

**Statement of Reasons for a Decision on Controlled Action Under the *Environment Protection and Biodiversity Conservation Act 1999***

I, ANDREW MCNEE (Branch Head, Environmental Assessments Queensland and Sea Dumping Branch), Department of Climate Change, Energy, the Environment and Water, delegate for the Minister for the Environment and Water, provide the following statement of reasons for my decision of 20 September 2022, under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), that the proposed action by BM Alliance Coal Operations Pty Ltd to develop an open cut metallurgical coal mine and associated infrastructure, approximately 50km south-west of Blackwater in the Bowen Basin and Surat CMA mining precinct, Queensland (EPBC 2022/09279), is a controlled action under the EPBC Act and that the controlling provisions are sections 18 and 18A (listed threatened species and communities) and section 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).

Legislation

1. Relevant excerpts of the EPBC Act are set out in **Annexure A**.

Background

2. On 8 August 2022, a valid referral of the proposed action was received in accordance with section 68 of the EPBC Act from BM Alliance Coal Operations (the proponent). The proponent stated its belief that the proposal is a controlled action for the purposes of the EPBC Act.
3. On 20 September 2022, under section 75 of the EPBC Act, I decided that the proposed action is a controlled action. I also decided that sections 18 and 18A, and sections 24D and 24E of the EPBC Act are the controlling provisions for the proposed action.
4. On 27 September 2022 a statement of reasons for the decision was requested.

Description of the proposed action

5. The Blackwater Mine South Coking Coal Project is located approximately 50km south-west of Blackwater and 80km south-east of Emerald, Queensland.
6. The proposed action is the development of an open cut metallurgical coal mine and associated infrastructure. The action is adjacent to the currently operating Blackwater Mine and may share infrastructure with this existing operation.
7. The proposed action includes the following components:
 - a. Staged development of an open cut coal mine producing 10 million tonnes per annum of metallurgical coal for up to approximately 90 years;
 - b. The construction and operation of a rail loop and mine infrastructure;
 - c. Staged development and operation of a temporary and permanent construction workforce accommodation village;

- d. Construction and use of transmission lines and various roads (road diversions, crossings, haul and access roads);
- e. Construction of tailings co-dispersal facility, on-site excavation and production of gravel, on-site landfill disposal;
- f. Construction and operation of ancillary infrastructure in support of coal pads, stockpiles, storage and lay down areas;
- g. The development of a water management system (pipelines, sediment and mine water dams, bores, pit dewatering infrastructure);
- h. Topsoil stripping, drilling, blasting and exploration activities.

Description of the environment

8. The proponent stated in the referral that the proposed action area is located within the Bowen Basin and Surat CMA mining precinct where resource extraction, agriculture and livestock grazing are the predominant land uses. The project site has been largely cleared and is currently grazed.
9. Information in the referral indicated that the proposed action area contains native vegetation and non-remnant vegetation, including;
 - a. Brigalow (*Acacia harpophylla*), Lancewood (*Acacia shirleyi*) and Bendee (*Acacia catenulata*) dominated communities, with emergent eucalypts such as Dawson Gum (*Eucalyptus cambageana*) (approx. 3,018.5 ha);
 - b. Buffel Grass with patches of Queensland Bluegrass and Mitchell Grass (approx. 18,024.2 ha).
10. The referral stated that riparian vegetation consisted of narrow linear patches consisting of primarily Eucalypt dominated communities such as Queensland Blue Gum (*Eucalyptus tereticornis*), Poplar Box (*Eucalyptus populnea*) and patches of Brigalow communities, which the proponent considered to be suitable habitat for the Koala.
11. The referral also stated that shrubs and hollow-bearing trees were relatively sparse in riparian areas but a grassy ground layer and fallen timber were commonly found, providing shelter for reptiles, amphibians and rodents.
12. The proposed action area lies within the Comet River sub-basin within the Fitzroy River basin. Tributaries of the Comet River include Rockland, Shotover and Three Mile Creek which are in the vicinity of the project area. Rockland Creek passes through the centre of the action area and drains into Humboldt Creek, which drains into Comet River. Shotover Creek drains through the southern areas of the project area into Humboldt Creek. There is an unnamed drainage line in the upper headwater gully of Three Mile Creek. This creek then drains into Sirius Creek which drains to Comet River. Comet River and associated tributaries are ephemeral in nature and are subject to short periods of high flows in summer. Permanent water sources such as farm and mine dams are scattered throughout the proposed action area.

Evidence or other material on which my findings were based

13. In making a decision, I considered a referral decision recommendation brief prepared by officers of the department which contained the following attachments:

- a. The referral and attachments to the referral:
 - i. Attachment A: EPBC Referral Figures;
 - ii. Attachment B: BHP Annual Report 2021;
 - iii. Attachment C: EPBC Act Protected Matters Report;
 - iv. Attachment D: Regional Chemistry of the Fitzroy Basin Groundwater;
 - v. Attachment E: OGIA (2021) Underground Water Impact Report for the Surat Cumulative Management Area;
 - vi. Attachment F: EMM (2022) Blackwater Terrestrial Ecology Survey Report;
 - vii. Attachment G: DSEWPac(2011) Draft Referral Guidelines for the Nationally Listed Brigalow Belt Reptiles;
 - viii. Attachment H: DAWE (2022) Conservation Advice for *Phascolctos cinereus* (Koala).
- b. Further information to the referral attachments:
 - i. The department's Protected Matters Search Tool (PMST) report dated 9 August 2022;
 - ii. Advice from the department's Office of Water Science (OWS) dated 24 August 2022.
- c. Public comments:
 - i. Public Comment Table (6 comments set out in full, the remainder summarised and attached separately);
 - ii. Comment with attachments from Lock the Gate, dated 22 August 2022;
 - iii. Comment with attachments from Blackwater Mine South, dated 17 August 2022;
 - iv. Comment with attachments from Mackay Conservation Group, dated 16 August 2022; and
 - v. Comment with attachments from GBR and Carbon Budget, dated 10 August 2022.
- d. Ministerial comments:
 - i. Comment from Queensland's Department of Environment and Science, dated 19 August 2022;
 - ii. Comment from the Minister for Resources and Northern Australia, dated 18 August 2022; and
 - iii. Comment from the Minister for Indigenous Australians, dated 23 August 2022.

- e. Fee schedule with justifications; and
- f. Fee schedule without justifications.

14. I considered the there was enough information available to make a decision under section 75 of the EPBC Act.

Comments from the public

15. On 8 August 2022, the department published the referral on its website and invited public comments from that date until 22 August 2022, in accordance with subsection 74(3) of the EPBC Act.

16. The department received a total of 10 public submissions on the referral during the public comment period. The relevant matters raised in these public comments were summarised in the decision recommendation brief, and copies of the comments were attached to the brief. I considered the comments in making the decision under sections 75 of the EPBC Act.

17. General comments from the public submissions included that:

- the proposed action should be found clearly unacceptable and rejected, as a result of impacts relating to greenhouse gas (GHG) emissions and climate change;
- there would be direct impacts to agricultural land within the project area vicinity;
- there would be impacts to social matters including intergenerational equity;
- there would be unacceptable impacts to water resources and the Great Barrier Reef which have already been assessed by DES;
- there would be direct significant impacts to World Heritage, National Heritage, Great Barrier Reef Marine Park, Threatened Species and Communities and Water Resource.

18. Comments in relation to Listed Threatened Species and Communities included that:

- The proponent has identified the presence of numerous threatened species and ecological communities within the project area, including the Koala and Ornamental Snake;
- Critical and essential habitat for these species and communities have also been identified within the project area.

19. Comments in relation to Water Resources included that:

- Cumulative impacts to water resources were not discussed adequately within the referral documentation;
- In the absence of completed impact assessments relating to water resources, the proponent should adopt the Precautionary Principle and assume that the impacts to water resources as a result of the proposed action will be significant;
- The proponent has claimed that potential impacts to bores are to be considered in the EIS.

20. Comments in relation to impacts of Climate Change on protected matters included that:

- The amount of carbon pollution and methane emissions that would be produced from the proposed action during the mines 90-year lifespan would greatly impact the warming effect, resulting in increased global temperatures;

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- GHG emissions produced resulting in warming impacts of the proposed action are likely to also have a significant impact on listed threatened species and communities;
- World Heritage and the Great Barrier Reef Marine Park stand to be significantly impacted by temperature increases;
- World Heritage areas stand to be significantly impacted by the proposed action and temperatures increases. These areas include the Great Barrier Reef, the Greater Blue Mountains Area, the Tasmanian Wilderness and Gondwana Rainforests of Australia;
- Australia's international obligations under the *Convention Concerning the Protection of the World Cultural and Natural Heritage* and the *Paris Agreement* made under the *United Nations Framework Convention on Climate Change*. Public comments raised concern as to how Australia is phasing out fossil fuels and abiding by these international agreements.

21. The recommendation brief responded to the public comments raised, noting that:

- The department does not consider that information in referral documentation suggests a level of impact that is significant enough to suggest that the action is clearly unacceptable.
- The department noted further assessment of social and economic impacts will be carried out in the EIS assessment, including:
 - Impacts to surrounding land users
 - Intergenerational equity impacts
 - Impacts to the Australian economy
- The department noted that the impacts to water resources and listed threatened species are yet to be assessed under the EPBC Act. The department advised that if I was to make a controlled action decision as delegate of the Minister, the proposed action would be assessed under the bilateral agreement between the State of Queensland and the Commonwealth of Australia.
- The department recommended that further information be provided in relation to threatened species and communities and water resources during the EIS assessment to help inform understanding of relevant impacts of the proposed action.
- The department acknowledged concerns raised in the public submissions concerning climate change and GHG emissions. In the department's view, the referral information did not suggest that GHG emissions associated with the proposed action, including emissions resulting from coal, would be a substantial cause of any adverse climate change related effects on relevant matters of national environmental significance, such as listed threatened species or communities, water resources, World Heritage, National Heritage, Commonwealth marine environment, Great Barrier Reef Marine Park and Ramsar wetlands.

I agreed with the department's conclusions on the issues raised by the public comments.

Comments from Commonwealth and State/Territory Ministers

22. On 8 August 2022, the following Commonwealth Ministers were invited to comment on the referral:

- The Hon Murray Watt, Minister for Agriculture, Fisheries and Forestry;

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- The Hon Chris Bowen MP, Minister for Climate Change and Energy;
 - The Hon Linda Burney MP, Minister for Indigenous Australians;
 - Madeline King MP, Minister for Resources and Minister for Northern Australia.
23. On 18 August 2022, Geoscience Australia responded on behalf of the Minister for Resources and Minister for Northern Australia, noting that Geoscience Australia disagrees with the proponent's assessment and recommends that the project be considered a controlled action. This was based on:
- insufficient site-specific groundwater and surface water information;
 - insufficient assessment and quantification of potential impacts and cumulative impacts for water resources in the referral documentation;
 - Geoscience Australia considered the EIS would be necessary to assess the significance of potential impacts to water resources including changes to surface and groundwater, long-term changes to the groundwater system, cumulative impacts and effects of groundwater availability to groundwater dependent ecosystems.
24. On 23 August 2022, National Indigenous Australians Agency (NIAA) responded on behalf of the Minister for Indigenous Australians, noting that the proposed action will impact First Nations people and recommended that the proponent:
- seek advice from the Queensland Government regarding the *Native Title Act 1993* which may be applicable to the project;
 - engage with the Aboriginal Corporation for Development of Community (ACDC) and relevant Traditional Owners regarding the project. NIAA noted that the proponent had been engaging with the Gurang Land Council which had been deregistered and has been amalgamated to the ACDC;
 - ensure cultural heritage surveys undertaken allow for Traditional Owners to participate as a matter of priority to allow for potential changes to the project design. This would also enable Traditional Owners to discuss the presence of culturally significant species such as the Ornamental Snake, Koala and Semi-evergreen vine thickets of the Brigalow Belt (North and South) and Nandewar Bioregions Threatened Ecological Community;
 - consult with Traditional Owners regarding related impacts on tangible and intangible cultural values associated with the Comet River and associated tributaries that are to be impacted by the project;
 - prepare a Cultural Heritage Management Plan (CHMP) which incorporates culturally significant species, ecological communities and waterways. The CHMP should also address protocols for the identification, protection and management of heritage values during the lifetime of the project;
 - develop a cultural heritage awareness training to be delivered to all staff and contractors, in collaboration with the Traditional Owners and First Nations stakeholders. This would also be documented in the CHMP;
 - develop a new Indigenous Land Use Agreement which would address Native Title matters, land use, dispute management, environmental and cultural heritage management and the CHMP;

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- explore opportunities to First Nations people regarding cultural and environmental services and employment.
25. No comments were received in response to the invitation from the Minister for Climate Change and Energy and the Minister for Agriculture, Fisheries and Forestry.
26. On 8 August 2022, Mr Chris Loveday, the delegated contact for the Hon Meaghan Scanlon MP, Queensland Minister for Environment and the Great Barrier Reef Marine Park and Minister for Science and Youth Affairs, was invited to comment on the referral.
27. On 19 August 2022, Mr Loveday responded and advised that:
- if a controlled action decision was to be made, the proposed action would be assessed under the bilateral agreement between the State of Queensland and the Commonwealth of Australia;
 - Minimal information was provided in the referral regarding the proposed residual voids. The documentation did not clearly state the land use of the void, the location of the void and its impacts to groundwater as a sink;
 - The floodplain of Shotover Creek overlaps with the proposed pit area;
 - The project may continue to influence groundwater and surface water following the closure of the mine after its 90-year lifespan;
 - There is a lack of sufficient information regarding the mine and closure planning.
28. Mr Loveday also advised that the under the Queensland Governments Mined Land Rehabilitation Policy and section 126D (2) of the *Environmental Protection Act 1994* (Qld), the department will not approve Progressive Rehabilitation and Closure Plans that do not include an area which does not sustain a post-mining land use, unless the authority holder can demonstrate the proposed treatment of the land meets current best practice management.

Findings on material questions of fact

Referral of a larger action decision (section 74A)

29. Section 74A(1) of the EPBC Act provides that if the Minister is satisfied the proposed action (the action that is the subject of the referral) is a component of a larger action the same person proposes to take, the Minister may decide not to accept the referral.
30. I was aware that this is a discretionary decision and accordingly, I was not obliged to exercise the power even if I was satisfied that an action referred was a component of a larger action. I was also aware that if I accepted the referral, subsection 74A(4) required me to provide written notification of the decision under subsection 74A(1) to the person who referred the proposal.
31. The *Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement: Staged Developments – Split referrals: Section 74A of the EPBC Act* states that a referred action that is part of a larger action can be rejected only if there is a reasonable basis for doing so, and the key question for the Minister is whether the splitting of the project is likely to promote the objects of the EPBC Act. I also noted that the key considerations when deciding whether to accept a split referral were:

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- whether separate assessment of the referred action risks important impacts being overlooked or being unable to be controlled through approval conditions; and
 - whether, if undertaken separately, the impact would be reduced below significant.
32. The proposed action is adjacent to the currently operating Blackwater Mine also owned by BM Alliance Coal Operations Pty Ltd. The proponent stated that there is some potential of shared infrastructure between the projects however considers the proposed action to not be a component of a larger action.
33. The department advised that the Blackwater Mine has already been approved and is currently being undertaken by BM Alliance Coal Operations Pty Ltd. For the purposes of section 74A, this project is no longer an action which the proponent is proposing to take.
34. I noted that the proposed action is linked to the existing Blackwater Mine, but I agreed with the department's recommendation that section 74A did not apply to the proposed action because the Blackwater Mine has already been approved. I also agreed that the referral should be accepted.

Whether the proposed action is a controlled action

35. Section 75(1) of the EPBC Act provides that the Minister must decide whether the proposed action is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the action.
36. In accordance with subsection 75(2) of the EPBC Act, in making my decision, I considered all adverse impacts that the proposed action has, will have, or is likely to have on matters protected under Part 3 of the EPBC Act. I did not consider any beneficial impacts that the proposed action has or will have, or is likely to have, on matters protected under Part 3 of the EPBC Act.
37. After considering the department's advice, and the available information and materials, I decided that proposed action is a controlled action because there are likely to be significant impacts on the following matters protected by Part 3 of the EPBC Act:
- i. Listed threatened species and communities (section 18 & section 18A); and
 - ii. A water resource, in relation to a coal seam gas development or large coal mining development (section 24D & section 24E).

38. These impacts are discussed respectively below.

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

39. The department's Protected Matters Search Tool (PMST) report (dated 9 August 2022) identified that 27 listed threatened species and 5 threatened ecological communities (TEC) may occur within 10km of the proposed action.
40. Based on the location of the proposed action, the likely habitat in the area and the information provided in the brief, the department advised that significant impacts will potentially arise in relation to the following matters.

Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) —Endangered

41. The referral stated that five Koalas were identified through direct observation along creek line vegetation following Shotover and Rockland Creek during the autumn and spring surveys of 2019 and 2020. Indirect evidence of Koalas was also found during the autumn and spring surveys including scats and scratches identified along Rockland and Shotover Creek and in the Acacia woodland patch.
42. One Koala sighting was along Shotover Creek in a Queensland Blue Gum and the remaining four were identified in a large patch of Acacia woodland south of the existing Blackwater Mine. Species within the woodland patch included Queensland Peppermint (*Eucalyptus exerta*), Poplar Box and Narrow-leaved Ironbark (*Eucalyptus cebra*).
43. The proponent mapped Koala habitat according to the following conditions:
 - Preferred habitat
 - contiguous remnant Eucalyptus open forest to woodlands on alluvial and/or cracked rock groundwater where palatable food tree species occur frequently (and are usually dominant);
 - stream fringing open forest, open forest or woodland on alluvial terraces where *Eucalyptus tereticornis/camaldulensis* are dominant or common subdominant elements. Other important food species on the alluvial terraces can include *Eucalyptus coolibah*, *Eucalyptus cebra*, *Eucalyptus melanophloia* and *Eucalyptus populnea* areas represented as *Eucalyptus cebra/drepanophylla* tall woodland on hills and ranges with aquifers that persist in most drought cycles.
 - Suitable habitat
 - remnant and regrowth Eucalyptus open forests to woodlands with more variable aquifers (often seasonal) and that have connectivity to other areas of suitable or preferred habitat.
 - Marginal habitat:
 - fragmented and sparsely distributed woodlands and open woodlands, shrub lands and forests, with some food trees and which experience significant seasonal water deficits and/or are subject to periodic high intensity fires.
44. The Conservation Advice for *Phascolarctos cinereus* (Koala) 2022, identifies habitat that is critical to the survival of the Koala as being characterised by Eucalyptus forests and woodlands that contain resources necessary for foraging, survival (including predator avoidance), growth, reproduction and movement. Climate refugia such as drainage lines, riparian zones and patches that are resilient to drying conditions was also noted as habitat critical. The department advised that the combined description of preferred, suitable and marginal habitat provided in the referral aligned with the habitat description in the Conservation Advice, despite the Conservation Advice not dividing habitat into preferred, suitable and marginal habitat.
45. The referral stated that 350.3ha of 'preferred habitat', 3,507.7ha of 'suitable habitat' and 3,026.6ha of 'marginal habitat' was mapped within the survey area. The proponent considered habitat mapped in the survey area to be 'critical habitat' due to the presence of Koalas and abundance of Eucalypts along waterways.
46. Considering the information provided in the referral, the discussion provided above and the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance* (2013), the department advised that there is a real chance or possibility that the

proposed action will reduce the area of occupancy of the Koala and that the proposed action was likely to have a significant impact on the endangered Koala. I agreed with the department's conclusion.

Other listed threatened species or communities

47. The department also advised, based on the PMST report, referral documentation, SPRAT database and in consideration of the Significant Impact Guidelines 1.1, that the proposed action may significantly impact on other listed threatened species or communities, including but not limited to the following:

Marsupials

- Greater Glider (southern and central) (*Petauroides Volans*) – Endangered

Birds

- Painted Honeyeater (*Grantiella picta*) – Vulnerable
- Squatter Pigeon (southern) (*Geophaps scripta scripta*) – Vulnerable

Reptiles

- Ornamental Snake (*Denisonia maculate*) – Vulnerable

TECs

- Brigalow (*Acacia harpophylla* dominant and codominant) – Endangered
- Semi-evergreen vine thickets of the Brigalow Belt (North and South) and Nandewar Bioregions – Endangered

Flora

- *Bertya opposens* – Vulnerable
- *Solanum dissectum* – Endangered
- King Blue-grass (*Dichanthium queenslandicum*) – Endangered
- Ooline (*Cadellia pentastylis*) – Vulnerable
- *Aristida annua* – Vulnerable

Conclusion for listed threatened species

48. Having considered the information available, including the PMST report, SPRAT database, referral documentation and public comments, and with consideration of the Significant Impact Guidelines 1.1 and advice from the department, I was satisfied that the proposed action is likely to have a significant impact on listed threatened species and communities.

49. Some public comments raised concerns that the GHG emissions and resulting warming impact of the proposed action are likely to have significant impacts on threatened species and ecological communities. Based on the information before me, I agreed with the department's conclusion on GHG emissions as is outlined in the public comments section (paragraph 21).

50. For the reasons set out above, I decided that sections 18 and 18A are controlling provisions for the proposed action.

Water resource, in relation to a coal seam gas development or large coal mining development (sections 24D and 24E)

51. The department's Office of Water Science (OWS) noted that the impacts of the proposed action to some surface water, groundwater and ground water dependent ecosystem (GDE) values were not clearly outlined in the referral documentation. The Queensland Department of Environment and Science (DES) provided comment on water resources noting that minimal information was provided in reference to the mining void, mine closure and planning details. DES also raised concern over the impacts to water resources following the closure of the mine. In addition, Geoscience Australia (GA) commented that there is insufficient assessment, quantification of potential impacts and cumulative impacts for water resources in the referral documentation.
52. Based on information provided in the referral, and advice from the department's OWS, DES and GA, the department advised that significant impacts will potentially arise in relation to the following matters.

Surface water

53. The referral stated that the proposed action has the potential to impact surface water resources through direct disturbances associated with open cut mining, diversion of drainage features and creation of landforms that may affect surface water via the release of water to the surrounding environment. Potential impacts to surface water resources may include changes to catchment areas and flow characteristics due to the construction of potential water dams, mine infrastructure, flood levees, impacts to other water users in the region and the extraction/discharge of water.
54. Advice provided by OWS noted it is likely that there will be impacts to Comet River and associated tributaries despite these waterways being ephemeral. As the mine design is yet to be finalised, it cannot be determined that these impacts to surface water will be minimal. OWS stated that all surface water systems in the proposal areas will be impacted due to the removal, diversion or reduction in flow of Comet River and associated tributaries. OWS noted that the proponent had not provided an assessment of flow regime of the impacted surface water systems and there are no stream gauging stations in any other tributaries impacted by the project.
55. The referral stated that surface water will not be significantly impacted due to the Comet River and associated tributaries being ephemeral in nature. The proponent stated that management strategies such as a water management strategy and site water balance model would limit the impacts to surface water; however, these documents were not provided.
56. Based on the lack of information provided in the referral, and advice received, the department advised that it did not support the conclusion that surface water would not be significantly impacted, instead advising that there is a real risk of significant impacts to surface water.

Groundwater

57. The referral stated that the proposed action has the potential to impact groundwater resources through direct interaction with aquifers by open cut mining and indirect impacts to adjacent aquifers. Potential impacts to groundwater resources include: the drawdown of aquifers, alteration of groundwater flow and baseflow, water quality effects and changes to groundwater levels and flow direction in the vicinity of the final void.
58. The referral indicated that groundwater will not be significantly impacted due to the confined location of the coal resource within the porous rock groundwater system and the presence of intervening Triassic units (Rewan Formation) acting as an aquitard allowing for the isolated extraction of the coal resource. In addition, the referral concluded that groundwater flow and baseflow will not be significantly impacted due to the open cut mine acting as a groundwater sink during the operation and closure of the mine. The proponent stated that groundwater regulation requirements under the Fitzroy Basin Water Resource Plan would be followed to satisfy requirements of an Environmental Authority (EA).
59. The department advised that there was insufficient evidence in the referral to support the above conclusions on groundwater.
60. The referral indicated that there are 68 registered bores, categorised as existing or abandoned but useable within 10km of the proposed project. The proponent stated that a groundwater bore assessment will be undertaken during the project. The referral stated that the impact to the bores will not be significant, however, it does highlight that the current groundwater bore database contains insufficient information to fully characterise third party users in the vicinity of the action area.
61. Geoscience Australia stated that there is insufficient site-specific information regarding impacts to groundwater. The OWS advice noted it was likely that many of the bores located in the project area are to be impacted as the mine design is yet to be finalised. OWS highlighted that there may be cumulative impacts to groundwater due to the extensive petroleum (Coal Seam Gas (CSG)) exploration occurring in the area.
62. Given the concerns outlined by Geoscience Australia and OWS, the department advised that there was a real risk of significant impacts to groundwater.

Groundwater dependent ecosystems

63. The proponent stated that the Groundwater Dependent Ecosystem (GDE) Atlas was used to identify the western portion of the project area to potentially support GDEs. These areas were classified as having high and moderate potential for aquatic GDEs and moderate to low terrestrial GDEs. The department advised that there is a risk of impacts to GDEs through impacts to groundwater and surface water (as discussed above).
64. Therefore, the department advised that due to the presence of GDEs in the project area, potential impacts to groundwater and surface water, and the minimal site-specific survey information provided in the referral documentation, that there is a real risk of significant impact to GDEs.

Conclusion

65. The department advised that, based on the referral documentation, advice from Geoscience Australia, DES and the department's OWS, the proposed action has the potential to impact

surface water, groundwater resources and GDEs through changes to hydrological regimes and through cumulative impacts associated with Blackwater Mine.

66. Having considered the information before me, including the referral documentation, public submissions and advice from the department, I decided that the proposed action, being an action that involves a large coal mining development, is likely to have a significant impact to water resources and decided that sections 24D and 24E are controlling provisions for the proposed action.

Part 3 provisions that are not controlling provisions

67. In making a decision under section 75(1)(b) of the EPBC Act, I considered whether other provisions of Part 3 of the EPBC Act are controlling provisions.

Listed migratory species (s20 and s20A)

68. The Protected Matters Search Tool (PMST) indicated that a total of 10 migratory species may occur within 10km of the proposed action. The department noted that suitable habitat for listed migratory species is present within the area of the proposed action including Rockland Creek, Shotover Creek, Three Mile Creek, gilgai and farm dams.

69. The referral states that during surveys conducted over 2019 and 2020, four White-throated Needletail's (*Hirundapus caudacutus*) and two Latham's Snipe's (*Gallinago hardwickii*) were found. Other species identified as being present within the site based on database records included the Fork-tailed Swift (*Apus pacificus*), Sharp-tailed Sandpiper (*Calidris acuminata*) and Rufous Fantail (*Rhipidura rufifrons*).

70. The proponent stated that the proposed action will not result in a significant impact to listed migratory species based on the action area not being considered important habitat for these species and the site not being able to support an ecologically significant proportion of the population. The department advised that it agreed with the proponent's conclusion.

71. Based on the information available to me, including the referral documentation, PMST report, SPRAT Database, and with consideration of the *Significant Impact Guidelines 1.1* (2013), I considered the proposal is unlikely to result in a significant impact to any migratory species.

72. For these reasons, I decided that sections 20 and 20A are not controlling provisions for the proposed action.

Other controlling provisions

73. For the reasons set out in the table below, I also did not consider any of the following provisions of Part 3 of the EPBC Act to apply to the proposed action.

World Heritage properties (s12 & s15A)	<p>The PMST did not identify any declared World Heritage properties located within or adjacent to the proposed action area.</p> <p>The nearest World Heritage Area is the Great Barrier Reef. The border of Great Barrier Reef World Heritage area is approximately 195 km north-east of the proposed action.</p> <p>Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to World Heritage properties, I considered that the</p>
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	<p>proposed action is unlikely to have a significant impact on World Heritage properties.</p> <p>The EPBC Act does not regulate GHG emissions as a matter of national environmental significance. However, GHG emissions from the taking of an action may be considered where those emissions are likely to result in a 'significant impact' on a protected matter (whether on their own, or in combination with other adverse environmental effects) having regard to the <i>EPBC Act Significant impact guidelines 1.1</i> (2013).</p> <p>I agreed with advice provided by the department that it is not possible to establish that the GHGs associated with the proposed action will be a substantial cause of any adverse climate change related effects on relevant matters of national environmental significance, such as the world heritage values of World Heritage properties.</p> <p>For these reasons, I have considered that sections 12 and 15A are not controlling provisions for the proposed action.</p>
<p>National Heritage places (s15B & s15C)</p>	<p>The PMST did not identify any National Heritage places located within or adjacent to the proposed action area.</p> <p>The nearest National Heritage place is the Great Barrier Reef. The border of Great Barrier Reef National Heritage place is approximately 195 km north-east from the proposed action.</p> <p>Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to National Heritage places, I considered that the proposed action is unlikely to have a significant impact on the National Heritage values of National Heritage places.</p> <p>I agreed with advice provided by the department that it is not possible to establish that the GHGs associated with the proposed action will be a substantial cause of any adverse climate change related effects on relevant matters of national environmental significance, such as the National Heritage values of National Heritage places.</p> <p>For these reasons, I considered that sections 15B and 15C are not controlling provisions for the proposed action.</p>
<p>Ramsar wetlands (s16 & s17B)</p>	<p>The PMST did not identify any declared Ramsar listed wetlands of international importance within or adjacent to the proposed action area.</p> <p>The nearest Ramsar wetland is the Shoalwater and Corio Bays Area (Shoalwater Bay Training Area, in part - Corio Bay). The border of this Ramsar wetland is approximately 223 km north-east from the proposed action.</p> <p>Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to Ramsar listed wetlands of international importance, I considered that the proposed action is unlikely to have a significant impact on the ecological character of Ramsar listed wetlands of international importance.</p> <p>I agreed with advice provided by the department that it is not possible to establish that the GHGs associated with the proposed action will be a substantial cause of any adverse climate change related effects on</p>

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	<p>relevant matters of national environmental significance, such as the ecological character of Ramsar wetlands.</p> <p>For these reasons, I considered that sections 16 and 17B are not controlling provisions for the proposed action.</p>
Nuclear action (s21 & s22A)	<p>The proposed action does not meet the definition of a nuclear action as defined in the EPBC Act. For this reason, I considered that sections 21 and 22A are not controlling provisions for the proposed action.</p>
Commonwealth marine environment (s23 & s24A)	<p>The proposed action is not being taken in a Commonwealth marine area. Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to a Commonwealth marine area, I considered the proposed action is unlikely to have a significant impact on the environment in a Commonwealth marine area.</p> <p>I agreed with advice provided by the department that it is not possible to establish that the GHGs associated with the proposed action will be a substantial cause of any adverse climate change related effects on relevant matters of national environmental significance, such as a Commonwealth marine environment.</p> <p>For these reasons, I considered that sections 23 and 24A are not controlling provisions for the proposed action.</p>
Great Barrier Reef Marine Park (s24B & s24C)	<p>The proposed action is not being taken in the Great Barrier Reef Marine Park. The Great Barrier Reef Marine Park is approximately 211km north-east from the proposed action.</p> <p>Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to the Great Barrier Reef Marine Park, I considered the proposed action is unlikely to have a significant impact on the Great Barrier Reef Marine Park.</p> <p>I agreed with advice provided by the department that it is not possible to establish that the GHGs associated with the proposed action will be a substantial cause of any adverse climate change related effects on relevant matters of national environmental significance, such as the environment in the Great Barrier Reef Marine Park.</p> <p>For these reasons, I considered that sections 24B and 24C are not controlling provisions for the proposed action.</p>
Commonwealth land (s26 & s27A)	<p>The proposed action is not being taken on Commonwealth land. The nearest Commonwealth land is Defence – Shoalwater Bay Training Area approximately 190 km north-east from the proposed action.</p> <p>Given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to Commonwealth land, I considered the proposed action is unlikely to have a significant impact to the environment on Commonwealth land.</p>

	For these reasons, I considered sections 26 and 27A are not controlling provisions for the proposed action.
Commonwealth Heritage places overseas (s27B & s27C)	The proposed action is not being taken overseas. For this reason, I considered that sections 27B and 27C are not controlling provisions for the proposed action.
Commonwealth action (s28)	The person proposing to take the action is not a Commonwealth agency. For this reason, I considered that section 28 is not a controlling provision for the proposed action.

Precautionary Principle

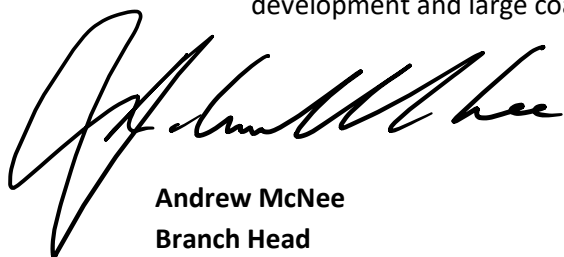
74. In reaching the decision under s 75 of the EPBC Act, I also took into account the precautionary principle pursuant to section 391 of the EPBC Act to the extent possible to do so consistently with other provisions of the EPBC Act. The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.
75. In this case, in light of the findings above that the proposed action will have or is likely to have a significant impact on matters protected (listed threatened species and communities, and a water resource associated with a large coal mining development/CSG), the application of the precautionary principle did not affect my conclusion that the proposed action is a controlled action, or which provisions are controlling provisions for the action.
76. I, however, have taken the precautionary principle into account in making my decision. I considered whether there are threats of serious or irreversible environmental damage with respect to matters protected by the EPBC Act, whether they will or are likely to be significantly impacted by the proposed action. I also considered whether there was a lack of scientific certainty associated with these matters.
77. The department advised that there are threats of serious or irreversible damage from the proposed action to the listed threatened species and communities and water resources. The department also advised that there is a lack of full scientific certainty because of insufficient site-specific information regarding cumulative impacts and hydrological regime impacts to groundwater, surface water and Groundwater Dependent Ecosystems. I agreed with the department's conclusions.
78. In relation to the other protected matters which are not controlling provisions, I did not consider that there are threats of serious or irreversible environmental damage as a result of the proposed action. Further, based on the available information including the referral documentation and its attachments, I do not consider that there is a lack of scientific certainty as to the nature or scope of the threat of environmental damage in relation to these other protected matters. For these reasons, the precautionary principle did not affect my decision that those other protected matters were not controlling provisions.

79. Considering the above findings, while I took into account the precautionary principle, it did not affect my conclusion that the action is a controlled action and the controlling provisions are sections 18, 18A, 24D and 24E.

Reasons for decision

80. In making my decision I took account of the precautionary principle and public comments.

81. In light of my findings, I was satisfied that the proposed action will, or is likely to have, a significant impact on listed threatened species and ecological communities and a water resource. I therefore decided on 20 August 2022 that the proposed action is a controlled action and the controlling provisions are sections 18 and 18A (listed threatened species and communities) and sections 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).



Andrew McNee
Branch Head
Environment Assessments Queensland and Sea Dumping Branch

10 **November 2022**

Annexure A

Section 68 of the EPBC Act relevantly provides:

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

Section 74 of the EPBC Act relevantly provides:

Inviting other Commonwealth Ministers to provide information

- 1) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:
 - a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
 - b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from appropriate State or Territory Minister

- 2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):
 - a) inform the appropriate Minister of the State or Territory; and
 - b) invite that Minister to give the Environment Minister within 10 business days:
 - i) comments on whether the proposed action is a controlled action; and
 - ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

Inviting public comment

- 3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
 - a) the referral; and
 - b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

- 1) The Minister must decide:
 - a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - b) which provisions of Part 3 (if any) are controlling provisions for the action.
- (2) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

- (3) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
 - a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
 - b) within the period specified in the invitation.

Considerations in decision

- 4) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
 - a) the Minister must consider all adverse impacts (if any) the action:
 - i) has or will have; or
 - ii) is likely to have;on the matter protected by each provision of Part 3; and
 - b) must not consider any beneficial impacts the action:
 - i) has or will have; or
 - ii) is likely to have; on the matter protected by each provision of Part 3.

Timing of decision and designation

- 5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.