision, the NSW Department of Planning, Infrastructure and the Environment (**DPIE**) undertook assessment of the proposed action on behalf of the Commonwealth under Part 5 Division 5.2 of the *Environment Planning and Assessment Act 1979* (**EP&A Act**) (**state significant infrastructure**). State significant infrastructure is subject to approval by the NSW Minister for Planning and requires an Environmental Impact Statement to be prepared. The proponent prepared an Environmental Impact Statement in June 2021 (**the EIS**).

9. The EIS was publicly exhibited by the DPIE for 28 days (20 business days) from 14 July to 11 August 2021, and 118 submissions were received. Key issues raised in the submissions were:
 - Inadequate consultation had been undertaken, and questions as to the validity of the decision making process and the consultation process
 - The viability of the proposed action and the need for a ferry service
 - The size of the wharves, the ferry to be used and the reliability of the service.
 - The impacts on Aboriginal and non-Aboriginal heritage at La Perouse and Kurnell, including that the design of the proposal is not sympathetic to the heritage values and Aboriginal significance of the area and the visual impact the wharves would have on the character of La Perouse and Kurnell
 - The impacts on traffic and parking, and the accessibility of the wharves and surrounding areas within Botany Bay
 - The validity of the noise and vibration assessment and the impacts on local residents and marine species
 - The potential soil, water and contamination impacts during the construction and operation of the wharves, including concerns for litter and water pollution impacts that would result from oil spills.
 - Concerns how offset requirements of the *Fisheries Management Act 1994* or EPBC Act would be met.
 - Concerns relating to the impact of construction and ferry turbulence on marine biodiversity and aquatic life. In particular, concerns were raised in relation to *Posidonia Australis* seagrass meadows of the Manning-Hawkesbury ecoregion, White's Seahorse (*Hippocampus whitei*), Black Rockcod (*Epinephelus daemeli*), Cauliflower Soft Coral (*Dendronephthya australis*), Weedy Seadragon (*Phyllopteryx taeniolatus*), squid populations and turtles.
10. On 22 October 2021, the proponent published a Response to Submissions Report (**the RTS**). The RTS identified the submitters and issues raised during exhibition of the EIS and responses to these issues. Although late submissions were not formally counted as submissions, their contents were addressed in the RTS.
11. On 19 November 2021, the DPIE sought further information from the proponent, in particular with respect to the impacts of the proposed action on marine biodiversity, White's Seahorses, Black Rockcod, *Posidonia Australis* seagrass species, Australian Pied Oystercatcher and Sooty Oystercatcher. The proponent provided a response on 17 May 2022.
12. In July 2022, the DPIE published a State Significant Infrastructure Assessment SSI-10049 (**NSW Assessment Report**).
13. On 21 July 2022, the NSW Minister for Planning approved the proposed action, subject to conditions, under s 5.19 of the EP&A Act.
14. On 3 August 2022, the DPIE formally advised the Department of this decision, and provided the Department with the NSW Assessment Report, the NSW Infrastructure Approval signed on 21 July 2022, and the NSW Notice of Decision.

15. In summary, the DPIE concluded that the potential environmental impacts of the proposed action would be acceptable, subject to implementation of appropriate mitigation and management measures, and the enforcement of the conditions of approval recommended in the NSW Assessment Report (**the NSW conditions**), which are set out in the Instrument of Approval (**the NSW Approval**) signed by the NSW Minister for Planning on 21 July 2022.
16. On 8 August 2022, the 30-business day statutory timeframe commenced for an approval decision under section 130(1B)(a) of the EPBC Act, with a statutory due date of 19 September 2022.
17. On 18 September 2022, a delegate extended the final decision timeframe by 40 business days to 15 November 2022 to allow the Department to undertake a robust assessment of the protected matters to ensure all impacts are considered, including seeking additional advice from relevant departmental line areas.
18. On 11 November 2022, a delegate further extended the final decision timeframe by 23 business days to 16 December 2022 to consider the line area advice, update the proposed decision briefing package, and to allow for statutory consultation with the proponent and other relevant parties.
19. On 22 November 2022, a delegate requested further information from the proponent under section 132 of the EPBC Act for the purposes of making a decision on whether to approve the proposed action. On the same day, the final decision timeframe was paused. This request for further information was informed by the Department's Environmental Contamination, Advice, and Standards Section (**ECASS**) advice regarding gaps in information about the potential for contamination to occur during development works, and the potential for mobilisation and redistribution of contaminants. On 30 January 2023 the proponent provided the requested additional information, regarding further sampling that was undertaken at La Perouse and Kurnell.
20. On 21 February 2023, I proposed to approve the proposed action, with conditions, as delegate of the Minister. On the same day, I wrote to the following parties inviting comments on my proposed decision:
 - the proponent
 - Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP
 - Minister for Indigenous Australians, the Hon Linda Burney MP
 - delegated contact for the Minister for Defence and Deputy Prime Minister, the Hon Richard Marles MP
 - delegated contact for the NSW Minister for Planning and Homes, the Hon Anthony Roberts MP.
21. The proponent responded to the invitation to comment on 24 February 2023, and suggested amendments relating to clarification of definitions for consistency with the NSW Approval. The Department met with the proponent on 3 March 2023 and discussed the definitions. Following the Department's explanation of the points in the table above, the proponent agreed that no changes to the definitions were required.
22. On 7 March 2023, a delegate for the Minister for Defence responded with 'nil comment'.

23. On 10 March 2023, the National Indigenous Australians Agency (**NIAA**) responded on behalf of the Minister for Indigenous Australians with the following comments:
- The NIAA recommends the proponent engage with several Traditional Owners and other First Nations stakeholders, additional to those already involved in consultation, and provided contact details.
 - The NIAA recommend that the proponent seek advice on whether any future act processes are required under the Native Title Act 1993.
 - The proponent should include measures agreed with Traditional Owners, Registered Aboriginal Parties (**RAPs**) and the La Perouse Local Aboriginal Land Council for First Nations in the Construction Heritage Management Plan for cultural heritage protection and management.
 - Develop a First Nations employment, training and procurement plan in consultation with Traditional Owners and other First Nations stakeholders.
24. No comments were received from the Minister for Infrastructure, Transport, Regional Development and Local Government or the NSW Minister for Planning and Homes.
25. On 16 March 2023, I decided to approve the taking of the proposed action for the purposes of sections 15B, 15C, 18 and 18A of the EPBC Act, subject to conditions.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

26. My decision to approve the taking of the proposed action under sections 130(1), 133 and 134 of the EPBC Act was based on consideration of the approval decision brief prepared for me by officers of the Department.
27. The approval decision brief contained the following attachments:

Attachment A: Updated Legal Considerations Report

Attachment B: Proposed approval decision package

A: Legal considerations report

B: Decision notice

B1: Decision notice (Appendix A)

B2: Decision notice (Appendix B)

C: Letters requesting comment on the proposed decision

C1: Letter to Proponent

C2: Letter to Minister (Defence)

C3: Letter to Minister (Indigenous Australians)

C4: Letter to Minister (Infrastructure, Transport, Regional Development and Local Government)

C5: Letter to Minister (NSW Planning and Homes)

D: NSW DPE determination

D1: NSW DPE Assessment Report

D2: NSW DPE Instrument of Approval

D3: NSW DPE Notice of Decision

E: Transport for NSW's assessment documentation

- E1.1: Environmental Impact Statement - Volume 1 (Chapters 1-28)
- E1.2(A): Environmental Impact Statement - Volume 2 (Appendices A-F)
- E1.2(B): Environmental Impact Statement - Volume 2 (Appendices G-M)
- E1.2(C): Environmental Impact Statement - Volume 2 (Appendices N-Y)
- E1.3: EIS Chapter 7 unredacted
- E1.4: EIS Appendix D unredacted
- E1.5: EIS Appendix E(A) unredacted (Appendices 1-3)
- E1.6: EIS Appendix E(B) unredacted (Appendices 4-8)
- E2.1: Response to Submissions
- E2.2: Response to Submissions (Unredacted)

F: Consultation

- F1: Proposed conditions comments (Post Approvals Section)
- F2: Proposed conditions comments (Environmental Audit Section)
- F3: Statutory document check (Species Listing, Information and Policy Section)
- F4: Environmental history check (Triage and Wildlife Section)
- F5: Line area advice (Cultural, Historic, and Natural Heritage Sections)
- F6: Line area advice (Environmental Contamination, Advice, and Standards Section)

G: Protected Matters Search Tool Reports

- G1: PMST Report at Referral decision stage (18-12-2020)
- G2: PMST Report at Proposed decision stage (03-02-2023)

H: Threat Abatement Plan (marine debris)

I: Conservation Advices

- I1: Conservation Advice (*Posidonia australis* seagrass meadows)
- I2: Conservation Advice (White's Seahorse)
- I3: Conservation Advice (Black Rockcod)
- I4: Conservation Advice (Cauliflower Soft Coral)

J: Marine Bioregional Plans

- J1: Marine Bioregional Plan (North Marine Region)
- J2: Marine Bioregional Plan (Temperate East Marine Region)

K: Request for additional information (section 132 of the EPBC Act)

- K1: Letter to proponent
- K2: Response from proponent
- K3: Sampling Analysis Quality Plan
- K4: Assessment of Protected Matters

Attachment C: responses to invitation to comment, comprising:

- C1: Proponent comments on proposed decision
- C2: NIAA comments on proposed decision

Attachment D: Notice of decision, comprising:

D1: Notice of decision, for signature

D2: Notice of decision with track changes

Attachment E: Draft letters to relevant parties, comprising

E1: Letter to the proponent

E2: Letter to Minister for Indigenous Australians

E3: Letter to delegate for the Minister for Defence

E4: Letter to delegate for the NSW Minister for Planning and Homes

ASSESSMENT

28. My findings are set out below in relation to relevant controlling provisions for the proposed action and other matters which I was required to take into account in making my decision.
29. My decision and findings on the material questions of fact were based on the information outlined at paragraph 27.

Mandatory Considerations- s 136(1)(a)

30. Section 136(1)(a) of the EPBC Act requires me, in deciding whether or not to approve the taking of an action and what conditions to attach to an approval, to consider matters relevant to any matter protected by a provision of Part 3 that is a controlling provision for the action, so far as they are not inconsistent with any other requirement of Subdivision B of Division 1 of Part 9 of the EPBC Act.
31. The proposed action was determined a controlled action under the following controlling provisions of the EPBC Act:
 - National heritage places (sections 15B and 15C)
 - Listed threatened species and ecological communities (sections 18 and 18A)

National Heritage places (sections 15B and 15C)

32. At the time of the controlled action decision, the Department considered that the proposed action is likely to have a significant impact to the Kurnell Peninsula Headland, Cape Solander Drive, Kurnell, NSW, Australia (ID 105812) National Heritage place.
33. I note that the NSW Assessment Report assessed impacts to values of this National Heritage place in accordance with the NSW Assessment Bilateral Agreement.
34. On 28 February 2005, the Kurnell Peninsula Headland, Cape Solander Dr, Kurnell, NSW, Australia (**KPH**) was gazetted on the National Heritage List.
35. The Australian Heritage Database states the KPH occupies an area of approximately 325 ha on the southern headland at the entrance to Botany Bay and contains both historic and Indigenous heritage values. The place is listed for the following values:
 - Criterion A Events, Processes
 - Criterion B Rarity
 - Criterion G Social value
 - Criterion H Significant people.

36. Heritage items (including Aboriginal items such as artefact scatters, shell middens, bone implements and Non-Aboriginal items such as monuments, structures and vegetation) are listed in the National Heritage values that contribute to the KPH listing.
37. The KPH includes the Meeting Place Precinct, Captain Cook's Landing Place, and much of the Kurnell headland portion of Kamay Botany Bay National Park, located northeast of Captain Cook Drive. The proposed action is located within the KPH and north of the area identified as Captain Cook's Landing Place.
38. The Department considered, and I accepted, that the proposed action would introduce new structures within the heritage settings, resulting in temporary and permanent impacts on the heritage significance of KPH, as set out in Table 1.

Table 1. Impacts on Aboriginal and Non-Aboriginal heritage values of Kurnell Peninsula Headland

Impact	Aboriginal heritage	Non-Aboriginal heritage
Direct	<ul style="list-style-type: none"> ▪ The proposed action has potential to directly impact one site with Aboriginal heritage, the 'Foreshore Midden-Captain Cook's Landing Place' ▪ The location of midden material that has the potential to be disturbed during construction is expected to be 600-900 millimetres below surface level. TfNSW carried out archaeological testing in the location of the midden and did not identify any archaeological material. ▪ Construction has potential to uncover Aboriginal middens during excavation which could provide additional information relating to Aboriginal occupation. As a result, the proposed action may have some impact on the Aboriginal heritage values of KPH, particularly those that display Aboriginal occupation. 	<ul style="list-style-type: none"> ▪ The main risk of direct impact is to the stone sea wall due to the excavation of a utility trench. The sea wall is a contributing heritage element to the KPH. This comprises removal of a 2 m wide section, with the potential to destabilise adjacent sections of the wall.
Indirect	<ul style="list-style-type: none"> ▪ Vibration generated during construction may impact heritage items. ▪ Construction may indirectly impact the aesthetic value associated with the views over Botany Bay and visual connectivity to the area which contained important marine resources in the precontact landscape. 	<ul style="list-style-type: none"> ▪ The proposed action would result in permanent indirect impacts to the views from Kurnell monuments in Kamay Botany Bay National Park, particularly the Captain Cook monument located approximately 50 m from the wharf. ▪ The proposed wharf would be visible in the foreground looking towards Botany Bay and La Perouse. This view is currently largely uninterrupted, except for the existing smaller wharf to be replaced. ▪ Views towards the monument from the south-west would be altered with the introduction of the larger wharf.

Avoidance, mitigation and management measures

39. The EIS notes that direct impacts have been minimised as much as possible by reducing the footprint of the proposed action and through sympathetic design within the context of the heritage values of KPH.
40. Measures are proposed in the EIS to minimise impacts to heritage values through careful management of Aboriginal and non-Aboriginal heritage items, including:

- Detailed recording of Aboriginal objects.
 - Archaeological salvage excavations.
 - Artefact analysis and, where appropriate, reburial of Aboriginal objects in a location determined by the Registered Aboriginal Party.
 - High archaeological significance – conservation as a priority. Only if all practicable alternatives have been exhausted would impacts be considered justified. Comprehensive salvage excavations may be necessary.
 - Moderate archaeological significance – conservation where possible. If conservation is not practicable, salvage excavations or similar mechanisms determined in consultation with the Aboriginal community may be necessary.
 - Low archaeological significance – conservation where possible, but usually no mitigation required if impacts are unavoidable.
41. The NSW conditions require the preparation of management plans for Aboriginal and Non-Aboriginal Heritage impacts (Conditions E21-E37) and require the proponent to conduct vibration testing before and during vibration activities that have the potential to impact on heritage items (Condition E49).

State assessment

42. The NSW Assessment Report concludes that impacts to National Heritage places are unavoidable and recommends that the impacts of the proposed action will be acceptable subject to the implementation of the avoidance and mitigation measures described in the EIS and the requirements of the NSW conditions.
43. The NSW Assessment Report states that the proponent has committed to mitigation measures to manage residual impacts on heritage items (e.g. protection and salvage programs, and vibration monitoring outlined in chapter 7 of the EIS) to ensure that Aboriginal heritage sites are protected. The NSW conditions require the proponent to carry out the proposed action in accordance with the procedures, commitments, preventative actions, performance criteria and mitigation measures set out in the EIS (conditions A1 and A2).
44. Further, the NSW conditions include conditions to avoid, mitigate and manage impacts on heritage items including:
- Implementation of Aboriginal Cultural Heritage and Non-Aboriginal Heritage sub-plans of the Construction Environmental Management Plan.
 - Implementation of an Unexpected Heritage Finds and Human Remains Procedure.
 - Implementation of a Non-Aboriginal Heritage Management Plan with measures to manage the retention, conservation, storage and display of any artefacts and relics.
 - Stop work requirements where previously unidentified Aboriginal or places of cultural significance are discovered.
 - Avoid impacts to the exposed sandstone surrounding a heritage site at La Perouse during construction.
45. The DPIE is satisfied that impacts to National Heritage Places listed under the EPBC Act have been adequately assessed and can be appropriately mitigated through measures outlined in the EIS.

Line area advice

46. On 15 August 2022, the Department's Heritage Branch was asked to review the NSW Approval to see whether additional EPBC Act conditions are required to avoid, minimise and mitigate impacts to the KPH National Heritage place.
47. On 5 September 2022, the Heritage Branch stated that the proposed action is unlikely to have detrimental impact on the historic heritage values of the KPH, provided the proposed action is undertaken in accordance with the proposed mitigation measures and the NSW conditions.
48. The Heritage Branch recommended the Department be consulted in the preparation of the Construction Environmental Management Plan, in line with NSW conditions C1-C13, and that I attach conditions to my approval requiring compliance with NSW conditions E21-E31 as they pertain to the minimisation of impacts on the National Heritage listed places with regard to Indigenous and non-Indigenous heritage.

Conclusion

49. Based on the information available and the *Matters of National Environmental Significance Significant Impact Guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999 (Significant Impact Guidelines 1.1)*, the Department considered that the avoidance and mitigation measures described in the EIS, together with the NSW conditions, are adequate to manage impacts on the National Heritage values of the KPH National Heritage place. The Department recommended that I attach to my approval a condition requiring the proponent to comply with the relevant NSW conditions (conditions E21–E37 and E49).
50. I accepted the Department's advice that the avoidance and mitigation measures described in the EIS, together with the NSW conditions, are adequate to manage impacts on the National Heritage values of the KPH National Heritage place. I was accordingly satisfied that it is necessary and convenient to attach conditions to my approval requiring the proponent to comply with the relevant NSW conditions (conditions E21–E37 and E49) to minimise impacts on the Indigenous, Non-Indigenous and Natural heritage values of the KPH National Heritage place.
51. I have concluded that, if approved subject to these conditions, the proposed action will not have an unacceptable impact on the values of a National Heritage place.

Listed threatened species and communities (sections 18 and 18A)

52. The Department advised that the proposed action is likely to have a significant impact on the following listed threatened species and communities:
 - *Posidonia australis* seagrass meadows of the Manning-Hawkesbury ecoregion – Endangered
 - White's Seahorse (*Hippocampus whitei*) – Endangered
 - Black Rockcod (*Epinephelus daemeli*) – Vulnerable
 - Cauliflower Soft Coral (*Dendronephthya australis*) – Endangered.

Posidonia australis seagrass meadows of the Manning-Hawkesbury ecoregion – Endangered

53. *Posidonia australis* is a sub-tidal meadow-forming seagrass species. *Posidonia australis* seagrass meadows of the Manning-Hawkesbury ecoregion (*Posidonia australis* seagrass

meadows) is an ecological community made up of an assemblage of plants, animals, and micro-organisms associated with seagrass meadows occurring in the warm temperate Manning Shelf and Hawkesbury Shelf bioregions. This community is dominated by *Posidonia australis* but also often includes other seagrass species such as *Zostera spp* and *Halophila spp*.

54. The *Approved Conservation Advice (including listing advice) for Posidonia australis seagrass meadows of the Manning-Hawkesbury ecoregion ecological community (Posidonia australis seagrass meadows Conservation Advice)* identifies the key threats affecting the ecological community as coastal development, dredging, boat mooring and other boating related activities, catchment disturbance and pollution, and climate change.

Marine study area

55. Seagrass distribution at both La Perouse and Kurnell was surveyed in May, August, and September of 2020. The extent of *Posidonia australis* seagrass meadows was calculated by combining areas of *Posidonia*, *Posidonia/Halophila* and *Posidonia/Zostera* seagrasses with a total of 7.25 ha across the marine study area:
 - 0.05 ha in La Perouse with a patchy distribution, mostly *Posidonia and Halophila*.
 - 7.2 ha in Kurnell, with all three species present across the site.
56. At Kurnell, *Posidonia australis* seagrass meadows are generally confined to a large dense bed on the western side of the proposed wharf in shallow water (1-3.5 m). Smaller isolated patches of *Posidonia australis* were also recorded amongst other seagrasses in the shallow waters close to the shoreline to the east, with *Zostera capricorni* densest in shallow waters close to the shoreline.
57. Seagrasses often experience seasonal fluctuations. The seagrass surveys noted that the density of *Halophila spp* at Kurnell has decreased since previous seagrass mapping surveys in May 2020. This is likely due to storm damage in June and July 2020.
58. The EIS states there is no habitat critical to the survival of the ecological community in the marine study area.

Impact assessment

59. The EIS assumed that seagrass located up to 15 m beyond the wharf's footprint would be lost due to piling and construction activities, shading from the wharf and moored boats, scour from boat activity, and anchoring. These impacts could extend across the proposed action area where vessels move but would be most concentrated around the wharves. Scour from the operational ferries and other vessels using the wharves would continue to disturb the area within the swept path and may prevent seagrass regrowing.
60. The EIS states that construction will not have a direct impact or result in the loss of *Posidonia australis* seagrass meadows at La Perouse. Operational impacts from propeller wash are also not predicted to impact the ecological community at La Perouse given the distance from the proposed action area and the nearest seagrass patch.
61. Construction and shading of the wharves, once built, will result in the loss of 0.0683 ha of *Posidonia australis* seagrass meadows at Kurnell and propeller wash during operation will impact an additional 0.0101 ha.

62. In addition, indirect impacts at Kurnell may include mobilisation of sediment and changes to lighting. The NSW Assessment Report notes that construction activities, particularly excavation and piling, have the potential to impact groundwater and cause soil disturbance within the construction footprint. However, it is unlikely to add to the overall sediment transport and movement patterns that naturally occur in Botany Bay. As such, the proposed action is unlikely to generate turbid waters that would reduce light levels or cause any perceptible depositional settlement over *Posidonia australis* seagrass meadows.
63. The Department considers, and I accept, that artificial lighting from the jetty is unlikely to lead to any long-term changes to the ecological community and seagrass has been known to persist for decades in the vicinity of jetties.
64. As discussed in paragraph 19, the proponent provided additional information on potential contamination. The proponent undertook further sampling at La Perouse and Kurnell, with a total of 36 samples from 6 locations at each site between 0.25 and 1 m below the sea floor. This also included one sea water sample for elutriate testing from each site. The findings were as follows:
- All sediment and elutriate samples from La Perouse were below guideline levels, including petroleum hydrocarbons, antifouling components, PFAS and pesticides.
 - All sediment and elutriate samples from Kurnell were also below guideline levels except for two samples for mercury that exceeded the sediment Default Guideline Value (0.2 mg/kg), but in both cases were below the High Guideline Value (between 0.15 mg/kg and 1 mg/kg).
65. An analysis of impacts to protected matters from construction and operation was undertaken, including modelling of piling and suspended sediments, and scouring from boat movements. The assessment found:
- The potential for sediment to be disturbed by works related to the proposed action is low and in line with naturally occurring sediment movement already occurring in Botany Bay.
 - A worst-case assessment of sediment quality in relation to mercury found that these sediments, if disturbed, will not impact on any organisms in the project area.
 - Based on elutriate sampling, the potential for contaminants to move from the sediment into the water column during disturbance is negligible.
 - The added levels of example contaminants that could move into areas adjacent to the project area is negligible.
 - The potential for protected matters to be impacted by contaminants in shallow sediments being disturbed during these works is low/negligible.
66. I accept that this testing was done in accordance with relevant guidelines, the *National Assessment Guidelines for Dredging*, Commonwealth of Australia, Canberra, 2009. Although dredging does not form a component of the proposed action, these guidelines provide relevant limits for typical sediment contaminants and analytical parameters. Therefore, noting the guidelines were followed, I accept that the risk of impacts from contamination on protected matters is low/negligible. Therefore, the Department considers, and I accept, that the risk of impacts from contamination on *Posidonia australis* seagrass meadows are low/negligible.

Avoidance, mitigation and management measures

67. The proponent has proposed measures in the RTS which it will implement during detailed design and construction to manage and mitigate the impacts of the proposed action on marine biodiversity, which are set out below in Table 2. These measures apply to *Posidonia australis* seagrass meadows and also to White's Seahorse which may use this ecological community as habitat.

Table 2. Proposed environmental management measures for impacts on marine biodiversity

Impact	Management measure	Timing
Lighting impacts to marine habitat and fauna	<ul style="list-style-type: none"> ▪ Design and lighting opportunities will be considered during the detailed design, including: <ol style="list-style-type: none"> a. Use of light permeable materials for the wharves to minimise shading impacts to marine habitats. b. Measures in the National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds, and Migratory Shorebirds. 	Detailed design
Marine biodiversity impacts	<ul style="list-style-type: none"> ▪ Measures and procedures to minimise and manage construction impacts on marine biodiversity include: <ol style="list-style-type: none"> a. Sensitive area maps that identify sensitive habitats, protection areas, no anchoring zones, and exclusion zones to protect seagrass and threatened species. b. Define procedures addressing relevant matters specified in the NSW DPI Fisheries Policy and guidelines for seagrass conservation and management. c. Measures to prevent and monitor: <ul style="list-style-type: none"> • water pollution • sediment disturbance during construction • construction vessel/barge movements, anchoring, and shading • biosecurity risks. d. Provide a marine ecology induction to all workers during site inductions. e. Consultation with DPI Fisheries, NSW Environment, Energy and Science Group, Randwick City Council, Sutherland Shire Council, National Parks and Wildlife Service for the preparation of the BMP. 	Pre-construction, construction
Habitat degradation related to vessel anchoring and mooring: construction	<ul style="list-style-type: none"> ▪ Establish no anchoring zones to minimise impacts from anchor points within <i>Posidonia australis</i> seagrass meadows at Kurnell and La Perouse. ▪ Avoid fixed location of barges at locations of <i>Posidonia australis</i> outside of the marine habitat impact area within the proposed action area to minimise shading impacts. 	Pre-construction and construction
Marine pests	<ul style="list-style-type: none"> ▪ Implement biosecurity management measures applicable and relevant to the proposed action in accordance with relevant NSW DPI Fisheries policies and procedures and <i>National biofouling management guidelines for marinas, slipways, boat maintenance and recreational boating facilities</i> to reduce the risk of introducing pests and diseases. 	Pre-construction, construction and operation
Habitat degradation and turbidity related to vessel wash: operations	<ul style="list-style-type: none"> ▪ Establish suitable navigation channels to avoid areas of listed threatened species habitat. ▪ Establish areas of no wash zones in consultation with Port Authority NSW, NSW DPI Fisheries and Transport for NSW at: <ol style="list-style-type: none"> a. La Perouse to minimise wash effects on the coastal subtidal and intertidal reef areas. b. Watts Reef near Kurnell to minimise wash effects on the subtidal habitat on the reef. 	Pre-construction, construction and operation

	<ul style="list-style-type: none"> ▪ Near both wharves to minimise excess wash from the ferry and recreational vessel access. 	
Contamination	<ul style="list-style-type: none"> ▪ Preparation of a Soil and Water Management Plan which describes how risks from soil erosion, contamination and water pollution will be managed and minimised, and an Erosion and Sediment Control Plan which details measures and controls to manage sediment control risks to prevent pollution of waterways. ▪ Implement operational restrictions on vessels approaching, berthing and departing the wharves to limit scour and sediment disturbance. 	Pre-construction, construction and operation

Environmental offsets

68. The proponent has prepared a Marine Biodiversity Offset Strategy (**MBOS**) to minimise direct and indirect impacts on listed threatened species and communities in the proposed action area. The NSW conditions require the MBOS to be implemented (conditions E12-E20).
69. The MBOS is a partnership between three universities (NSW, Sydney, and Western Australia), NSW Department of Primary Industry - Fisheries (**DPI Fisheries**), Gamay Rangers and local community volunteers to improve seagrass transplantation and rehabilitation outcomes in Botany Bay.
70. The MBOS includes provision for a monetary bond of \$2.881 million AUD to implement these offsets in the proposed action area. Part of the money would be held in trust under the NSW Fisheries Policy and be reinvested into the offset measures. Approximately \$114,000 AUD is required for offsetting *Posidonia australis* seagrass meadows and \$1.150 million AUD will support seagrass transplantation and research.
71. The EIS states that transplanting is the only way to replace and re-establish seagrasses in areas where it has been lost. As part of the MBOS commitments, the proponent proposes to rehabilitate and improve 0.2 ha of *Posidonia australis* seagrass meadows through transplantation to compensate for the clearance impact of 0.0683 ha to the ecological community.
72. A staged transplantation approach would be adopted, including:
- Stage 1: Transplant any *Posidonia australis* that would be directly impacted by shading from the wharves, or likely to be damaged by wharf construction.
 - Stage 2: Transplant *Posidonia australis* that might be affected by operation of the ferry vessels. This could be done when nearing the completion of wharf construction or once the full details on the types of ferry vessels and final modelling of the impact areas are available.
73. The success of the rehabilitation would be assessed through time by comparing the rehabilitated site(s) with two types of reference *Posidonia australis* populations:
- Initial reference site: *Posidonia australis* seagrass meadows in impacted areas prior to translocation.
 - Unimpacted reference sites: Existing *Posidonia australis* seagrass meadows in Botany Bay not impacted by construction.

State assessment

74. The NSW Assessment Report concludes that impacts to *Posidonia australis* seagrass meadows are unavoidable and recommends that the impacts of the proposed action will be acceptable subject to the implementation of the avoidance and mitigation measures described in the EIS and the requirements of the NSW conditions.
75. In the RTS, the proponent has committed to the mitigation measures summarised in Table 2 to manage residual impacts on *Posidonia australis* seagrass meadows. The NSW conditions require the proponent to carry out the proposed action in accordance with the procedures, commitments, preventative actions, performance criteria and mitigation measures set out in the RTS (conditions A1 and A2). Further, the NSW conditions include a number of conditions to avoid, mitigate and manage impacts on *Posidonia australis* seagrass meadows including:
- Implementation of Terrestrial and Marine Biodiversity sub-plan of the Construction Environmental Management Plan (conditions C1–C13).
 - Implementation of the Operational Environmental Management Plan (conditions D1–D4).
 - Transplantation through the implementation of the Marine Biodiversity Offset Strategy, described in paragraphs 69 to 75 above (conditions E12–E20).
76. The NSW conditions also include conditions to manage the risk of unexpected impacts arising in relation to contamination (conditions E62–E70), which require the proponent to:
- Engage a NSW EPA-accredited Site Auditor to review contamination reports throughout the duration of the proposed action to ensure that any work required in relation to sediment, soil or groundwater contamination is appropriately managed.
 - Prepare a Remedial Action Plan if remediation is required.
 - Prepare an Unexpected Contamination Finds Procedure for Contamination if remediation is not required.

Conclusion

77. Based on the information available and the Significant Impact Guidelines 1.1, the Department considered that the avoidance and mitigation measures described in the EIS and RTS, together with the NSW conditions, are adequate to manage impacts on *Posidonia australis* seagrass meadows. The Department accordingly recommended that I require the proponent to comply with the following NSW conditions:
- C1–C13, D1–D4, E6–E8, and E11 to avoid, mitigate, manage and compensate for impacts on the *Posidonia australis* seagrass meadows during all phases of the proposed action (pre-construction, construction and operation) (Conditions 4 and 6–9).
 - E62–E65, E67–E68, and E70 to engage an NSW EPA-accredited Site Auditor to review contamination reports throughout the duration of the proposed action to ensure that any work required in relation to sediment, soil or groundwater contamination is appropriately managed (Condition 5).
78. I accepted the Department's advice that the avoidance and mitigation measures described in the EIS and RTS, together with the NSW conditions, are adequate to manage impacts on *Posidonia australis* seagrass meadows. I was accordingly satisfied that it is necessary

and convenient to attach conditions to my approval requiring the proponent to comply with the NSW conditions set out immediately above.

79. In addition to the NSW conditions, the Department recommended that the following conditions be attached to the approval to minimise impacts associated with clearing *Posidonia australis* seagrass meadows:
- No clearance of *Posidonia australis* seagrass meadows outside of the project area (Condition 1).
 - A maximum clearance limit of 0.0683 ha of *Posidonia australis* seagrass meadows in the project area (Condition 3a).
80. I accepted the Department's recommendation to impose these additional conditions. I considered that it is necessary and convenient to do so, to ensure that the impacts associated with clearing *Posidonia australis* seagrass meadows are minimised.
81. Further, the Department recommended that I attach conditions relating to the MBOS, as follows:
- requiring the proponent to monitor and report on the environmental outcomes of the MBOS on an annual basis for 10 years for the *Posidonia australis* seagrass meadows and White's Seahorse habitat on an annual basis for 10 years, in the form of a Marine Biodiversity Offset Report (**MBOR**) (Condition 11). The Department noted that the MBOS has a reporting duration of five years, but it recommended that this should be extended to 10 years to align with Condition E17 of the NSW Approval. Further, the Department considered that 10 years is an appropriate length of time to establish an environmental offset for *Posidonia australis* seagrass meadows as it is known to be slow growing.
 - requiring the proponent to undertake a five-yearly review of the MBOS (Condition 12).
82. I accepted the Department's recommendation to impose these additional conditions. I considered that it is necessary and convenient to do so, to enable an assessment of the success of the environmental offsets and ensure that they have been achieved or are on track to be achieved, in the form of a Rehabilitation Monitoring Review. I also note that the proposed conditions for the MBOR and Rehabilitation Monitoring Review align with the proponent's commitments in the EIS and will:
- describe any adaptive management measures implemented to ensure that the environmental outcomes of the MBOS are achieved;
 - increase the amount of publicly available information around the success of transplanting *Posidonia australis* seagrass meadows; and
 - potentially be used to inform future research initiatives and transplantation approaches for the ecological community.
83. I concluded that, if approved subject to the conditions set out above, the proposed action will not have an unacceptable impact on *Posidonia australis* seagrass meadows.

White's Seahorse (*Hippocampus whitei*) – Endangered

84. White's Seahorse is a small, long-snouted seahorse known to occur in estuaries from St Georges Basin, NSW to Hervey Bay, Qld. In NSW, the species is currently confirmed to occur in eight estuaries between Forster and Port Hacking (Sydney) and in the Tweed River. Port Stephens and Sydney Harbour are the only locations where large populations

(more than 10 individuals) have been found to occur, and there are no indications or evidence to suggest that large populations exist outside of Port Stephens or Sydney Harbour.

85. White's Seahorse is known to occur at depths between 1-15 m and is found utilising a wide range of habitat types. Natural habitat includes soft coral, sponges, and seagrass (especially taller, denser species such as *Posidonia australis*) and artificial habitat including protective swimming net enclosures and jetty pylons. The species' use of artificial habitat appears to be most common where natural habitat has been lost.
86. The EIS states that no public studies have been completed to date in Botany Bay on the habitat preferences for the species. The EIS notes that stands of medium to high density *Posidonia australis* are likely to provide good quality habitat in the marine study area.
87. The *Conservation Advice* Hippocampus whitei *White's Seahorse* (**White's Seahorse Conservation Advice**) identifies the key threats affecting the species as natural habitat loss and cleaning of artificial habitats (protective swimming nets) in the Sydney region.

Marine study area

88. The NSW Assessment Report notes that habitat for the White Seahorse occurs in the *Posidonia australis* seagrass meadows (*Posidonia*, *Posidonia/Halophila*, *Posidonia/Zostera*).
89. While the species is known to occur in Botany Bay and has strong site fidelity, no individuals of this species were detected during diving surveys undertaken in the marine study area.

Impact assessment

90. The NSW Assessment Report states that the proposed action will directly impact 0.0683 ha of White's Seahorse habitat at Kurnell during construction.
91. The NSW Assessment Report noted indirect impacts to the species at both Kurnell and La Perouse may include artificial light during construction and operation, required for safety and security reasons; and turbidity and sedimentation from marine sediments being disturbed during construction and operation.
92. As discussed above in paragraphs 19 and 64-66, the Department sought additional information from the proponent regarding potential contamination, and testing found that the risk of impacts on White's Seahorse is low/negligible.

Avoidance, mitigation and management measures

93. Table 2 above describes avoidance, mitigation and management measures for *Posidonia australis* seagrass meadows, which are relevant to the White's Seahorse.

Environmental offsets

94. As *Posidonia australis* seagrass meadows constitute habitat for the White's Seahorse, the environmental offsets provided for *Posidonia australis* seagrass meadows, discussed in paragraphs 64 to 69 above, are relevant for this species. This includes transplantation of *Posidonia australis* seagrass meadows. This will provide habitat for the White's Seahorse, if successful.

Artificial habitats

95. Artificial habitats known as seahorse hotels have increasingly been adopted to supplement aquatic habitat and recreational fisheries in NSW. In addition to seagrass transplantation, the proponent proposes to create 78 seahorse hotels for the White's Seahorse, equating to 0.005945 ha habitat gained if measured by area, as an additional compensatory measure for the loss of habitat.
96. In highly modified and developed estuaries such as Botany Bay, many species, including the endangered White's Seahorse, will colonise artificial habitats, including jetty piles. The basic design is an alloy frame with a metal/rope mesh and or other permeable material that allows access into the middle of the frame to provide an area of protected shelter. They allow marine growth to cover the 'hotel' therefore providing suitable habitat for seahorses. More recent designs use a metal grid mesh around the frame that would offer longevity to the hotel.
97. The design of the wharves includes piles, where seahorse hotels would be attached to, providing increased habitat coverage as a fixed offset. Implementing these structures around the wharf piles would also encourage habitat connectivity. These structures would also encourage biological growth (e.g. via epifauna and epibiotic growth) resulting in a potential increase of biodiversity to the region.

State assessment

98. The NSW Assessment Report concludes that impacts to White's Seahorse are unavoidable and recommends that the impacts of the proposed action will be acceptable subject to the implementation of the avoidance and mitigation measures described in the EIS and the requirements of the recommended conditions in the NSW Approval.
99. In the RTS, the proponent has committed to the mitigation measures summarised in Table 2 to manage residual impacts on White's Seahorse. The NSW conditions require the proponent to carry out the proposed action in accordance with the procedures, commitments, preventative actions, performance criteria and mitigation measures set out in the RTS (conditions A1 and A2).
100. Further, the NSW conditions include conditions to avoid, mitigate and manage impacts on White's Seahorse including:
 - Implementation of Terrestrial and Marine Biodiversity sub-plan of the Construction Environmental Management Plan (conditions C1–C13)
 - Translocation of White's Seahorse habitat and installation of artificial habitat through the implementation of the Marine Biodiversity Offset Strategy (conditions E6–E8)
 - Engaging an NSW EPA-accredited Site Auditor (conditions E62–E65, E67–E68, and E70).
101. The DPIE was satisfied that impacts to White's Seahorse have been adequately assessed and can be appropriately mitigated through measures outlined in the EIS.

Conclusion

102. Based on the information available and the Significant Impact Guidelines 1.1, the Department considered that the avoidance and mitigation measures described in the EIS and RTS, together with the NSW conditions, are adequate to manage impacts to the

White's Seahorse. The Department accordingly recommended that I require the proponent to comply with the following NSW conditions:

- C1–C13 and D1–D4 to avoid, mitigate, manage and compensate for impacts on the White's Seahorse during all phases of the proposed action (pre-construction, construction and operation (Conditions 6-9); and
- E62–E65, E67–E68, and E70 to engage an NSW EPA-accredited Site Auditor to review contamination reports throughout the duration of the proposed action to ensure that any work required in relation to sediment, soil or groundwater contamination is appropriately managed (Condition 5).

103. I accepted the Department's advice that the avoidance and mitigation measures described in the EIS and RTS, together with the NSW conditions, are adequate to manage impacts to the White's Seahorse. I was accordingly satisfied that it is necessary and convenient to attach conditions to my approval requiring the proponent to comply with the NSW conditions set out immediately above.

104. In addition to the NSW conditions, the Department recommended that the following additional conditions be attached to the approval to minimise impacts associated with clearing White Seahorse habitat:

- No clearance of White's Seahorse habitat outside of the project area (Condition 1).
- A maximum clearance limit of 0.0683 ha of White's Seahorse habitat in the project area (Condition 3b).

105. I accepted the Department's recommendation to impose these additional conditions. I considered that it is necessary and convenient to do so, to ensure that the impacts to the White's Seahorse are minimised.

106. Further, the Department recommended that I attach conditions relating to the MBOS, as follows:

- requiring the proponent to monitor and report on the environmental outcomes of the MBOS on an annual basis for 10 years for the *Posidonia australis* seagrass meadows and White's Seahorse habitat on an annual basis for 10 years, in the form of a MBOR (Condition 11). The Department noted that the MBOS has a reporting duration of five years, but it recommended that this should be extended to 10 years to align with Condition E17 of the NSW Approval. Further, the Department considered that 10 years is an appropriate length of time to establish an environmental offset for *Posidonia australis* seagrass meadows as it is known to be slow growing.
- requiring the proponent to undertake a five-yearly review of the MBOS (Condition 12).

107. I accepted the Department's recommendation to impose these additional conditions. I considered that it is necessary and convenient to do so, to enable an assessment of the success of the environmental offsets and ensure that they have been achieved or are on track to be achieved, in the form of a Rehabilitation Monitoring Review. I also note that the proposed conditions for the MBOR and Rehabilitation Monitoring Review align with the proponent's commitments in the EIS and will:

- describe any adaptive management measures implemented to ensure that the environmental outcomes of the MBOS are achieved;

- increase the amount of publicly available information around the success of transplanting *Posidonia australis* seagrass meadows; and
- potentially be used to inform future research initiatives and transplantation approaches for the ecological community.

108. I concluded that, if approved subject to the conditions set out above, the proposed action will not have an unacceptable impact on *Posidonia australis* seagrass meadows

Black Rockcod (*Epinephelus daemeli*) – Vulnerable

109. The Black Rockcod is a large marine grouper or 'cod' species with range including warm temperate and subtropical waters of the south-western Pacific, including south-eastern Australia and the North Island, Kermadec Islands, and Poor Knights Islands of New Zealand. In Australia, the species distribution is from southern Queensland through NSW to northern Victoria, with the NSW coastline forming the species' main range.

110. Black Rockcod generally inhabit near-shore rocky and offshore coral reefs at depths down to 50 m. Juveniles hide in rock structures and remain highly cryptic until at least 40 cm in length, and adults are found in rock caves, rock gutters and on rock reefs. The species is aggressive and territorial, and individuals may occupy one particular cave for most of their adult life.

111. The *Approved Conservation Advice for Epinephelus daemeli (black cod) (Black Rockcod Conservation Advice)* identifies the key threats affecting the species as incidental by-catch by recreational and commercial fishers and illegal fishing activities.

Marine study area

112. Targeted surveys did not identify any Black Rockcod individuals nor suitable habitat in the proposed action area. However, the species is known to occur in the region and there is good condition habitat in the marine study area. Based on this, the EIS assumes that the species is present within the marine study area, but not the proposed action area. In general, the species' habitat was confined to areas between the 5 m depth contour and sand line at 8-12 m depth.

113. The NSW Assessment Report states that potential rocky reef habitat occurs for both adults and juveniles within 25 m of the La Perouse proposed action area and 120 m of the Kurnell proposed action area.

Impact assessment

114. The EIS notes that the proposed action will not result in the direct loss of any Black Rockcod habitat, however the species may be impacted by noise disturbance.

115. The EIS states that impacts from noise disturbance are expected to be temporary and are highly dependent on the location of the individual fish at the time of the noise occurring. The EIS concludes noise impacts are unlikely to lead to changes in the area of occupancy of the species or interfere with the recovery of the species as the impacts will be short-term and localised.

116. The *Marine bioregional plan for the Temperate East Marine Region* identifies that noise pollution is 'not of concern' to the species, nor is this type of impact discussed in the Black Rockcod Conservation Advice.

Avoidance, mitigation and management measures

117. Mitigation measures are described in the EIS and include measures for noise impacts such as restricting work hours, staging of construction and temporary noise barriers.

118. Mitigation measures that are proposed as part of the MBOS include:

- Areas of known Black Rockcod habitat will be marked and avoided within the ferry swept path.
- Areas of potential habitat must be inspected by an ecologist if they are to be potentially impacted by construction.

State assessment

119. The NSW Assessment Report concludes that the proposed action will potentially impact Black Rockcod and recommends implementing the avoidance and mitigation measures described in the EIS. The NSW conditions include conditions to avoid, mitigate and manage impacts on Black Rockcod, such as:

- Engaging an experienced ecologist to undertake an inspection when any construction methods have the potential to impact Black Rockcod and its habitat.
- Protecting potential Black Rockcod habitat through the implementation of the MBOS.

120. The DPIE is satisfied that impacts to Black Rockcod have been adequately assessed and can be appropriately mitigated through measures outlined in the EIS.

Conclusion

121. Based on the information available, the Significant Impact Guidelines 1.1 and the *Marine bioregional plan for the Temperate East Marine Region*, the Department considered that the proposed action is unlikely to have a significant impact on the Black Rockcod. The Department advised that the proposed action will not have an unacceptable impact on the Black Rockcod, without dependence on compliance with the NSW conditions, and accordingly did not recommend any conditions for this species.

122. I accepted the Department's advice and recommendations, and on this basis I decided not to attach any conditions to my approval with respect to Black Rockcod, as I considered that it was not necessary or convenient to attach any such conditions.

Cauliflower Soft Coral (*Dendronephthya australis*) – Endangered

123. Cauliflower Soft Coral is a colony of polyps densely placed together around divided branches that stems from a stalk. It is endemic to NSW. The only estuaries where the species is known to occur in abundance are Port Stephens and the Hawkesbury River. They have also been recently found occurring in Sydney Harbour, Botany Bay and Jervis Bay, however, there have only been a few colonies sighted across 8 different sites and their persistence in these areas is uncertain.

124. The species is generally found in sandy bottom areas in regions of high current flow and it can expand and contract in relation to tidal flow cycle, in depths of 1-18 m. The species is known to be an important habitat for a range of diverse marine species, including being the preferred habitat for White's Seahorse.

Marine study area

125. The NSW Assessment Report states that targeted surveys did not identify any Cauliflower Soft Coral colonies nor suitable reef habitat in the proposed action area nor marine study area. The DPIE concluded that the rocky reef and seagrass habitats in the marine study area do not support the species.
126. However, the species is known in the region at Bare Island and Kurnell, which was raised in several correspondences by the public. There are also records of the species around these areas in Atlas of Living Australia, though they are outside of the proposed action area.
127. The EIS states there is more suitable habitat in the high current and exposed locations further around to Bare Island at La Perouse and further northeast towards Inscription and Sutherland points at Kurnell. The proponent assessed the species as not occurring within the and ferry swept paths at La Perouse and Kurnell.

Impact assessment

128. The EIS states that due to the unlikely occurrence of the species and absence of suitable habitat in the proposed action area, an EPBC Act significance criteria assessment was deemed 'not required' and was not undertaken.
129. There are no relevant avoidance, mitigation or management measures for the Cauliflower Soft Coral.
130. The Department considered that construction and operation may cause sediment to move out of the proposed action area and indirectly impact the species.
131. The proponent undertook modelling of construction and operational activities and found that the potential for sediment to be disturbed by works is low and in line with naturally occurring sediment movement already occurring in Botany Bay.
132. The Department noted that sediment types in the area typically settle out of the water column quickly. Noting the distance to records of the species in the area and the nature of the habitat for the species with high tidal flow, the department considered indirect impacts from sediment mobilisation are unlikely.

State assessment

133. The NSW Assessment Report states that the proposed action would be unlikely to impact the Cauliflower Soft Coral, therefore no conditions were recommended.

Conclusion

134. Based on the information available and the Significant Impact Guidelines 1.1, the Department considered that the impacts to the Cauliflower Soft Coral would be acceptable due to the unlikely occurrence of the species and absence of suitable habitat in the proposed action area. The Department advised that the proposed action will not have an unacceptable impact on Cauliflower Soft Coral and accordingly did not recommend any conditions for this species.
135. I accepted the Department's advice and recommendations, and on this basis I decided not to attach any conditions to my approval with respect to the Cauliflower Soft Coral as I considered that it was not necessary or convenient to attach any such conditions.

Conclusion on listed threatened species and communities

136. As discussed below in the section on Conservation Advices, I had regard to the approved conservation advices relevant to the proposed action, and I was satisfied that the approval of the proposed action, and the proposed conditions of approval, are not inconsistent with relevant threat abatement plans. There are no adopted or made recovery plans relevant to the proposed action and its assessment.
137. Therefore, based on the information available, the measures proposed by the proponent to avoid, mitigate, manage and compensate for impacts, assuming compliance with the conditions imposed under the NSW Approval, and assuming compliance with the proposed conditions of approval, I concluded that the proposed action will not have an unacceptable impact on listed threatened species and communities (sections 18 and 18A).

Economic and social matters - section 136(1)(b)

138. 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 ss 136(2)(a), (b), (e) and (f) are relevant, and I have considered them in my reasons below.
139. The EIS addresses economic and social matters, as summarised in this section.
140. The main social impacts relate to a reduction in amenity and potential interruption to tourism activities during construction. Construction impacts include generation of dust and noise and parking impacts during realignment works. Visual impacts and restrictions to access would also create short-term socioeconomic impacts for the surrounding community. These amenity related impacts would be managed by a Construction Environmental Management Plan and relevant sub-plans that minimise and reduce impacts on the community.
141. Pedestrian pathways at La Perouse and Kurnell would be required to be closed off during construction, especially during utilities instalment activities. However, alternative access arrangements have been identified to maintain access.
142. The proposed action will have positive economic benefits, including up to 45 full time jobs to support the operation of the proposed action. The operation of the ferry is expected to attract increased tourism and spending in the area, which would benefit the local economy.
143. It is also noted that the social benefits of the proposed action align to community values identified in the Randwick City and Sutherland Shire Councils' community plans and supports improved connectivity between communities.
144. The proposed action would provide an accessible transport connection between Kurnell and La Perouse which would enable access to multiple destinations including the National Park. The National Park extends across 456 ha of land through the northern and southern headlands of the entrance to Botany Bay.
145. The proposed action forms part of a wider Kamay 2020 proposal (**Kamay 2020**), which is a Commonwealth and NSW Government proposal that is jointly funded by the NSW and

Commonwealth governments. Kamay 2020 is informed by the *Kamay Botany Bay National Park Master Plan* (NSW Government 2019) and *Kamay Botany Bay National Park Plan of Management* (NSW Government 2020) which commemorates the encounter between Aboriginal Australians and the crew of the Endeavour 250 years ago. Kamay 2020 focuses on improved visitor amenity and access, new experiences and acknowledgment of the diversity associated with the National Park.

146. Other key social and economic benefits provided by the proposed action include:

- Provision of an accessible transport connection between Kurnell and La Perouse.
- A new type of experience for visitors travelling around Kamay Botany Bay National Park.
- Increased visitation to the area and the creation of new commercial and recreational opportunities.
- Enhancement of Aboriginal cultural values.
- An improvement in amenity and placemaking outcomes through wharf design and provision of footpaths, landscaping, and signage.
- Additional car parking.

147. Overall, the Department advised that it agreed with the assessment of the DPIE that the proposed action would result in a range of benefits to the State and regional economy through improvements connections between Kurnell and La Perouse, improving active transport links and tourism. I agreed with the Department's conclusion.

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

148. 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 principles of ecologically sustainable development into account.

149. The NSW Assessment Report and the EIS address the principles of ESD. The DPIE considers that the proposed action, if undertaken in accordance with the recommended conditions of approval, would be consistent with the principles of ESD. I agree with the conclusion of the DPIE.

150. In approving the proposed action, I took into account the principles of ESD, including the precautionary principle, in the following ways.

Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations – section 3A(a) of the EPBC Act

151. I was satisfied that the NSW assessment process involved consideration of the long and short-term economic, environmental, social and equitable impacts in accordance with section 3A(a) of the EPBC Act. The proposed action has been assessed by NSW in accordance with the Bilateral Agreement. The assessment included analysis of economic, environmental, social and equitable considerations, and included a public consultation process.

152. I considered that the documents provided to me were sufficient to allow me to conclude that the decision-making processes have effectively integrated both short and long term social, economic and environmental considerations.

153. I considered that the likely impacts on the environment as a result of the proposed action are satisfactory in terms of the long-term and short-term economic, environmental, social and equitable impacts. The proposed action, if undertaken in accordance with the NSW conditions and the conditions I have attached to my approval will be consistent with the principle of ESD.

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 – section 3A(b) of the EPBC Act

154. Under sections 3A(b) and 391(2) of the EPBC Act, the precautionary principle provides that 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. I am required to take into account the precautionary principle in making my decision under section 133, by section 391 (to the extent that I can do so consistently with the other provisions of the EPBC Act), and by section 136(2)(a) as a principle of ecologically sustainable development.

155. Information on the threat of serious or irreversible damage to the National Heritage values of the KPH National Heritage place is discussed above in paragraphs 32 to 50.

156. Based on the information in the EIS, NSW Assessment Report, and the Heritage Branch advice, and given the nature and scale of the proposed action and its impacts, and the environment in which it will occur, I considered that there is a threat of serious or irreversible environmental damage to the KPH National Heritage place but there is not a lack of full scientific certainty about the likely nature and/or extent of those threats as the impacts associated with the proposed action are known and understood.

157. For these reasons, I concluded that the precautionary principle does not apply to National Heritage (s 15B & 15C).

158. I considered whether the precautionary principle applies to listed threatened species and communities (ss 18 and 18A) in two parts.

159. First, I considered the Black Rockcod and the Cauliflower Soft Coral. For the reasons discussed above at 109 to 122 and 123 to 135, I concluded that the proposed action does not present a threat of serious irreversible damage to the Black Rockcod and the Cauliflower Soft Coral. I therefore concluded that the precautionary principle does not apply to these species.

160. Second, I considered the *Posidonia australis* seagrass meadows and White's Seahorse. I concluded that the proposed action presents a threat of serious irreversible damage to *Posidonia australis* seagrass meadows and White's Seahorse because:

- *Posidonia australis* seagrass meadows is listed as endangered under the EPBC Act. The approved Conservation Advice states that one of the main factors for its listing is due to the communities restricted distribution. The Conservation Advice identified threats including coastal development, dredging, boat mooring and pollution. The action would result in a reduction in area of the community and is considered to be a serious impact.
- The White's Seahorse is listed as endangered under the EPBC Act. The approved Conservation Advice states that the key threatening processes for the species are

natural habitat loss and cleaning of artificial habitats. The action would result in a reduction in area of habitat for the species and is considered to be a serious impact.

161. I also considered that there is a lack of full scientific certainty with respect to the *Posidonia australis* seagrass meadows and White's Seahorse, because:

- There is limited evidence that indicates transplanting *Posidonia australis* seagrass meadows will be successful and a suitable offset, though the EIS states that Operation Posidonia has recently demonstrated success in transplanting the *Posidonia australis*. I consider that there is a lack of full scientific certainty in relation to the offsets proposed to compensate for the impacts.
- The White's Seahorse Conservation Advice states the current status of the historical distribution and size of current species populations are unknown. I note that limited research has been conducted on this species within Botany Bay and, while the surveys have not identified any individuals in the proposed action area, there is lack of full scientific certainty as to how impacts to habitat would affect the species.

162. Based on this information, I concluded that there are threats of serious or irreversible environmental damage to *Posidonia australis* seagrass meadows and White's Seahorse and a lack of full scientific certainty about the likely nature and/or extent of those threats. I therefore applied the precautionary principle to these species in making my decision.

163. The precautionary principle provides that, 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. I attached a number of conditions to my approval to prevent environmental degradation, notably:

- Conditions 6 and 7 require a Construction Environmental Management Plan to be developed prior to commencement of works to minimise impacts on White's Seahorse and its habitat.
- Conditions 11 and 12 require monitoring and public reporting on the outcomes of the MBOS to demonstrate that transplantation commences prior to the commencement of the action, and outcomes of the transplantation determine the success of the offsets and manage the uncertainty of translocation and rehabilitation.

164. In addition, the MBOS requires a monetary bond be paid to NSW Fisheries to ensure the offset measures are completed in accordance with the success criteria described in Sections 5.1.3 and 5.2.5 of the MBOS.

165. I noted that the approved *Posidonia australis* seagrass meadows Conservation Advice identifies transplantation as a high priority for management and research.

166. As noted above, I applied the precautionary principle to listed threatened species and communities and considered the scientific evidence available concerning the impacts of the proposed action. I considered that the conditions I attached to my approval, and NSW conditions, provide an appropriate level of protection to matters of national environmental significance.

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 – section 3A(c) of the EPBC Act

167. I took the intergenerational principle into consideration in my decision to approve the proposed action under the EPBC Act.

168. The proponent considers that the proposed action will provide inter-generational equity by:

- Being designed with future customer and community requirements in mind, the wharves are designed to be multi-user wharves with the ability to berth various vessel sizes, allowing flexibility for future use by a range of users.
- Improving accessibility and connectivity between the La Perouse and Kurnell parts of the National Park, including improved accessibility to culturally significant places for both Aboriginal and non-Aboriginal history.

169. I considered that these attributes have been adequately addressed by the proponent's commitments to avoid, mitigate and manage the impacts of the proposed action, the conditions I attached to my approval, and by the NSW conditions.

The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making – section 3A(d) of the EPBC Act

170. I considered the conservation of biological diversity and ecological integrity in relation to relevant listed threatened species and ecological communities in deciding to approve the proposed action.

171. The proponent's initial location options for the proposed action were considered based on biodiversity constraints and to avoid impacts on sensitive ecological communities. The land-based elements of the proposed action have been refined to avoid vegetation clearing. The marine elements such as the position, length and the number of piles of wharves has been refined to avoid impacts on seagrass and other sensitive habitats where possible. The construction boundaries of the proposed action have been refined to reduce and avoid impacts on sensitive communities.

172. The proponent's terrestrial and marine biodiversity assessments identify potential impacts on biodiversity and provide a range of mitigation measures to further avoid and minimise potential impacts. Where impacts would be unavoidable, a range of management and mitigation measures have been identified, including construction exclusion zones and no-anchoring zones, measures to limit sediment disturbance, vessel movements, vessel strike and monitoring. A MBOS will be implemented to offset the residual significant impacts on relevant biodiversity.

173. The DPIE considers that the advice provided within the NSW Assessment Report reflects the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for the proposed action.

174. I concluded that the proponent's commitments to avoid, mitigate and manage the impacts of the proposed action, the NSW conditions, and the conditions I have attached to my approval, ensure that the proposed action will not have serious or irreversible impacts on biological diversity and ecological integrity.

Improved valuation, pricing and incentive mechanisms should be promoted – section 3A(e)

175. I considered that the costs of avoidance, mitigation, management and compensation measures for any relevant impacts provide appropriate pricing and incentive mechanisms for the protection of Matters of National Environmental Significance (**MNES**) and the environment.

176. The proponent has further addressed this principle via four valuation and pricing mechanisms:

- Use of best available technologies to avoid or minimise impacts, that are both reasonably available and economically viable locally.
- Lifecycle cost principles – total up and downstream environmental, ecological and social impacts are accounted for.
- Polluter pays principle – where there is the need to remain liable for any pollution and environmental damage over a project's life.
- Best practical environmental option – most benefit for least environmental, social and cultural impact at an acceptable cost in both the short and long-term.

Assessment report - section 136(2)(b)

177. In accordance with section 136(2)(b) of the EPBC Act, I took into account the assessment and conclusions of the NSW Assessment Report in making my decision to approve the proposed action under the EPBC Act.

Other information - section 136(2)(e)

178. There are no strategic assessment reports relevant to the proposed action.

179. In making my decision, I considered all available information on the relevant impacts of the proposed action.

Relevant comments - section 136(2)(f)

180. In considering the matters set out in s 136(1) of the EPBC Act, I took into account any relevant comments given to me under ss 131 and 131A (from Commonwealth Ministers and members of the public, respectively). In deciding whether or not to approve the proposed action, I also took into account relevant comments provided by the proponent and the person proposing to take the action under s 131AA.

181. Comments were sought from the following parties about my proposed decision and recommended approval conditions:

- The proponent
- Mr Tom Calthorpe, delegated contact for the Minister for Defence and Deputy Prime Minister, the Hon. Richard Marles MP
- Minister for Indigenous Australians, the Hon. Linda Burney MP
- Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon. Catherine King MP
- Mr Tim Kirby, delegated contact for the NSW Minister for Planning and Homes, the Hon. Anthony Roberts MP.

182. The proponent responded to the invitation to comment on 24 February 2023, and suggested amendments relating to clarification of definitions for consistency with the NSW Approval. The Department met with the proponent on 3 March 2023 and discussed the definitions. Following the Department's explanation of the points in the table above, the proponent agreed that no changes to the definitions were required.

183. On 7 March 2023, a delegate for the Minister for Defence responded with 'nil comment'.

184. On 10 March 2023, the National Indigenous Australians Agency (NIAA) responded on behalf of the Minister for Indigenous Australians with the following comments:

- The NIAA recommends the proponent engage with several Traditional Owners and other First Nations stakeholders, additional to those already involved in consultation, and provided contact details.
- The NIAA recommend that the proponent seek advice on whether any future act processes are required under the Native Title Act 1993.
- The proponent should include measures agreed with Traditional Owners, Registered Aboriginal Parties (RAPs) and the La Perouse Local Aboriginal Land Council for First Nations in the Construction Heritage Management Plan for cultural heritage protection and management.
- Develop a First Nations employment, training and procurement plan in consultation with Traditional Owners and other First Nations stakeholders.

185. I took the above comments into account in making my decision.

186. No comments were received from the Minister for Infrastructure, Transport, Regional Development and Local Government or the NSW Minister for Planning and Homes.

187. The Department advised me that seeking public comments under section 131A of the EPBC Act is discretionary and recommended that I did not seek public comments in this case. I agreed that public consultation was unlikely to elicit any views or information that had not already been considered, noting that the views of the public in relation to the proposed action were well understood and extensive public consultation was undertaken in the NSW assessment process.

Other matters for decision making

Person's environmental history – section 136(4)

188. 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.

189. An environmental history check on Transport for NSW or NSW Roads and Maritime Services was received from the Department's Environmental Compliance Branch on 11 January 2023. The Environment Compliance Branch provided advice of seven incidents and cases involving Transport for NSW or NSW Roads and Maritime Services, occurring between 2014 and 2016. Two incidents involved minor land clearance (600 m² and 50 m²) prior to a required pre-clearance survey being undertaken. This resulted in a notification letter from the department reminding them to comply with their approval conditions. It did not result in a penalty notice. All other incidents were minor and generally administrative (e.g. late notification of commencement, late publications of plans and annual compliance reports) or third-party report investigations.

190. Based on the compliance history, including taking into consideration the above instances and their resolution, I did not consider that the proponent is unwilling or unable to comply with the recommended conditions of an EPBC Act approval. On this basis, I concluded that the proponent is a suitable person to be granted an EPBC Act approval.

National Heritage places – section 137A

191. Pursuant to s 137A of the EPBC Act, in deciding whether or not to approve for the purposes of section 15B or 15C of the EPBC Act the taking of an action, and what conditions to attach to such an approval, I must not act inconsistently with:

- the National Heritage management principles; or
- an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

National Heritage management principles

192. The National Heritage management principles are set out in Schedule 5B of the EPBC Regulations.

193. The EIS included an assessment of impacts on the National Heritage values of the KPH. The NSW Assessment Report discusses the requirements for decisions about National Heritage places. The DPIE considers the proposed action, if undertaken in accordance with the recommended conditions of approval, would not be inconsistent with the National Heritage management principles.

194. The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, their National Heritage values.

195. The National Heritage management principles provide a guiding framework for excellence in managing heritage properties. They set the standard and the scope of the way places should be managed in order to protect heritage values for future generations.

196. I considered that the approval of the proposed action is not inconsistent with the National Heritage management principles, including but not limited to the proponent implementing avoidance, mitigation and management measures that identify, protect, conserve, present and transmit the KPH National Heritage values and the ongoing engagement with Indigenous people as the primary source of information for the value of their heritage. In addition, I have attached a condition of approval (Condition 2) requiring compliance with the relevant NSW Approval conditions (conditions E21–E37 and E49) to minimise and manage impacts on the Indigenous, Non-Indigenous and Natural heritage values of the KPH National Heritage place.

Agreement for a National Heritage place

197. There is no agreement with NSW Government to which the Commonwealth is party in relation to KPH National Heritage Place.

Management plan for a National Heritage place

198. The NSW Government has the *Meeting Place Precinct: Conservation Management Plan 2008 (MPP Management Plan)* that covers the National Heritage listed KPH. However, this plan was not made under sections 324S or 324X of the EPBC Act.

199. On this basis, I considered that the approval of the proposed action, and the conditions I attached to my approval, are not inconsistent with any of the matters listed in section 137A of the EPBC Act.

Threatened species and endangered communities – section 139

200. 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 Convention¹; or
- the Apia Convention;² or
- CITES;³ or
- a recovery plan or threat abatement plan made or adopted under ss 269A and 270B, respectively.

201. 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

202. 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.

203. The recommendations of the NSW Assessment Report are not considered by the NSW Government to be inconsistent with the Biodiversity Convention, which promotes environmental impact assessment (such as that undertaken for the assessment of the proposed action) to avoid and minimise adverse impacts on biological diversity. I have also given particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.

204. I am satisfied that my decision is not inconsistent with the Biodiversity Convention, and that the proposed action would not be inconsistent with Australia's obligations. The

¹ The Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

² The Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as amended and in force for Australia from time to time.

³ The Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.

approval requires avoidance, mitigation and management measures for listed threatened species and communities (e.g. Construction Environmental Management Plan and Operation Environmental Management Plan). My decision requires information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Apia Convention

205. The 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.

206. The Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, the Department's advice included consideration of whether the proposed action would be consistent with the Apia convention. The Department advised, and I accepted, that the recommendations of the NSW Assessment Report are not inconsistent with the Convention which has the general aims of conservation of biodiversity.

International trade in endangered species

207. 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.

208. I am satisfied that the recommendations of the NSW Assessment Report are not inconsistent with CITES as the proposed action does not involve international trade.

Recovery Plans and Threat Abatement Plans

209. There are no adopted or made recovery plans relevant to the proposed action.

210. The Threat Abatement Plan relevant to the proposed action is:

- Department of the Environment and Energy (2018). *Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans* (2018). Canberra, ACT: Commonwealth of Australia. Available from: www.environment.gov.au/biodiversity/threatened/publications/tap/marine-debris-2018

211. The NSW Assessment Report notes that the proponent has committed to a MBOS which includes monitoring and reviewing actions as recommended by the interagency MBOS Implementation Reference Panel. This will feature best-practice translocation, restoration and maintenance of *Posidonia australis* seagrass meadows impacted by construction and operation of the proposed action.

212. The EIS notes that construction waste will be managed appropriately (i.e. taken off-site) in line with a plan of management, with bins and signage provided to reduce the potential for waste to enter the marine environment during the operational phase. The Department advised that the proposed action is unlikely to increase marine debris in the area and is not likely to exacerbate this threat.

213. On this basis, I considered that approval of the proposed action would not be inconsistent with the *Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans*.

Conservation Advice

214. When deciding whether to approve the taking of an action for the purposes of ss 18 and 18A, and what conditions to attach to any approval, I must have regard to any approved conservation advice for a listed threatened species or community that is likely to be significantly impacted by the proposed action. The approved conservation advices relevant to this proposed action, to which I am required to have regard, are:

- Department of the Environment (2015). *Approved Conservation Advice (including listing advice) for Posidonia australis seagrass meadows of the Manning-Hawkesbury ecoregion ecological community*. Canberra: Department of the Environment. Available from: www.environment.gov.au/biodiversity/threatened/communities/pubs/127-conservation-advice.pdf
- Threatened Species Scientific Committee (2020). *Conservation Advice Hippocampus whitei White's Seahorse*. Canberra: Department of Agriculture, Water and the Environment. Available from: www.environment.gov.au/biodiversity/threatened/species/pubs/66240-conservation-advice-12122020.pdf
- Department of Sustainability, Environment, Water, Population and Communities (2012). *Approved Conservation Advice for Epinephelus daemeli (black cod)*. Canberra, ACT: Department of Sustainability, Environment, Water, Population and Communities. Available from: www.environment.gov.au/biodiversity/threatened/species/pubs/68449-conservation-advice.pdf
- Threatened Species Scientific Committee (2020). *Conservation Advice Dendronephthya australis Cauliflower Soft Coral*. Canberra: Department of Agriculture, Water and the Environment. Available from: www.environment.gov.au/biodiversity/threatened/species/pubs/90325-conservation-advice-12122020.pdf

215. The Conservation Advice for the *Posidonia australis* seagrass meadows notes that relevant priorities include developing and trialing appropriate and successful methods for transplanting. As discussed above, the preparation and implementation of the MBOS will minimise impacts on the *Posidonia australis* seagrass meadows by rehabilitating and improving 2,000 m² of seagrass meadows in Botany Bay.

216. The Conservation Advice for the White's Seahorse notes that relevant priorities include developing and trialing artificial habitats to promote recovery of the species' populations. As discussed above, the MBOS aims to offset White's Seahorse habitat by establishing artificial compensatory habitat (seahorse hotels) and transplanting *Posidonia australis* habitat in Botany Bay, and to monitor the outcomes of these measures.

217. The Conservation Advice for the Black Rockcod notes that relevant priorities include monitoring known populations and the effectiveness of management actions. As impacts are unlikely to occur and no specific management actions are required, monitoring of this species is not required in relation to the proposed action.

218. The Conservation Advice for the Cauliflower Soft Coral notes that relevant priorities include implementing research regarding the biology of the species and reducing the impact of public and private boat moorings that impact on the species' habitat. As impacts are unlikely to occur, no specific mitigation or offset measures are required. It is noted that the presence of a wharf with mooring options may reduce public use of the surrounding areas for mooring which may reduce the risk of private boat moorings impacting habitat for this species.

219. In making my decision, I had regard to the approved conservation advices relevant to the proposed action, as summarised above, and have considered the likely impacts of the proposed action on listed threatened species and ecological communities.

Bioregional plans – section 176(5)

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

221. I have had regard to the following Marine Bioregional Plans in making my decision:

- Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) (2012). *Marine bioregional plan for the North Marine Region*. Prepared under the *Environment Protection and Biodiversity Conservation Act 1999*. Available from:
www.environment.gov.au/topics/marine/marine-bioregional-plans/north
- Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) (2012). *Marine bioregional plan for the Temperate East Marine Region*. Prepared under the *Environment Protection and Biodiversity Conservation Act 1999*. Available from:
www.environment.gov.au/topics/marine/marine-bioregional-plans/temperate-east

Marine bioregional plan for the North Marine Region

222. The Department's Species Profile and Threats Database (**SPRAT Database**) identifies the *Marine bioregional plan for the North Marine Region* (**North Marine Region MBP**) is relevant for White's Seahorse. However, the Department provided advice that the species distribution does not occur in the North Marine Region, and the proposed action is over 2,200 km away from the North Marine Region. Additionally, the species is not discussed in the North Marine Region MBP.

Marine bioregional plan for the Temperate East Marine Region

223. The Department's SPRAT Database identifies the *Marine bioregional plan for the Temperate East Marine Region* (**Temperate East Marine Region MBP**) is relevant for the Black Rockcod. The proposed action area is less than 8 km away from the Temperate East Marine Region. Additionally, the species is identified in the Temperate East Marine Region MBP as a Conservation value (protected species – bony fishes).

Consideration

224. I have had regard to the North Marine Region MBP and Temperate East Marine Region MBP. Due to the distance from the proposed action area, and nature and scale of the impacts on relevant listed threatened species, I have concluded that the proposed action will not impact on any Conservation value of the North Marine Region or the Temperate East Marine Region.

Conditions of approval – section 134

225. 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).

Conditions imposed by NSW- s 134(4)

226. 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

227. I considered the likely scope and severity of the impacts to MNES, and the proposed avoidance, mitigation and management measures, and determined that it is likely the proposed action will result in a significant residual adverse impact on listed threatened species and communities (sections 18 and 18A).

228. I also considered the NSW conditions. I consider that several of the conditions described are suitable to manage and compensate for the significant residual adverse impacts on relevant MNES resulting from the proposed action.

229. The NSW Assessment Report notes that the impacts of the proposed action on listed threatened species and ecological communities would be acceptable, subject to the implementation of the avoidance and mitigation measures described in the Submissions Report, Response to Submissions Report, MBOS and the requirements of the recommended conditions. It also notes that the impacts of the proposed action on the KPH National place would be acceptable, subject to the implementation of the avoidance and mitigation measures described in the Submissions Report and the requirements of the recommended conditions. However, the NSW Assessment Report does not recommend specific conditions to be applied for protected matters.

230. I considered that the following conditions included in the NSW Approval are necessary or convenient to protect, or repair or mitigate damage to relevant listed threatened species and communities:

- *Conditions C1–C13 are required as they relate to preparation and implementation of a Construction Environmental Management Plan (CEMP) to avoid, mitigate and manage impacts on protected matters during construction.*
- *Conditions D1–D4 are required to manage impacts during operation, including from potential contamination.*
- *Conditions E6–E8, and E11 are required to ensure surveys are undertaken pre-construction to reduce the risk of direct loss of individuals of White’s Seahorse through relocation, to record and confirm the impacts to Posidonia australis seagrass meadows, and to mitigate impacts to Posidonia australis seagrass meadows during operation.*

- Conditions E12–E20 are required to offset residual significant impacts to the *Posidonia australis* seagrass meadows.
- Conditions E21–37, and E49 are required as they relate to minimising impacts on the Indigenous, Non-Indigenous, and Natural heritage values of Kurnell Peninsula Headland.
- Conditions E62–E65, E67–E68, and E70 require the prevention and management of contamination.

231. I considered that, instead of duplicating the state conditions, it was appropriate to impose conditions that will require the proponent to comply with the NSW Government's conditions, where they relate to MNES, and allow the Department to retain an ongoing compliance role for the proposed action.

232. I consider that NSW conditions E9 and E10 are not required as they relate to Black Rockcod which is not subject to direct impacts from the proposed action as set out in the assessment above for this species.

233. In addition, I consider it appropriate to attach conditions to require the proponent to monitor and report on the environmental outcomes of the MBOS for the *Posidonia australis* seagrass meadows and White's Seahorse habitat on an annual basis for 10 years, in the form of a MBOR.

234. I note that the MBOS has a reporting duration of five years. I accepted the Department's recommendation that this should be extended to 10 years to align with Condition E17 of the NSW Approval, and that 10 years is an appropriate length of time to establish an environmental offset for *Posidonia australis* seagrass meadows as it is known to be slow-growing.

235. Further, I considered it appropriate to attach conditions to require the proponent to undertake a five-yearly review of the MBOS to assess the success of the environmental offsets and ensure that they have been achieved or are on track to be achieved, in the form of a Rehabilitation Monitoring Review.

236. I note that the proposed conditions for the MBOR and Rehabilitation Monitoring Review align with the proponent's commitments in the EIS and will:

- describe any adaptive management measures implemented to ensure that the environmental outcomes of the MBOS are achieved;
- increase the amount of publicly available information around the success of transplanting *Posidonia australis* seagrass meadows; and
- potentially be used to inform future research initiatives and transplantation approaches for the ecological community.

237. I have also attached conditions that limit the extent of impacts to protected matters and standard administrative conditions that allow for enforcement, record-keeping and appropriate documentation to support outcomes for the environment.

238. In deciding to attach conditions to my approval decision, I had regard to the *EPBC Act Condition-setting Policy 2015 (Condition-setting Policy)*.

239. I considered that the conditions I attached to my approval decision are necessary or convenient for the protecting, or repairing or mitigating damage to, the protected matters.

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

240. 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.

241. In making my decision, I considered the information provided by the proponent on the impacts on relevant MNES, as well as any avoidance, mitigation, management and compensation measures proposed to address them. I note also that the proponent was consulted on the proposed approval decision, and the proposed conditions, and I have considered the proponent's response.

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)

242. 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.

243. I considered that the recommended conditions are cost-effective as far as practicable, as they have been drafted to be as consistent as possible with the NSW Instrument of Approval, and the commitments made by the proponent in the EIS.

CONCLUSION

244. 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 the Minister is not required or permitted to consider by 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.

245. In light of my findings in paragraphs 26 to 243, I decided to approve, subject to conditions, the taking of the proposed action under ss 15B and 15C (National Heritage values of a national heritage place) and ss 18 and 18A (Listed threatened species and communities). My approval will remain valid until 31 December 2043 which will allow for completion of the action, including implementation of mitigation, management and environmental offset measures.



Kate Gowland

Branch Head, Environment Assessments NSW and ACT Branch

Date: 9/6/2023

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
 - (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 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:

- (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:

- (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
 - (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:
 - (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.