



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

I, KATE GOWLAND, Branch Head, Environment Assessments (NSW, ACT) Branch, Department of Climate Change, Energy, the Environment and Water (the **department**), delegate for the Minister for the Environment and Water (the **Minister**), provide the following statement of reasons for my decision of 1 May 2024, under subsection 130(1), section 133 and section 134 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to approve the proposed action to develop parts of the property located at 55 Coonara Avenue, West Pennant Hills, NSW, including demolition of existing buildings, removal and modification of existing infrastructure, construction of up to 165 community-titled dwellings and up to 252 apartments, communal facilities and open space (EPBC 2023/09508) (the **proposed action**).

Legislation

- 1) Relevant legislation is set out in Annexure A.

Background

Description of the proposed action

- 2) Mirvac Projects Pty Ltd (the **proponent**) is proposing to construct housing, apartments, open space and associated infrastructure at 55 Coonara Avenue, West Pennant Hills, NSW (**the property**), immediately adjacent to the Cumberland State Forest.
- 3) The proposed action will include the staged demolition of the former IBM office facilities, associated car parks and landscaping, and the development of 165 houses and 252 apartments across four apartment buildings. The proposed action will also include the construction of associated infrastructure, communal facilities, and the establishment of public and private open space.
- 4) As part of an approved subdivision, the property has been subdivided into 3 lots. Lot 1, comprising most of the northern section of the property, upon which the site of the proposed development (**the Action area**) is wholly located; Lot 2 (in three parts – the largest part comprising most of the southern part of the property, with two smaller parts along the north-eastern edge of the property adjacent to the boundary with Cumberland State Forest) which will be dedicated to the NSW Government and managed by Forestry NSW; and Lot 3 (in the south-east of the property) which is proposed to be subject to a future proposed open space plan development (and further assessment by the department as required).
- 5) The development has been the subject of a series of approved Development Applications (**DAs**) to The Hills Shire Council (**Council**) under the NSW *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
- 6) There is no other Australian Government involvement in the proposed action.

Description of the environment

- 7) West Pennant Hills is located approximately 25 kilometres northwest of the Sydney CBD in the Shire of Baulkham Hills.
- 8) The northern portion of the property was developed as an orchard prior to 1940 before being purchased and developed in the 1980's by IBM as a 34,000 square metre office facility. The remainder of the property contains bushland comprising *Blue Gum High Forests of the Sydney Basin Bioregion (BGHF)* and *Turpentine-Ironbark Forest of the Sydney Basin Bioregion (STIF)* Threatened Ecological Communities (TEC). Both communities are listed as Critically Endangered Ecological Communities under both the *Biodiversity Conservation Act 2016* (NSW) and the EPBC Act, however I determined at the referral stage that STIF was unlikely to be significantly impacted by the proposed action.
- 9) Listed threatened species identified in the referral as potentially impacted, but which I determined at the referral decision stage to be unlikely to be significantly impacted by the proposed action, included the Dural Land Snail (*Pommerhelix duralansis*); Spotted-tailed Quoll (*Dasyurus maculatus maculatus*), Gang-gang Cockatoo (*Callocephalon fimbriatum*), Grey-headed Flying-fox (*Pteropus poliocephalus*), Glossy Black Cockatoo (*Calyptorhynchus lathami lathami*); White Throated Needletail (*Hirandapus caudacutus*) and Magenta Lilly Pilly (*Syzygium paniculatum*).
- 10) A new Environmental Reporting Tool (ERT) report dated 4 April 2024 conducted for consideration in making the proposed decision identified six species not included in the original ERT dated 7 September 2023, and one uplisted species. Of the six species, three were wading birds listed in January 2024 (and therefore ineligible for consideration as part of this referral). The other three were heathland species listed in July 2000, which were likely included in the new ERT because it was based on a slightly different 5 km 'area of interest' polygon than the original. No habitat for any of these six species is likely to occur within the Action area. The uplisted species is the Large-eared Pied Bat (*Chalinolobus dwyeri*), which was uplisted from vulnerable to endangered on 15 November 2023. The proponent assessed this species as unlikely to occur at the Action area due to an absence of suitable nearby roosting habitat.

Procedural history

Referral and consultation period

- 11) The property was the subject of an earlier referral, 2021/8995 (the **previous referral**), which was submitted for 55 Coonara Avenue West Pennant Hills NSW 2125 in July 2021. On 16 September 2021, the previous referral was determined by a delegate of the Minister to be Not a Controlled Action under s 75 of EPBC Act.
- 12) Referral 2023/09508 (the **current referral**) was submitted 1 September 2023 following reclassification of some areas of vegetation on the Action area from 'highly modified edges' to BGHF, increasing in the total area of BGHF to be impacted from ~0.02 ha to ~0.31 ha, as well as small changes to the footprint in the northern part of the Concept Masterplan Development Approval as submitted to Council and reflected in NSW development consents.

- 13) Works considered as part of the previous referral which have since been completed (e.g. the demolition of the original IBM building, some landscaped areas and carparking), were excluded from consideration as part of the current referral.
- 14) Also on 1 September 2023, as required by section 74(3) of the EPBC Act, the proposal was published on the department's website, with public comments invited until 15 September 2023.
- 15) Six submissions were received by the department in response to the exhibition of the referral, from individuals and community groups concerned about the impacts on BGHF and the habitat of the Dural Land Snail.
- 16) On 1 September 2023, the Commonwealth Minister for Indigenous Australians, the Hon Linda Burney MP, was invited to comment on the referral. A delegate for Minister Burney responded on 15 September 2023 and acknowledged the proponent's approach to First Nations Engagement and providing additional recommendations regarding this approach. These recommendations were included as suggestions in the letter informing the proponent of the outcome of the referral decision on 29 September 2023.
- 17) On 1 September 2023, a delegate for the Hon Paul Scully, MP, NSW Minister for Planning and Public Spaces was also invited to comment on the referral. No response was received.
- 18) On 18 September 2023, the proponent wrote to the Minister, requesting the previous referral be withdrawn pursuant to section 170C of the EPBC Act.

Controlled action and assessment approach decision

- 19) On 29 September 2023, I decided that the proposed action was a controlled action under Section 75 of the EPBC Act, due to likely significant impacts on listed threatened species and communities (sections 18 and 18A of the EPBC Act).
- 20) In my controlled action decision, I determined that the increased direct impact area of ~0.31 ha of BGHF constituted a significant impact at the referral stage because the TEC has a remaining mapped area estimated to be less than 140 ha and the area to be impacted is directly and functionally connected to the Cumberland State Forest, an area recognised by the department as one of only five large high-quality remnants of the TEC.
- 21) The proposed action may also result in indirect impacts along approximately 745 metres (m) of edge habitat due to the interface between the development and the forest. Indirect impacts include surface water run off including chemicals and sediment, pest plant and animal invasion, and degradation associated with inadvertent or unauthorised access.
- 22) Also on 29 September 2023, I decided under Section 87 of the EPBC Act that the assessment approach should be assessment by Preliminary Documentation, because of the small number of EPBC-protected matters likely to be impacted and the limited scale of the action.

Preliminary documentation and public comment process

- 23) Following the controlled action decision, the proposed action was varied on 16 November 2023 to increase the extent of the excluded areas included as part of the original application,

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allowing work to continue in areas of the development that were unlikely to impact nationally protected matters while the assessment proceeded.

- 24) The proponent provided the Preliminary Documentation to the department on 23 December 2023, and the department accepted the information on 8 January 2024.
- 25) On 15 January 2024, the preliminary documentation was advertised in one publication, being The Australian newspaper and displayed at 2 locations between 15 January and 5 February 2024, these being:
 - a) The Hills Shire Council, Administration Centre, 3 Columbia Court Norwest NSW 2153
 - b) The State Library of NSW, LG2, 1 Shakespeare Place, Sydney NSW 2000
- 26) The proponent received 102 submissions in response to the public exhibition of the preliminary documentation. I noted that 100 submissions were against the proposed action and 2 were neutral. The content of these submissions was contained in the preliminary documentation and the proponent's response to them are discussed below.
- 27) The most common concern raised in the submissions was the removal of BGHF, either due to its listing as critically endangered, or because of its value as habitat for wildlife.
- 28) Additional concerns relevant to the proposed action included:
 - impacts on species including the Dural Land Snail and the Grey Headed Flying Fox
 - impacts on the adjacent Cumberland State Forest
 - impacts to the Creek and Riparian Zone
 - layout of the development and the lot yield (housing density), and
 - removal of trees.
- 29) Additional concerns raised that were not specifically relevant to the current action included impacts to visual amenity, impacts on the Powerful Owl (listed as threatened under State legislation only), general impacts on flora and fauna, contribution to climate change, unpredictable impacts, serious and irreversible impacts, and outdated NSW BioNet data.
- 30) The department considered, and I agreed, that the concerns raised within public submissions were adequately addressed by the proponent within the preliminary documentation, with the Submissions Summary Report, prepared by the proponent, identifying the relevant sections of the preliminary documentation in which the issues are addressed.
- 31) On 15 March 2024, the final preliminary documentation was published in The Australian newspaper and displayed at 2 locations between 15 March and 28 March 2024, these being:
 - a) The Hills Shire Council, Administration Centre, 3 Columbia Court Norwest NSW 2153
 - b) The State Library of NSW, LG2, 1 Shakespeare Place, Sydney NSW 2000

Approval/refusal process

- 32) On 11 April 2024, I proposed to approve the proposed action, with conditions, as delegate of the Minister. On 11 April 2024, I wrote to the following parties inviting comments on my proposed decision:
- the proponent;
 - Minister for Indigenous Australians, the Hon Linda Burney MP; and
 - delegated contact for the Hon Paul Scully MP, NSW Minister for Planning and the Environment.
- 33) On 22 April 2024, the proponent requested changes to the proposed decision. These are discussed in detail in the 'Relevant comments - section 136(2)(f)' section below (paragraphs 115-117).
- 34) The Minister for Indigenous Australians, the Hon Linda Burney MP and the NSW Minister for Planning and the Environment provided no comment on the proposed decision.
- 35) Consistent with the requirements in subsection 134(4) of the EPBC Act, I determined that in recommending conditional approval, the department has recommended conditions that are a cost-effective means for the Commonwealth and the proponent to achieve the objective of the conditions.
- 36) On 1 May 2024, for the reasons set out below, I decided to approve the taking of the proposed action for the purposes of sections 130(1), 133 and 134 of the EPBC Act, subject to conditions.

State assessment and approval

- 37) The proposed action is the subject of several DAs under the EP&A Act, which have been approved by The Hills Shire Council, as follows:
- a) Demolition DA (585/2021/HC) seeking development consent for the demolition of existing buildings and ancillary structures, associated vegetation clearing, and other associated works including installation of site security fencing, installation of stormwater and environmental controls, isolation and disconnection of existing services entering the Action area, removal and stockpiling of landscaping boulders and removal of all above-ground light poles and lighting cables (approved 15 September 2021). These activities were all to be contained within the boundaries of the Action area.
 - b) Subdivision DA (1414/2022/ZB) sought to subdivide the property into three lots (approved 19 October 2021):
 - i) Lot 1, the subject of this assessment and the location of the Action area
 - ii) Lot 2 (in three parts), land intended to be dedicated to Forestry Corporation of NSW
 - iii) Lot 3, to be subject to a future proposed open space development]
 - c) Concept Masterplan DA (860/2022/JP) sets out the concept proposal for the property and includes the detailed first stage comprising the Civil Works (within the Action area) (approved 15 November 2022)

- d) First stage of housing in the southern precinct (859/2022/JP) (approved 15 November 2022)
 - e) Apartment precinct (861/2022/JP) (approved 15 November 2022)
- 38) The property is also subject to the provisions of The Hills Local Environmental Plan 2019 and was rezoned on 17 June 2020 from B7 Business Park to E2 Environmental Conservation, R3 Medium Density Residential, and R4 High Density Residential with a dwelling cap of 600 dwellings.
- 39) The proposed development, within the Action area, is generally limited to the land zoned R3 Medium Density Residential and R4 High Density Residential and provides for a combination of two and three storey housing, as well as four apartment buildings.
- 40) Rezoning land adjacent to the Action area to E2 Environmental Conservation zone has ensured the ongoing protection of remnant forest areas. A majority of the E2 zoned land on the property (~10 ha) will be dedicated to the NSW State Government and managed by Forestry Corporation of NSW. This dedication was a condition of the Subdivision DA. A further 3 ha will remain as community land and will be protected from development by its zoning restrictions and subject to a Vegetation Management Plan (**VMP**). The land to be dedicated to Forestry will also be subject to a separate VMP.

Evidence or other material on which my findings were based

- 41) In making my decision to approve the taking of the proposed action under sections 130(1), 133 and 134 of the EPBC Act, I read and gave consideration to the decision brief (and its attachments) prepared by officers of department (**decision brief**). The documents attached and referred to in the decision brief are as follows:
- a) Copy of the Proposed Approval Decision Brief
 - i) Proposed approval brief
 - ii) Att A – Recommendation Report
 - iii) Att B – Finalised Preliminary Documentation
 - B1: Referral information
 - B2: Additional information published with draft preliminary documentation
 - B3: Submissions and response to submissions
 - iv) Att C – Letters to relevant parties
 - C1: Letter to proponent/person proposing to take the action
 - C2: Letter to the Hon Linda Burney MP, Minister for Indigenous Australians
 - C3: Letter to the delegate for the Hon Paul Scully MP, NSW Minister for Planning and the Environment
 - v) Att D - Proposed approval decision notice
 - vi) Att E – Additional required information for consideration

- E1: Approved Conservation Advice for Blue Gum High Forest of the Sydney Basin Bioregion (2014)
 - E2: Threat abatement plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (2018)
 - E3: Environmental History check on the Proponent, Mirvac Projects Pty. Ltd
 - E4: Environmental Reporting Tool (ERT) report – 5 km buffer, completed 4 April 2024
 - E5: Species Listing Advice on Statutory Documents
- vii) Att F – Development Approvals by The Hills Shire Council under the NSW EP&A Act for the proposed action
- F1: Demolition DA: DA 585/2021/HC, approved 15 September 2021
 - F2: Subdivision DA: DA 1414/2022/ZB, approved 19 October 2021
 - F3: Attachment to Subdivision DA – Final Stamped Plans
 - F4: Concept Masterplan DA: DA 860/2022/JP, approved 3 November 2022
- b) Responses to invitation for comment on proposed decision
- i) Att B1 – Proponent response to proposed decision
 - ii) Att B2 – Proponent’s Vegetation Management Plan
 - iii) Att B3 – National Indigenous Australians Agency response
- c) Approval Decision Notice
- d) Letters to relevant parties
- i) Att D1 – Letter to Mirvac Projects Pty Ltd as the proponent/person proposing to take the action
 - ii) Att D2 – Letter to the Minister for Indigenous Australians
 - iii) Att D3 – Letter to the delegate for the Hon Paul Scully MP, NSW Minister for Planning and the Environment

Findings on material questions of fact

- 42) In deciding whether to approve the proposed action, and what conditions to attach to an approval, I took into account all information I had on the relevant impacts that the proposed action would have or would be likely to have on the matter protected by each controlling provision for the proposed action (being sections 18 and 18A of the EPBC Act).
- 43) Based on the material before me, I agreed that there was sufficient information to decide whether or not to approve the proposed action.

Controlling provisions – section 136(1)(a)

- 44) 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.
- 45) The proposed action was determined to be a controlled action under the following controlling provision of the EPBC Act:
- a) Listed threatened species and ecological communities (sections 18 and 18A)

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

- 46) The department advised, and I accepted, that the proposed action is likely to have a significant impact on the following TEC:
- a) *Blue Gum High Forest of the Sydney Basin Bioregion* – Critically Endangered

Blue Gum High Forest of the Sydney Basin Bioregion – Critically Endangered

Description

- 47) BGHF is a type of tall open forest endemic to Sydney's northern suburbs. The community is characterised by a tall canopy of dominant *Eucalyptus pilularis* (blackbutt) and/or *Eucalyptus saligna* (Sydney blue gum) with other canopy trees including *Angophora costata* (smooth-barked apple). The mid-storey consists of shrubs and small trees, with a diverse and often dense ground layer of herb, grass and fern species.
- 48) I noted that the current total geographic extent of BGHF remaining varies by source however the Conservation Advice for the BGHF (**Conservation Advice**) approved by the Minister in 2014 states that the ecological community had experienced a reduction in geographic distribution of over 95% with a total remaining mapped area estimated to be less than 140 ha.
- 49) Key threats to the BGHF ecological community include clearing and fragmentation of the community and weed infestations. Additional threats include degradation from inappropriate access, increased nutrient load and sedimentation from urban runoff, inappropriate fire regimes, mowing or clearing of the understory and pathogen invasion.

Extent and Condition

- 50) I noted that the referral stated that the extent of the community on the property totals 5.49 ha, shown as vegetation zones VZ3a, VZ5a, VZ5b and VZ5c, with VZ3a and VZ5a described by the proponent as being of modified/weedy condition.
- 51) I agreed with the department which, in turn, agreed with the proponent's conclusion that BGHF on the property, including those areas within VZ3a and VZ5a, are directly and functionally connected to a large patch of BGHF within Cumberland State Forest.

- 52) I noted that the Listing Advice on the department's Species Profile and Threats Database states that the Cumberland State Forest is one of the five largest high-quality remnants of BGHF remaining, only three of which occur on public land.
- 53) The Conservation Advice states that occurrences of BGHF are considered part of the nationally listed ecological community if they are greater than one hectare in size and have a canopy cover greater than 10%, or a have a canopy cover of less than 10% but that the patch is >1 ha and occurs in areas of native vegetation >5 ha.
- 54) I noted and agreed with the department's consideration, in line with the Conservation Advice, that areas of BGHF to be directly and indirectly impacted by the proposed action comprise part of a larger patch of vegetation that extends into the adjacent Cumberland State Forest, thereby meeting the patch size/connectivity requirements as described in the Conservation Advice.
- 55) There is no recovery plan for BGHF.

Impacts to BGHF as a result of the proposed action

- 56) I noted that the referral states that the area of potential direct impact is small and unlikely to threaten the continued existence of the community on the property, in the local area or at any relevant scale.
- 57) The proposed action will directly impact on (remove) ~0.31ha (~3,100 square metres) of BGHF considered by the proponent to be of modified/weedy condition.
- 58) The department considers, and I accepted, that regardless of the description provided by the proponent regarding the condition of the ecological community, the impacted area is directly and functionally connected to the Cumberland State Forest, an area recognised by the department as one of five remaining large high-quality remnants of the TEC.
- 59) I accepted the department's advice that the proposed action may also result in indirect impacts along approximately 745 m of edge habitat due to the interface between the development and the Cumberland State Forest.
- 60) Indirect impacts include surface water runoff (including chemicals and sediment), pest plant and animal invasion, and degradation associated with inadvertent or unauthorised access.
- 61) I agreed with the department's consideration that indirect impacts are likely during both the construction phase and following this as the area becomes populated with residents.
- 62) I noted that priority actions relevant to recovery and threat abatement as identified in the Conservation Advice include the prevention of any further clearing or fragmentation of the ecological community and avoiding removal of isolated canopy trees.
- 63) I noted that BGHF is listed in the *Threat abatement plan for disease in natural ecosystems caused by *Phytophthora cinnamomi** (2018) (***Phytophthora cinnamomi* Threat Abatement Plan**) as being affected by dieback caused by *Phytophthora cinnamomi*. *Phytophthora cinnamomi* can be difficult to detect and can cause significant and permanent damage to ecosystems and landscapes before detection (*Phytophthora* dieback). The *Phytophthora cinnamomi* Threat Abatement Plan outlines various management methods to minimise the

spread or mitigate the impacts of *Phytophthora* dieback and states that the limited management options available focus on modifying human activities through education, access restriction, and hygiene protocols.

Proposed avoidance and mitigation as described by the proponent

- 64) I noted that within the preliminary documentation, the proponent detailed the long and iterative process of ecological constraints assessment used to inform the property's Concept Masterplan which had been modified in response to new information prior to the submission of the referral. Modifications in order to avoid areas of BGHF and STIF were described in the Concept Masterplan Biodiversity Development Assessment Report and have included:
- a) Roadway widening into the existing developed area rather than towards bushland areas.
 - b) Redesign of the perimeter road to avoid direct impacts on STIF, habitat of the Dural Land Snail and a tree that had been previously used by the Powerful Owl.
 - c) Re-use and retro fitting of existing stormwater infrastructure where possible.
 - d) The deletion of the proposed soccer field from the masterplan removing pressure to widen the perimeter road and entry bridge.
 - e) The movement of the Asset Protection Zone (**APZ**) from the outer edge, inwards to the existing development areas.
 - f) A further amendment of the footprint, lifting a proposed APZ and application of a 50 m buffer in response to a new sighting of the Powerful Owl.
- 65) The proponent stated that a range of mitigation measures have been developed for before, during, and after the proposed action to mitigate impacts unable to be avoided. Primarily these measures are outlined in a series of management plans relating to construction, vegetation, fauna, tree protection, stormwater, sediment and erosion, waste, noise and vibration, dust, and traffic. These management plans were requirements of the Council Consent and have all been either endorsed or approved by Council.
- 66) The Concept Vegetation Management Plan identified measures to be implemented to reduce the risk of spread of *Phytophthora cinnamomi*.

Compensatory measures proposed by the proponent

- 67) While measures have been proposed to avoid and minimise impacts on BGHF, the proponent acknowledged that residual impacts remain, being the clearing and/or modification of ~0.3 ha of BGHF.
- 68) The proponent stated that the ecological impact assessment for the proposed development was conducted in accordance with the NSW *Biodiversity Assessment Method 2020*, with credits calculated under the NSW Biodiversity Offsets Scheme endorsed by the Australian Government.
- 69) The proponent confirmed that payments to the Biodiversity Conservation Fund have been made for 19 credits for the Concept Masterplan DA and 57 credits for the Demolition DA as required by Council, which together cover all likely impacts on protected matters under the

EPBC Act for this project. I noted and accepted the department's advice that these numbers exceed the offset requirements calculated under the NSW Biodiversity Offsets Scheme endorsed by the Australian Government, with the proponent stating that the credit requirements were imposed in the conditions of consent issued by Council.

- 70) I noted that impacts would be mitigated by the implementation of a Vegetation Management Plan within the area of the proposed action, which the proposed conditions require to be implemented through a restriction and a positive covenant on the titling instrument for the property. I noted that this plan was as drafted at the time of my proposed decision.
- 71) I noted that the department considered that the risk that environmental objectives may not be met by the proposed conditions is considered to be low, since payments to the Biodiversity Conservation Fund have already been made. The greatest risk would be the effectiveness of the implementation of the Concept Vegetation Management Plan in perpetuity following the sale of the development, however, the department considered, and I accepted, that the requirement for a restrictive covenant to require the implementation of this plan (as described below) is the most effective available mitigation for this risk.
- 72) I agreed with the department's conclusion that the precautionary principle did not apply in relation to this controlling provision. I also agree there is a serious and irreversible impact however there was no lack of scientific certainty as to the impacts of the proposed action (more detail is provided below in section 'Principles of ecologically sustainable development - section 136(2)(a)').

Approval with conditions

- 73) I accepted the department's recommendation that, in relation to Listed Threatened Species and Ecological Communities (sections 18 and 18A), the proposed action be approved with a series of conditions to limit the extent of vegetation removal and to require implementation of the Vegetation Management Plan.
- 74) The department recommended, and I accepted, that I attach the following conditions:
- a) The stipulation of clearing limits and identifying action areas on relevant maps.
 - b) Requiring the implementation of the Concept Vegetation Management Plan as approved by Council and subsequently updated in line with the department's requirements, and, following the sale of the development, implementation of the Concept Vegetation Management Plan through a restrictive covenant on the Community Title.
 - c) The retirement of a specified number of relevant ecosystem credits prior to the commencement of the proposed action.
 - d) Requirements relating to amending relevant management plan/s.
 - e) Requirements relating to the timing of the proposed action, the maintenance of records, reporting non-compliance and independent audit.

Conclusion

- 75) I had regard to the approved Conservation Advice in forming my conclusion in respect of the approval of the proposed action and considered the likely impacts of the proposed action on BGHF.
- 76) The proponent has avoided impacts of the proposed action within the development area and committed to the implementation of mitigation measures and the provision of offsets as described above. As such, I concluded that the impact of the proposed action on the BGHF will be minimised if undertaken in accordance with the conditions as outlined above.

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

- 77) Section 136(1)(b) of the EPBC Act provides that, in deciding whether or not to approve the proposed action, and what conditions to attach to an approval, I must consider economic and social matters, so far as they are not inconsistent with any other requirement of Subdivision B of Division 1 of Part 9 of the EPBC Act.
- 78) The proponent addressed economic and social considerations within the preliminary documentation, specifically those considerations relating to environmental initiatives, public engagement and consultation, First Nations consultation and engagement and community impacts.
- 79) The proponent stated in their preliminary documentation that approximately 12.5 ha of BGHF and STIF adjacent to the Action area will be protected through the application of C2 (environmental conservation) zoning under NSW legislation to areas that were previously zoned Business, and the dedication of ~10 ha of this to the NSW Government for management by Forestry, ultimately increasing the size of the adjoining Cumberland State Forest by 25%.
- 80) In addition to the mitigation measures outlined above, the proponent stated that they intend to include the community in onsite regeneration activities to educate them on the process of regenerating forest.
- 81) The proponent also stated in their preliminary documentation that to date, they had undertaken works in such a way as to minimise waste, ensuring that where possible established plants are removed and housed for reuse, the successful recycling of over 95% of materials and the reuse of over 70 tonnes of equipment and materials. The proposed action will also result in a community which will be all electric with an average 7 star NatHERs (Nationwide House Energy Rating Scheme) rating. Each of the homes will also have a solar system, rainwater tank and EV infrastructure.
- 82) The proponent stated that they had engaged with Dharug elders and are proposing to include an education element into the Discovery Centre which will focus on truth telling, language and First Nations-led programs for the community and local schools, with the intention of educating people on how to care for, listen to and learn from country and First Nations People.
- 83) I noted that the department understands that the Discovery Centre is primarily a facility for the marketing of the development prior to its completion, and its proposed use following the completion of sales is unclear. However, the proponent stated in the preliminary documentation that they hope the First Nations educational programs will continue beyond

the life of the Discovery Centre in the open space which has been designed to include a yarning circle, edible garden, forest regeneration, nature play and connection to existing walking trails.

- 84) I noted that the department understands that there has been significant community interest in the proposed action since its inception in 2014, and that the proponent has undertaken community engagement in various forms throughout the process. I also noted that a portion of the community remains concerned about the impacts of the proposed action on the local environment, as well as on traffic movements within the local area, and that the department advised that the project has been controversial in the local area.
- 85) Modelling undertaken by the proponent and referenced in the preliminary documentation indicates that there would be a net reduction in traffic movements compared to the Action area's former use as a business park.
- 86) The proponent considered that the proposed action will provide much needed dwellings, and diversity of dwellings, in the Sydney metropolitan area, as well as new community infrastructure. Table 8 of the preliminary documentation states that the proposed action will utilise a large skilled local workforce and acquire local goods and services for the construction phase of the proposed action.

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

- 87) In deciding whether or not to approve the taking of an action and the conditions to attach to an approval, section 136(2)(a) of the EPBC Act provides that I am required to take into account the principles of ecologically sustainable development (**ESD**). The principles of ESD, as defined in Part 1, section 3A of the EPBC Act, are:
- a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
 - b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
 - c) the principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
 - e) improved valuation, pricing and incentive mechanisms should be promoted.
- 88) I noted that the proponent responded to the 5 principles of ESD in Section 7, Table 8, of the preliminary documentation. The responses are summarised below.
- 89) The proponent stated that project planning since 2014 has enabled comprehensive engagement with relevant stakeholders to ensure that values are protected to the greatest extent possible, that short term impacts can be mitigated and offset over the medium to long

term and that the proposed action will see the delivery of over 400 homes on a vacant site close to public transport and infrastructure.

- 90) The proponent stated that a precautionary approach was applied, and that unless there was clear evidence to preclude a species from its use of the property, they have assumed its presence and mitigation measures have been identified. In addition, assessments of serious and irreversible threats were conducted in accordance with the requirements of the NSW Biodiversity Assessment Method and are detailed in Section 9.1 of the Concept Masterplan Biodiversity Development Assessment Report (**BDAR**).
- 91) With regard to inter-generational equity, I noted that the proponent considered that the proposed action would see the retention of the majority of the vegetation within the property as well as the management of the retained vegetation into perpetuity to maintain and where possible enhance its condition for the benefit of future generations. In addressing this point, the proponent also identified the use of the Discovery Centre in community education.
- 92) The conservation of biological diversity and ecological diversity is discussed in detail in Paragraphs 49-80 of this Statement of Reasons. I noted, in summary, that the proponent considered that the design as amended over time, resulted in a proposed action that avoids and mitigates impacts on vegetation, and offsets those residual impacts.
- 93) With regard to the final principle, the proponent stated that the environmental assessments undertaken examined the environmental consequences of the proposed action and identified measures to avoid, mitigate and offset as required. Further, the proponent considered that the costs associated with the environmental commitments have been incorporated into the overall project planning and operational costs.
- 94) I accepted that in formulating its recommendation, the department took into account the principles of ESD, including the precautionary principle. In particular:
- a) The recommendation report and the assessment documentation provided contain information on the long-term and short-term economic, environmental, social and equitable considerations that are relevant to my decision and were presented for my consideration.
 - b) Any lack of certainty related to the potential impacts of the proposed action was addressed by conditions that restrict environmental impacts, impose strict monitoring and adopt environmental standards which, if not achieved, require the application of response mechanisms in a timely manner to avoid adverse impacts.
 - c) The proposed conditions will ensure protection of EPBC listed threatened species and communities and allow for the proposed action to be delivered and operated in a sustainable way to protect the environment for future generations and preserve EPBC listed threatened species and communities in perpetuity.
 - d) I noted that the department considered, and I also considered, the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for this proposed action, and I accepted that the advice provided within the department's recommendation report reflects that consideration.

- e) I noted that the department's advice included reference to and consideration of a range of information on the economic costs, benefits and impacts of the proposed action. Based on the reference to relevant NSW planning and policy documents in the preliminary documentation, the proposed action has given consideration to evaluation, pricing and incentive mechanisms, relevant to the proposed action.
- 95) I accepted the department's advice that in making my decision under section 133 of the EPBC Act, I am required to take account of the precautionary principle (section 391), to the extent that I can do so consistently with the other provisions of the EPBC Act. In making my decision under section 133 of the EPBC Act, in considering matters relevant to the matters protected by the controlling provisions for the proposed action, and economic and social matters, I am required to take into account the principles of ESD, which include the precautionary principle (section 3A(b) 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.
- 96) I took into account the precautionary principle by considering whether there were threats of serious or irreversible environmental damage with respect to the relevant matters protected by the EPBC Act, and whether there was a lack of full scientific certainty.
- 97) Based on the information in the preliminary documentation, given the nature of the proposed action and the environment in which it will occur, and the discussion above about the BGHF, I concluded that there is a threat of serious or irreversible environmental damage to the BGHF but there is not a lack of full scientific certainty about the likely nature and/or extent of those threats.
- 98) For these reasons, I agreed with the department's conclusion that the precautionary principle did not apply.

Preliminary documentation – section 136(2)(bc)

- 99) In accordance with section 136(2)(bc)(i) of the EPBC Act, I took into account the documents given to me under section 95B(1) of the EPBC Act,.
- 100) In accordance with section 136(2)(bc)(ii) of the EPBC Act, I took into account the recommendation report relating to the proposed action which I was given under section 95C of the EPBC Act.

Other information - section 136(2)(e)

- 101) There is no strategic assessment relevant to the proposed action.
- 102) In making my decision, I took into account all available information on the relevant impacts of the proposed action.

Relevant comments - section 136(2)(f)

- 103) Public comments were invited on the referral and the draft assessment documentation. I agreed with the department's advice that adequate public consultation for the proposed action has occurred. Therefore, I agreed with the department that I should not invite public comment under section 131A of the EPBC Act on the proposed decision and recommended

conditions of approval, as was unlikely to elicit views or information that were not already considered in relation to the proposed action.

104) I invited the following Ministers, who I considered may have administrative responsibilities relating to the proposed action, to comment within 10 business days, as required by section 131 of the EPBC Act:

- a) The Hon Linda Burney MP, Minister for Indigenous Australians
- b) The delegate for the Hon Paul Scully MP, NSW Minister for Planning and the Environment

105) In considering the matters set out in section 136(1) of the EPBC Act, I took into account any relevant comments given to me under section 131 of the EPBC Act from Commonwealth Ministers.

106) On 26 April 2024, the National Indigenous Australians Agency (**NIAA**) responded on behalf of the Minister for Indigenous Australians to indicate that they had no further comments to provide.

107) The NSW Minister for Planning and the Environment did not provide a response to the invitation to provide comments.

108) Under section 131AA(1) of the EPBC Act, I invited the proponent (who is also the person proposing to take the action) to provide comments on the proposed decision and proposed conditions of approval within 10 business days.

109) On 22 April 2024, the proponent requested minor changes to conditions, in response to the proposed approval, that did not impact material outcomes. This included a change to one of the three included maps, and a minor change to the wording of Condition 5 (as it appeared in the Proposed Decision Notice – now conditions 5-7). The change relates to ensuring consistency with Council approvals. These changes also meant that several of the definitions and another of the maps originally proposed for inclusion were no longer necessary.

110) I am aware that the department met with the proponent on 22 April 2024 to discuss the proposed amendments to the conditions. The proponent provided finalised comments on 28 April 2024 which were agreed to by the department.

111) In making my final decision I took into account the public comments on the preliminary documentation and the proponent's comments on the proposed decision.

Information in a notice - section 136(2)(g)

112) No notice relevant to section 136(2)(g) of the EPBC Act was requested or received from a State Minister in relation to this assessment.

Other matters for decision making

Person's environmental history – section 136(4)

113) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, I 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.

114) Based solely on the information available, the Compliance and Enforcement Branch conducted an environmental history check on the proponent, Mirvac Projects Pty Ltd. No adverse history was identified relating to contraventions of national environmental law for this entity.

115) The Compliance and Enforcement Branch is not aware of any contravention of state laws associated with this entity.

116) In the referral, the proponent described a range of positive environmental initiatives they have undertaken and continue to undertake.

117) The proponent disclosed the following within the referral and the department concluded that this was an isolated incident and not representative of history of ongoing incidents:

- a) In 2016, the department investigated an alleged breach by Mirvac WA Pty Ltd (a related party to Mirvac) of the EPBC Act. In response, Mirvac entered into a Deed in which it agreed to undertake agreed works and monitoring. Upon completion of these requirements to the department's satisfaction in September 2018, the department agreed not to pursue further action, or to perform and exercise any statutory and / or discretionary powers under the EPBC Act in relation to the alleged contravention.

Delegate not to consider other matters – section 136(5)

118) I noted that in accordance with section 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 of the EPBC Act.

119) In forming my decision about whether or not to approve the proposed action, and what conditions (if any) to attach, I did not consider any matters that I was not required or permitted to consider under Division 1, Part 9 of the EPBC Act

Threatened species and endangered communities – section 139

120) In accordance with section 139(1) of the EPBC Act, 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:

- a) Australia's obligations under:
 - i) the Biodiversity Convention; or
 - ii) the Apia Convention; or
 - iii) CITES; or

- b) a recovery plan or threat abatement plan.

121) In accordance with section 139(2), if:

- a) I am 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;

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

Biodiversity Convention

122) 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.

123) I noted that the department did not consider the action to be inconsistent with the Biodiversity Convention, which promotes environmental impact assessment (such as this process) to avoid and minimise adverse impacts on biological diversity, and I agreed. The department also gave particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.

124) I am satisfied that the Biodiversity Convention was considered in, and is not inconsistent with, the approval which requires avoidance, mitigation and management measures for listed threatened species and communities. The approval 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

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

126) I further noted that the Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, I took Australia's obligations under the Convention were taken into consideration, as the department did in its advice. I was satisfied that the department's recommendations were not inconsistent with the Convention which has the general aims of conservation of biodiversity.

International trade in endangered species

127) I noted that the [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

128) I was satisfied with the department's recommendations that approving the proposed action, subject to conditions, would not be inconsistent with CITES as the proposed action does not involve international trade.

Recovery Plans and Threat Abatement Plans

129) There were no Recovery Plans relevant to the proposed action and assessment.

130) The Threat Abatement Plan relevant to the proposed action and assessment is:

- a) Department of the Environment and Energy (2018) *Threat abatement plan for disease in natural ecosystems caused by Phytophthora cinnamomi*. Canberra: Commonwealth of Australia

131) I considered the Threat Abatement Plan available at <http://www.environment.gov.au/biodiversity/threatened/publications/threat-abatement-plan-disease-natural-ecosystems-caused-phytophthora-cinnamomi-2018> and was attached to the department's proposed decision briefing package.

132) I considered the discussion in the recommendation report of the Threat Abatement Plan in respect of each listed threatened species and community to which the Threat Abatement Plan is relevant (as described at paras 66 and 69 above).

133) I agreed with the department's advice that actions to be implemented as outlined in the Concept Vegetation Management Plan were not inconsistent with those objectives and actions outlined within the Threat Abatement Plan.

Conservation Advice

134) The approved Conservation Advice relevant to this proposed action and its assessment is:

- a) Department of Environment (2014). *Approved Conservation Advice for Blue Gum High Forest of the Sydney Basin Bioregion*. Canberra: Department of the Environment.

135) This approved conservation advice is at <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/47-conservation-advice.pdf> and I noted it was attached to the department's proposed decision briefing package.

136) I considered the approved conservation advice relevant to the proposed action, including when considering the likely impacts of the proposed action on listed threatened species and endangered ecological communities. I agreed with the department's advice that approval of this proposed action would not be inconsistent with the Conservation Advice.

Bioregional plans – section 176(5)

137) In accordance with section 176(5), subject to the EPBC Act, I must have regard to a bioregional plan in making any decision under the EPBC Act to which the plan is relevant.

138) I noted that the proposed action is not located within or near an area designated by a bioregional plan. I considered that there are no bioregional plans relevant to the proposed action.

Conditions of approval

139) In accordance with section 134(1) of the EPBC Act, I may attach conditions 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).

Department's recommended conditions

140) I considered the likely scope and severity of the impacts to matters of national environmental significance (**MNES**), and the proposed avoidance and mitigation measures, and accepted the department's advice that it is likely the proposed action will result in residual significant impact to the critically endangered BGHF.

141) I also considered the conditions imposed or likely to be imposed by Council under the NSW EP&A Act. I accepted the department's advice that the conditions imposed by the development approval described in Paragraph 38 were not sufficient to manage the residual significant impacts to MNES resulting from the proposed action.

142) I determined, accepting the department's advice, that it was necessary or convenient to apply approval conditions to this proposed action. The key conditions relating to protected matters have been discussed above under each controlling provision.

143) I accepted the department's advice that the conditions met the requirements of section 134(1) of the EPBC Act since they were necessary to protect, repair or mitigate damage to BGHF, which is the matter protected by a provision of Part 3 for which this approval would have effect. I considered they were convenient as they were drafted to give effect to measures proposed by the proponent and were consistent with the conditions imposed by Council in the various development consents.

Additional considerations for conditions

144) In accordance with section 134(4) of the EPBC Act, in deciding whether to attach a condition to an approval, I must consider all of the following:

s134(4)(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

145) I considered the conditions imposed by Council to the extent that they were relevant to the relevant matter protected under Part 3 of the EPBC Act and considered that the conditions of approval recommended by the department were not inconsistent with conditions set out in the DA approval.

146) In accordance with section 134(4)(aa) of the EPBC Act, I must consider the following:

s134(4)(aa) Information provided by the person proposing to take the action or by the designated proponent of the action

147) I took into account the information in the documentation provided by the proponent in making my decision on whether or not to approve the proposed action.

148) In accordance with section 134(4)(b) of the EPBC Act, I must consider the following:

s134(4)(b) 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.

149) I considered that the conditions recommended by the department were practicable and cost effective, as they were drafted to give effect to the measures proposed by the proponent and were consistent with the conditions imposed by Council in the development consents issued by The Hills Shire Council for the Concept Masterplan DA (860/2022/JP and the Demolition DA (585/2021/HC) .

Conclusion

150) I concluded that the proposed action was likely to impact on a threatened ecological community (BGHF). I considered that the likely impacts of the proposed action on BGHF would not be unacceptable, provided the proposed action was undertaken in accordance with the conditions of approval recommended by the department .

151) Having considered all matters required to be considered under the EPBC Act and in light of my findings above, I decided to approve the taking of the proposed action, subject to conditions, for the purposes of sections 18 and 18A of the EPBC Act.

152) The approval was issued for a period of 10 years from 1 May 2024 to 1 May 2034 to allow sufficient time for the approval holder to undertake the action and implement the avoidance and mitigation measures and the conservation benefit of the required environmental offsets to be realised.

name and position	Kate Gowland Branch Head Environment Assessments (NSW, ACT)
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signature



date of decision	24 October 2024
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ANNEXURE A

Section 130 of the EPBC Act relevantly provides:

Basic rule

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

Notice of extension of time

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

Section 131 of the EPBC Act provides:

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

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

Section 131AA of the EPBC Act relevantly provides:

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

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

Section 131A of the EPBC Act provides:

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

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

Section 133 of the EPBC Act relevantly provides:

Approval

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

Content of approval

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

Persons who may take action covered by approval

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

Notice of approval

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

Notice of refusal of approval

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

Section 134 of the EPBC Act provides:

Condition to inform persons taking action of conditions attached to approval

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

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

Generally

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

Conditions to protect matters from the approved action

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

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

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