



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

I, KATE GOWLAND, Branch Head, Department of Climate Change, Energy, the Environment and Water (**department**), delegate for the Minister for the Environment and Water (**Minister**), provide the following statement of reasons for my decision of 20 March 2025, under section 78C of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to confirm the decision by Louise Vickery, Assistant Secretary, Environmental Assessments (NSW, ACT) of 26 May 2020 under section 75 of the EPBC Act that the proposed action by InvoCare Australia Pty Limited (**proponent**) for the construction of a memorial park which includes several buildings (up to six), associated infrastructure and landscaping, adjacent to the Callum Brae Nature Reserve, ACT (EPBC 2019/8595) (**proposed action**), is not a controlled action.

### Legislation

- 1) Relevant legislation not otherwise set out in this statement of reasons is set out in Annexure A.

### Background

#### Referral Decision

- 2) On 24 April 2020, the department received a valid referral from the proponent for the construction of a memorial park which includes several buildings (up to six), associated infrastructure and landscaping, adjacent to the Callum Brae Nature Reserve (**Reserve**) in the ACT.
- 3) The proposed action will result in the clearance of 0.33 hectares (**ha**) of the critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland threatened ecological community (**BGW TEC**). The remaining 2.57 ha of BGW TEC will be retained, rehabilitated and maintained in accordance with a conservation management plan.
- 4) Fourteen mature remnant Yellow Box (*Eucalyptus melliodora*) and Blakely's Red Gum (*E. blakelyi*) will be removed from the project area, two being in BGW TEC, which are considered suitable foraging habitat for the Swift Parrot (*Lathamus discolor*). The species was only considered to visit the project area periodically.
- 5) The proponent stated its belief that the proposal was not a controlled action for the purposes of the EPBC Act.
- 6) On 26 May 2020, a delegate of the Minister for the Environment determined under section 75 of the EPBC Act that the proposed action was not a controlled action (**original referral decision**). The original referral decision brief and referral documentation was attached to the reconsideration of referral decision brief prepared by the department (**decision brief**).

#### Reconsideration Requests

- 7) On 23 April 2024, Ms Pamela Collett of Friends of Callum Brae Inc (**first request**), and on 6 May 2024, Ms Margaret Roberts (**second request**), sent a letter and supporting documents requesting reconsideration under section 78A of the EPBC Act of a delegate of the Minister's referral decision

for the South Canberra Memorial Park (EPBC 2019/8595) (**the requests**). The requests were attached to the decision brief.

- 8) The requests contend that there:
  - a) is substantial new information available about the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 (section 78(1)(a) of the EPBC Act); and
  - b) has been a substantial change in circumstances that was not foreseen at the time of the referral decision and relates to the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 (section 78(1)(aa) of the EPBC Act).
- 9) Based on the above and the information provided in the requests summarised below, Ms Collett and Ms Roberts requested that I revoke the original referral decision and substitute with a new controlled action decision under section 75(1) of the EPBC Act due to significant impacts on listed threatened species and communities.
- 10) Section 78 of the EPBC Act allows for the Minister to reconsider a decision made under section 75(1) of the EPBC Act, which relates to a decision on:
  - 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.

#### Substantial new information

- 11) The requests state that there is new factual information that was not available at the time of the original referral decision about the impacts of the proposed action on listed threatened species and communities. This new information is summarised below and in detail in the reconsideration validity brief along with information that was presented and did not meet the legal test for reconsiderations. The reconsideration validity brief was attached to the decision brief.
- 12) New information presented in the requests included:
  - a) Additional observations of the nationally threatened Swift Parrot foraging in suitable habitats in and within proximity to the project area in 2021 (post referral decision), indicating the likely significant impact that the proposed action would have on its habitat.
  - b) Evidence that the referral application did not include information on the endangered Gang-gang Cockatoo (*Callocephalon fimbriatum*) which are frequently observed in the Reserve.
  - c) Indication that the proponent did not include or address a proposed new path that leads from the crematorium complex to the adjacent Reserve.
  - d) Evidence that the number of mature hollow-bearing trees to be destroyed for the proposed action has changed during the ACT Development Application process and there is an ongoing lack of clarity with the number of trees to be destroyed.
  - e) Evidence of administrative errors in the referral application, in particular other proposals in the region, the project name, land tenure and listing all relevant parties.

- f) Information that will result in more edge effects (i.e. human disturbance) on the boundary of the Reserve, having an ongoing negative impact on BGW TEC in the project area and the adjoining Reserve.
  - g) Information associated with the increased anthropogenic pressures on BGW TEC in and adjacent to the project area (e.g. industrial greenhouse gases, air quality impacts to EPBC Act threatened species).
  - h) Concern regarding the potential presence of critically endangered Natural Temperate Grassland of the South Eastern Highlands threatened ecological community (**NTG TEC**) patches in adjacent blocks which will be impacted by the proposed action (e.g. increased human activity).
  - i) Identifying that water which falls on the project area should not be harvested for the proposed action and be allowed to naturally flow into nearby wetlands which provide a source of water for migrating birds.
  - j) The Hooded Robin (south-eastern) (*Melanodryas cucullata cucullata*) was listed as 'endangered' under the EPBC Act in March 2023 and preferred habitat is likely present in the project area. The 2024 Protected Matters Search Tool (**PMST**) report states that the species is likely to occur within five kilometres (**km**) of the proposed action and therefore no habitat should be cleared.
  - k) The proposed action will negatively impact on the now vulnerable Golden Sun Moth (*Synemon plana*) due to the clearance of Wallaby Grass (i.e. suitable habitat) in the project area. The 2024 PMST report states that the species is known to occur in the area.
  - l) Recent research outlines that increasing anthropogenic pressures are causing avifauna to no longer inhabit suitable habitat and lead to extinctions.
- 13) The requests refer to relevant species statutory documents, such as approved conservation advices and new national recovery plans, as well as other publications. I noted that the referenced documents were not published at the time of the referral decision. References include, but are not limited to:
- a) Department of Climate Change, Energy, the Environment and Water (2024). *National Recovery Plan for the Swift Parrot* (Lathamus discolor) (**SP Recovery Plan**). Department of Climate Change, Energy, the Environment and Water, Canberra. Available at: [www.dcceew.gov.au/environment/biodiversity/threatened/recovery-plans/swift-parrot-2024](http://www.dcceew.gov.au/environment/biodiversity/threatened/recovery-plans/swift-parrot-2024).
  - b) Department of Agriculture, Water and the Environment (2022). *Conservation Advice for Callocephalon fimbriatum (Gang-gang Cockatoo)*. Canberra: Department of Agriculture, Water and the Environment. Available at: [www.environment.gov.au/biodiversity/threatened/species/pubs/768-conservation-advice-02032022.pdf](http://www.environment.gov.au/biodiversity/threatened/species/pubs/768-conservation-advice-02032022.pdf).
  - c) DCCEEW (2022). *Threatened Species Strategy Action Plan 2022 – 2032*. Department of Climate Change, Energy, the Environment and Water, Canberra. Available at [www.dcceew.gov.au/environment/biodiversity/threatened/publications/strategy-home](http://www.dcceew.gov.au/environment/biodiversity/threatened/publications/strategy-home).
  - d) Australian Capital Territory (2023). *Nature Conservation (Loss of mature native trees key threatening process) Action Plan 2023*. Available at: [Loss of Mature Native Trees Key Threatening Process Action Plan](#).

### Swift Parrot

- 14) Both requests state that the proponent considered that the Swift Parrot was unlikely to be present in the project area. The first request quotes Capital Ecology's *Environmental Impact Assessment* (2019) attached to the referral application: "*The species may move through the site during winter, however this is unlikely due to the paucity of records of the species in the region.*". Both requests provide recent information from species experts to dispute this conclusion.
- 15) Dr Deborah Saunders states that individuals were repeatedly observed using the project area and habitats in the immediate vicinity in 2021. Individuals were observed:
  - a) flying and calling above the tree canopy of the project area;
  - b) landing and foraging in the trees on the boundary of the project area and the Reserve; and
  - c) using dead standing trees within 50-100 metres (**m**) of the fence line as flock gathering points.
- 16) Dr Saunders further states that, based on an annual survey in 2021, a flock of up to 65 Swift Parrots were recorded at the Reserve adjacent to the project area. This is one of the largest flocks recorded in the ACT and equates to approximately 10% of the global population.
- 17) Dr Saunders states that the increase in flock sizes in the ACT is indicative of the growing importance of the region for the species. The species is increasing its dependence on ACT habitats throughout their wintering season (April to October) rather than only migrating through. Dr Saunders cites an annual survey report which states that the Reserve and adjacent areas were in the top 3% of sites across mainland Australia that supported flocks of 50 or more Swift Parrots in 2021.
- 18) Professor Robert Heinsohn states that "*... from 21 April 2021 to 2 May 2021, flocks between six and 36 individuals were recorded in the Reserve. From experience, an estimated combined number of individuals using the Reserve can be extrapolated to at least 70 individuals. Hence, the Reserve has been shown to be an important component of the Swift Parrot's winter range as public sightings suggest that a high proportion of the entire population can aggregate there.*".
- 19) Mr Robert Speirs (Capital Ecology) states that with regard to Dr Saunders' expert advice report and updates to databases with recent observations (e.g. NSW Wildlife Atlas and NatureMapr), the Reserve and other adjoining woodland (including the project area) clearly supports foraging habitat for the Swift Parrot during the autumn-winter migration period.
- 20) Dr Laura Rayner (ACT Parks and Conservation Service) states that, based on consultation with the Office of the Conservator of Flora and Fauna in mid-2023, she was able to confirm that 12 Swift Parrot sightings have been recorded within one kilometre of the project area in the last 2 years.

### Gang-gang Cockatoo

- 21) Both requests state that the referral application did not include information on the Gang-gang Cockatoo which are frequently observed in the Reserve. The species was listed as 'endangered' under the EPBC Act in March 2022. The 2024 PMST report states that the species is known to occur within five kilometres of the proposed action.
- 22) The second request states that the species has the potential to be adversely affected by the proposed action by the loss of over 100 mature native trees, including dead trees which can provide essential nesting and resting places. Further, the trees in the project area provide a buffer which protects the woodland in the Reserve.

### *Proposed path through the Reserve*

- 23) The first request states that the proponent's proposed path through the Reserve to spread ashes should have been referred under the EPBC Act because it opens up the Reserve to more environmental and biosecurity pressures.
- 24) The second request states that the proposed path is not mentioned in the referral application. It also states that the proposed path could place environmental assets of the Reserve at substantial risk, in particular:
- a) Increased biodiversity risks from human presence (e.g. rubbish and ashes) which could result in invasive pests.
  - b) Increase in noxious weeds (e.g. African Lovegrass) from human presence and infected vehicles.
  - c) Potential for vandalism, poisoning from ashes of 'trophy' trees and exacerbation of existing pressures leading to dieback (e.g. climate change, encroaching urbanisation, weeds, firewood gatherers, etc.).
  - d) Increased disturbance near ponds which will negatively impact visiting migratory bird species which may use them as a water source on their migration.

### *Significant impact during operation of the proposed action*

- 25) The requests state that there is no information in the referral application on the type of cremators to be used in operation. Despite this, the proponent stated: *"The operation of the crematorium has the potential to have a minor impact on the environment."*
- 26) Further, the witness statement from Mr Nobbs (InvoCare) provides more information on the operation of the proposed action, including that it will be operational seven days a week and could host up to 4-6 services a day.
- 27) The first request states that the operation of the proposed action will result in an increase in noise, traffic and general disruption. This will have a serious impact on the foraging Swift Parrot and Gang-gang Cockatoo in and adjacent to the project area.
- 28) Further, the first request states that there is no information in the referral application on the associated pollution and toxic emissions from the operation of the proposed action, and its potential impacts on matters of national environmental significance (**MNES**) including BGW TEC, Swift Parrot and Gang-gang Cockatoo. For example, the proponent has not provided any information in the ACT Development Application process to demonstrate that the operation of the proposed action will meet national air quality standards.

### *Other reasons*

- 29) The first request states the following:
- a) Since the original referral decision, the number of mature hollow-bearing trees to be destroyed for the proposed action have changed in the ACT Development Application process and there is an ongoing lack of clarity with the number of trees to be destroyed.
  - b) The proponent incorrectly stated in the referral application that there were no related proposals in the region, despite being aware of the proposed Southern Memorial Park project approximately five kilometres away.

- c) The project name in the referral application (South Canberra Memorial Park) has been used without registered permission as per ACT Government advice.
- d) The referral application incorrectly stated that the proposed action is located on unleased land.
- e) The referral application did not list Red Box Contractors Pty Ltd even though it is in a joint venture with the proponent and they have been in partnership since 2018.
- f) The proposed action will result in more edge effects (i.e. human disturbance) on the boundary of the Reserve, having an ongoing negative impact on BGW TEC in the project area and the adjoining Reserve.
- g) The SP Recovery Plan has been implemented with an objective to maintain or improve the extent, condition and connectivity of habitat of the Swift Parrot by 2032.

30) The second request states the following:

- a) The proposed action will result in the unnatural fragmentation of BGW TEC which has a variety of negative impacts as supported by the ACT *Nature Conservation (Unnatural fragmentation of habitats) Conservation Advice 2019*.
- b) The proposed action will result in increased anthropogenic pressures on BGW TEC in and adjacent to the project area, including a loss of connectivity with BGW TEC in other reserves, increased noise and disturbance, loss of recovery of BGW TEC in the project area, and loss of mature native trees for wildlife.
- c) The implementation of the ACT *Nature Conservation (Loss of mature native trees key threatening process) Action Plan 2023* outlines the real value of mature native trees, including dead trees (e.g. supports nesting and resting). The loss of these trees, including from the proposed action, will have a negative impact on protected species including the Swift Parrot and Gang-gang Cockatoo.

#### Substantial change in circumstances

- 31) Both requests also contend that there has been a substantial change in circumstances that was not foreseen at the time of the original referral decision and relates to the impacts that the proposed action has or will have, or is likely to have, on MNES (section 78(1)(aa) of the EPBC Act). This is summarised below and in detail in the reconsideration validity brief which was attached to the decision brief.
- a) The splitting of the proposed action into two stages, which is different to the referred action under the EPBC Act where the proponent stated that it would be a single proposed action.
  - b) Changes in risks to protected species and wider risks to protected species since the original referral decision (e.g. climate change, bushfires, continued native forest logging and increased habitat loss due to urbanisation).
  - c) New/Updated Commonwealth and ACT Government legislation, approved conservation advices and recovery plans relevant to the proposed action since the original referral decision.

## Validity of Requests

32) On 5 August 2024, a delegate of the Minister determined that the requests were valid with respect to the availability of substantial new information but not a substantial change in circumstances. This determination was based on a comprehensive review of both requests and their supporting documents (including supplementary information) against the requirements of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000*.

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

33) My decision was made after considering the decision brief prepared by the department, which I signed on 20 March 2025. The decision brief contained the following attachments:

- a) A: Original referral documentation (EPBC 2019/8595)
  - i. A1: Signed referral decision brief
  - ii. A2: Referral application
  - iii. A3: Capital Ecology Environmental Impact Assessment (2019)
  - iv. A4: Concept plan 1
  - v. A5: Concept plan 2
  - vi. A6: Concept plan 3
  - vii. A7: Concept plan 4
  - viii. A8: Signed decision notice
- b) B: Request for Reconsideration from Ms Pamela Collett (dated 23 April 2024) (First request)
  - i. B1: Dr Debbie Saunders, Expert Report
  - ii. B2: Mr Robert Speirs, Capital Ecology Report
  - iii. B3: Mr Steven Nobbs, InvoCare, Witness Statement
  - iv. B4: InvoCare Site Plan
  - v. B5: ACT Minister Tara Cheynes MLA, Naming of Memorial Parks Letter
  - vi. B6: Mr Paul Russell, Letter of Support
  - vii. B7: Professor Robert Heinsohn, Expert Witness Statement

Supplementary Information (dated 4 May 2024)

  - viii. B8: Dr Laura Rayner, Witness Statement

Supplementary Information (dated 28 June 2024)

  - ix. B8: Dr Laura Rayner, Witness Statement
  - x. B9: National Recovery Plan for the Swift Parrot *Lathamus discolor* (2024)
- c) C: Request for Reconsideration from Ms Margaret Roberts (dated 6 May 2024) (Second request)
  - i. C1: National Recovery Plan for the Swift Parrot *Lathamus discolor* (2011)

- ii. C2: Dr Debbie Saunders, Expert Report
  - iii. C3: Professor Robert Heinsohn, Expert Witness Statement
  - iv. C4: ACT Nature Conservation (Loss of mature native trees key threatening process) Action Plan 2023
  - v. C5: EPBC Act Protected Matters Search Tool Report (dated 23 April 2024)
  - vi. C6: EPBC 2018/8151 Decision – Mugga Quarry overburden expansion project, Symonston, ACT
  - vii. C7: ACT Nature Conservation (Unnatural fragmentation of habitats) Conservation Advice 2019
  - viii. C8: Conservation Advice for *Callocephalon fimbriatum* (Gang-gang Cockatoo) (2022)
  - ix. C9: ParkCare Rejection Email
  - x. C10: 2022-2032 Threatened Species Action Plan (Cth)
- d) D: Ministerial comments
- i. D1: National Indigenous Australians Agency
  - ii. D2: ACT Government
- e) E: Public comments
- f) F: Proponent response to the reconsideration requests
- g) G: Decision notice
- h) H: Letters to the person proposing to take the action, the reconsideration requestors and relevant Ministers
- i) I: Signed validity brief

### **Submissions on the Reconsideration Requests**

#### Comments from Commonwealth Ministers

- 34) By letter dated 5 August 2024, the following ministers were invited to comment on the reconsideration requests:
- a) Senator the Hon Malarndirri McCarthy, Minister for Indigenous Australians
  - b) the Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government
  - c) Ms Berlinda Bowler, delegate of the Hon Richard Marles MP, Minister for Defence
- 35) The National Indigenous Australians Agency responded on 19 August 2024 and noted that the reconsideration requests were in regard to threatened species and vegetation clearance, rather than a First Nations matter. Therefore, they provided no comments.
- 36) No response to the invitation to comment was provided by the Minister for Infrastructure, Transport, Regional Development and Local Government and the Minister for Defence.

### Comments from Territory Ministers

- 37) By letter dated 5 August 2024, Mr George Cilliers, delegate of Mr Chris Steel MLA, Minister for Planning, was invited to comment on the reconsideration requests.
- 38) Mr Cilliers responded on 26 August 2024 and outlined the status of the proposed action under ACT legislation. Further, the comments included refined advice from the Conservator of Flora and Fauna in light of new information regarding the presence of the Swift Parrot in the project area. This includes:
- a) A new Population Viability Analysis for the Swift Parrot, indicating the importance of mainland habitat availability.
  - b) Research indicating the reliance of large numbers of birds on repeated use of very restricted habitat patches. The flock of up to 65 Swift Parrots recorded in 2021 at the Reserve, adjacent to the project area, is one of the largest flocks ever recorded in the ACT and equates to 10% of the global population (current population size is approximately 600-700 birds).
  - c) Development in the project area would separate two areas of contiguous habitat used by the Swift Parrot which increases the risk of mortality through collisions with cars and structures due to an idiosyncratic flight pattern. Even a small number of deaths per year at this site has the potential to impact the national species' trajectory.
- 39) Further, Mr Cilliers advised that the ACT Heritage Council advises that in relation to heritage issues there is no substantial new information, or any substantial changes in circumstances that would warrant a revocation of the original decision, and that the ACT Environment Protection Authority have no comment.
- 40) I reviewed and considered the submissions received from the Commonwealth and Territory ministers in response to the invitation to comment on the reconsideration requests. The responses were attached to the decision brief.

### Public submissions – department's EPBC Act Public Portal

- 41) As required by section 74(3) of the EPBC Act, the reconsideration requests were published on the department's website on 7 August 2024 and public comments were invited until 21 August 2024 (10 business days). A total of 48 public submissions were received on the reconsideration requests via the EPBC Act Public Portal.
- 42) On the EPBC Act Public Portal, members of the public were invited to answer the seven prompts set out in Table 1 below.

**Table 1: Public comment questions and response options**

| Question Number                       | Question                                                                | Response Options      |
|---------------------------------------|-------------------------------------------------------------------------|-----------------------|
| <b>Controlled Action Responses</b>    |                                                                         |                       |
| 1                                     | Do you consider this is a controlled action?                            | Yes/No                |
| 2                                     | Provide reasons for why you believe this is/is not a controlled action. | Text Comment or Blank |
| <b>Reconsideration s78B Responses</b> |                                                                         |                       |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 3 | Do you consider there is substantial new information available about the impacts the action has, will have or is likely to have on a matter protected under Part 3* of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) (EPBC Act)?                                                                                                                                                     | Yes/No or Blank       |
| 4 | Provide reasons for your answer and/or any comments below.                                                                                                                                                                                                                                                                                                                                                            | Text Comment or Blank |
| 5 | Do you consider there has been a substantial change in circumstance that was not foreseen at the time of the first referral decision and that relates to the impacts the action has, or will have or is likely to have on a matter protected under Part 3* of the EPBC Act?                                                                                                                                           | Yes/No or Blank       |
| 6 | Provide reasons for your answer and/or any comments below.                                                                                                                                                                                                                                                                                                                                                            | Text Comment or Blank |
| 7 | If applicable, provide any other comments on whether you consider there are reasons to revoke the first referral decision and substitute a new decision. This may include any other comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act applies in relation to the action.<br><br>*(The current version of the EPBC Act can be accessed through the department's website). | Text Comment or Blank |

43) I reviewed and considered all public submissions received through the EPBC Act Public Portal in response to the invitation to comment on the reconsideration requests. In the decision brief, the department summarised the key matters raised in the submissions under the relevant questions.

**Question 1: Do you consider this is a controlled action?**

44) The department received no responses (either yes or no) in relation to Question 1.

**Question 2: Provide reasons for why you believe this is/is not a controlled action.**

45) The department received no responses in relation to Question 2.

**Question 3: Do you consider there is substantial new information available about the impacts the action has, will have or is likely to have on a matter protected under Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)?**

46) The department received the following responses in relation to Question 3:

- a) Yes – 40 responses
- b) No – 1 response
- c) Blank – 7 responses

**Question 4: Provide reasons for your answer and/or any comments below.**

47) The department received the following responses in relation to Question 4:

- a) Comment – 45 responses
- b) Blank – 3 responses

48) Respondents who answered ‘Yes’ in response to Question 3 made the following comments, as summarised in Table 2 below.

**Table 2: Summary of comments from respondents who answered ‘Yes’ in response to Question 3**

| Issue                                  | Comment Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Re. Environment</i>                 | <ul style="list-style-type: none"> <li>a) The reconsideration request includes information regarding significant species habitat (Swift Parrot) that is new and substantial as it did not exist when the first decision was made or was not before the decision-maker when the referral decision was made.</li> <li>b) The proposed action could have significant environmental impacts on threatened species, including the Swift Parrot, Gang-gang Cockatoo, Golden Sun Moth and Small Blue-ant Butterfly, which are known to use similar habitat identified within the proposed crematorium footprint.</li> <li>c) The proposed action could have a significant impact to the Yellow Box - Blakely’s Red Gum Grassy Woodland, through its clearance and fragmentation in the region.</li> <li>d) The proposed crematorium will contribute to the fragmentation of the vegetation community connected to the adjacent Reserve.</li> <li>e) The proposed action could have a significant impact on mature trees, and the habitat they provide to EPBC-listed fauna, specifically hollow-bearing trees used for nesting.</li> <li>f) The proposed action would contribute to the spread of invasive weed species in the area, specifically into the Reserve.</li> <li>g) The cumulative impacts to MNES from the Boral Quarry site to the south have not been adequately considered.</li> </ul> |
| <i>Re. Pollution</i>                   | <ul style="list-style-type: none"> <li>a) There are concerns regarding the pollution created by the crematorium, including the fumes, greenhouse gases and toxic emissions, in particular the fine particulate matter, mercury and other toxins.</li> <li>b) There are concerns regarding the operational noise, including increased traffic to the area throughout an average week.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <i>Re. ACAT decision</i>               | <ul style="list-style-type: none"> <li>a) The ACT Civil and Administrative Tribunal (<b>ACAT</b>) provided additional ecological data, including expert opinion, that supports the view that the development should not proceed.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <i>Re. Legislation and regulations</i> | <ul style="list-style-type: none"> <li>a) Concerns about the adherence and compliance with the ACT Government’s <i>Nature Conservation Act 2014</i>, Threatened Species Action Plan and Regional Plans.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <i>Re. Consultation and approval</i>   | <ul style="list-style-type: none"> <li>a) Insufficient consultation and adequate consideration of the revisions that have occurred to the development plans post referral decision, specifically the excessive car park requirements.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <i>Re. Community impacts</i>           | <ul style="list-style-type: none"> <li>a) Insufficient consideration to the importance of the site for the immediate community, now and into the future.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|                                              |                                                                                                                                                                                                                                                                                   |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Re. Inadequate assessment</i>             | <ul style="list-style-type: none"> <li>a) Concerns that the original field survey associated with the referral was only conducted over two days.</li> <li>b) Concerns that the recent data and expert advice has not been adequately incorporated into the assessment.</li> </ul> |
| <i>Re. Development need and alternatives</i> | <ul style="list-style-type: none"> <li>a) Argument that a new crematorium is unnecessary based on the current capacity, and present crematoriums in the ACT.</li> <li>b) Alternative locations have not been adequately considered.</li> </ul>                                    |

49) Respondents who answered 'No' or left the field blank in response to Question 3 made the following comments, as summarised in Table 3 below.

**Table 3: Summary of comments from respondents who answered 'No' or left the field blank in response to Question 3**

| <b>Issue</b>                                        | <b>Comment Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Re. Environment</i>                              | <ul style="list-style-type: none"> <li>a) The proposed crematorium will contribute to the fragmentation of the vegetation community connected to the adjacent Reserve.</li> <li>b) The proposed action could have significant environmental impacts on the Swift Parrot and Gang-gang Cockatoo.</li> <li>c) The proposed action could have a significant impact to the Yellow Box - Blakely's Red Gum Grassy Woodland, through fragmentation in the region.</li> <li>d) The proposed action could have a significant impact on multiple threatened woodland bird species.</li> </ul> |
| <i>Re. Pollution</i>                                | <ul style="list-style-type: none"> <li>a) Concerns regarding the pollution created by the crematorium, including the fine particulate matter produced by the cremation process and the increased noise caused by additional traffic to the area.</li> </ul>                                                                                                                                                                                                                                                                                                                          |
| <i>Re. Support of the reconsideration documents</i> | <ul style="list-style-type: none"> <li>a) Support of the documentation provided within the reconsideration requests.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

**Question 5: Do you consider there has been a substantial change in circumstance that was not foreseen at the time of the first referral decision and that relates to the impacts the action has, or will have or is likely to have on a matter protected under Part 3 of the EPBC Act?**

50) The department received the following responses in relation to Question 5:

- a) Yes – 30 responses
- b) No – 1 response
- c) Blank – 17 responses

**Question 6: Provide reasons for your answer and/or any comments below.**

51) The department received the following responses in relation to Question 5:

- a) Comment – 33 responses

b) Blank – 15 responses

52) Respondents who answered ‘Yes’ in response to Question 5 made the following comments, as summarised in Table 4 below.

**Table 4: Summary of comments from respondents who answered ‘Yes’ in response to Question 5**

| Issue                  | Comment Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <i>Re. Environment</i> | <p>a) Concern about the impact to the significant fauna habitat, loss of mature trees, connectivity with other vegetation communities and fragmentation within the landscape.</p> <p>b) The proposed replacement revegetation will take several years to establish and fully restore the habitat lost.</p> <p>c) The impacts to the Swift Parrot, Gang-gang Cockatoo, Superb Parrot and Small Ant-blue Butterfly have not been adequately considered.</p> <p>d) The change in listing to the Hooded Robin and Gang-gang Cockatoo after the referral decision has not been considered.</p> <p>e) Incorrectly listing the Swift Parrot within the original referral documents.</p> <p>f) Impacts to the adjacent Reserve from the crematorium operations haven't been adequately considered.</p> <p>g) The area forms part of the Murray Darling Basin Riverine System which was found to be 1 of 19 ecosystems threatened with collapse based on a February 2021 report by Australian biodiversity scientists.</p> <p>h) Concerns related to the key threatening processes under the EPBC Act. Specifically:</p> <ul style="list-style-type: none"> <li>• Land clearance – further land clearance of likely EPBC BGW TEC in the project area as a result of Stage 2 of the proposed action.</li> <li>• Novel biota and their impact on biodiversity – the hydrology and water quality issues of the project area and its possible downstream impact on EPBC BGW TEC and threatened fauna species (e.g. birds).</li> <li>• Loss of climatic habitat caused by anthropogenic emissions of greenhouse gases (industrial) – air quality impact on the EPBC threatened fauna species (e.g. birds).</li> </ul> <p>i) Lack of certainty regarding the number of mature native trees to be removed over time.</p> <p>j) Presence of edge effects from developments along Mugga Lane and the expansion of the Boral Quarry.</p> |
| <i>Re. Bushfire</i>    | <p>a) The fire risk associated with the proposed operation (gas cremators) of the crematorium hasn't been considered.</p> <p>b) The smoke and debris from any chimneys would also have a detrimental effect on wildlife.</p> <p>c) The impacts of the 2019 bushfires along the east coast makes vital the preservation of what remains, particularly when there is clear scientific</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                                             | evidence of a shift in the behaviour of the Swift Parrot, favouring inland foraging sites to deal with the loss of many coastal foraging habitat.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <i>Re. Climate change</i>                   | a) The worsening effects of climate change increase the pressure on what is the best remaining section of Yellow Box/Blakely's Red Gum left in the country.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Re. Development and planning issues</i>  | <p>a) The improper use of the name 'South Canberra Memorial Park' and no mention of the caretaker's cottage within the referral documents.</p> <p>b) The proposed action is currently going through ACAT, which is awaiting a decision regarding the reconsideration request under the EPBC Act prior to making their decision.</p> <p>c) Additional information has become available through the appeals process that hasn't been considered as part of the referral.</p> <p>d) The new ACT <i>Territory Planning Act 2023</i> includes the Symonston block on the East Canberra District 9 Map, identifying this area as a part of a wider system of reserves.</p> <p>e) The proposed footpath from the crematorium complex leading directly into the Reserve was not considered within the original referral, including both direct and indirect impacts that would result from it.</p> <p>f) The previous approval for the expansion of the Boral Quarry adjacent to the Reserve will contribute to the cumulative impact.</p> |
| <i>Re. Policy and regulatory concerns</i>   | <p>a) The proposed action hasn't considered the ACT <i>Urban Forest Act 2023</i>, ACT <i>Nature Conservation Action Plan 2023</i>, and updated conservation advice.</p> <p>b) Concerns that the proposed action is inconsistent with the ACT Waste-to-Energy Policy 2020-25 under which thermal treatment of waste including, incineration, gasification and pyrolysis will not be permitted in the ACT.</p> <p>c) Gas use for the crematorium is inconsistent with the ACT Government's directive to work toward electricity.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <i>Re. Pollution</i>                        | <p>a) Implementation of the 2022 ACT Air Pollution Regulation not considered against the CO<sub>2</sub> footprint that the crematorium would produce.</p> <p>b) The smoke and debris from the chimneys would have a detrimental effect on wildlife.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <i>Re. Social and health impacts</i>        | a) Important for mental health that the proposed action areas aren't touched.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <i>Re. Uncertainty and changes in plans</i> | <p>a) Concerns that the proponent didn't describe the proposed action and its impacts accurately, and it has become unclear.</p> <p>b) Additional information and revised plans were not available at the time of the original referral decision.</p> <p>c) Concerns that the original referral decision influenced the ACT Development Application approval.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| <i>Re. Support of reconsideration documents</i> | a) Comments included support of the documentation provided within the reconsideration requests. |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------|

**Question 7: If applicable, provide any other comments on whether you consider there are reasons to revoke the first referral decision and substitute a new decision. This may include any other comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act applies in relation to the action.**

53) The department received the following responses in relation to Question 7:

- a) Comment – 34 responses
- b) Blank – 14 responses

54) The majority of the responses made comments similar to those in Questions 3 and 5, and also made the following comments as summarised in Table 5 below.

**Table 5: Summary of comments from respondents who provided a response to Question 7**

| Issue                                         | Comment Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <i>Re. Original referral</i>                  | <ul style="list-style-type: none"> <li>a) Negative attributes associated with the proposed action have been downplayed.</li> <li>b) Only two field surveys were undertaken to inform the ecological report, each occurring within a period of severe drought (September 2018) and heavy grazing by Eastern Grey Kangaroos.</li> <li>c) Doesn't address a breach in the lease agreement due to vegetation management works undertaken, including not managing the weeds in the project area.</li> <li>d) The area of EPBC listed woodland has been incorrectly calculated and there are inconsistencies between the proposed footprint and tree removals within the ACT Development Application attachments.</li> <li>e) Doesn't adequately consider the significance of the younger Eucalypts proposed for removal and disregards planted Eucalypts.</li> <li>f) The Capital Ecology <i>Environmental Impact Assessment</i> report (2019) is dismissive of indirect impacts and conclusions deemed insufficient.</li> </ul> |
| <i>Re. ACT Development Application issues</i> | <ul style="list-style-type: none"> <li>a) Lack of consideration for the "reverse" bushfire threat and the impact of high temperatures on nearby vegetation in the original referral or the ACT Development Application.</li> <li>b) Information not provided in regard to the cremators creating high temperatures, creating the heat plumes, causing heat stress to adjacent Eucalypts, which can then expel their oil content, which become more flammable, creating risk in certain conditions.</li> <li>c) The combination of the geographical location, proximity to vegetation, varying wind conditions and heat created by the crematorium, would pose a bushfire risk.</li> </ul>                                                                                                                                                                                                                                                                                                                                   |

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|  | <ul style="list-style-type: none"> <li>d) Uncertainty in regard to long-term plans for the site (i.e. crown lease may be amended to change the primary purpose to include the words “cemetery” while retaining “and subsidiary thereto a caretaker's residence”). This may result in grave digging (additional noise) and ongoing vegetation, underground community and groundwater disturbance. A future caretaker’s cottage will also extend noise and light impacts.</li> <li>e) No summary of comments from the relevant agencies on the proposed action.</li> <li>f) Not adequately addressing the public representations on the ACT Development Application.</li> <li>g) The ACT Conservator of Flora and Fauna has placed restrictions on the proposed action which are insufficient.</li> <li>h) Legislation not properly enforced in regard to historical works on the site.</li> <li>i) State Government’s inability to resource the property’s maintenance.</li> <li>j) Lack of detail on the biodiversity impacts associated with Stage 2 of the proposed action.</li> <li>k) Inconsistencies and errors in the ACT Development Application documents, including diagrams and ecological reports.</li> <li>l) The ACT Development Application approval process is considered bias and not independent.</li> <li>m) Bushfire reporting inadequate and Bushfire Attack Levels are incorrect.</li> <li>n) Breach of lease through unauthorised vegetation management.</li> <li>o) Inability to comment on EPBC Act referral documents.</li> <li>p) Hasn’t met specific objectives and code requirements within the Territory Plan 2023.</li> <li>q) The ACTPLA Parking and Vehicular Access General Code provides car parking requirements for developments, however they state the “number car park spaces calculated based on the ACTPLA Parking and Vehicular Access General Code for chapel is irrationally low”.</li> <li>r) Impacts to traffic have not been adequately considered, including intersection upgrade requirements, insufficient peak hour data, speed limit considerations, new access requirements, additional impacts to animals with more cars frequenting the area and a lack of key risks not identified.</li> <li>s) Incomplete tree assessment, overlooking the importance of dead trees and their habitat value.</li> <li>t) Tree removal has not been accurately assessed, including potential future expansion and safety considerations.</li> <li>u) A lack of local native species has been proposed as part of the revegetation requirements.</li> <li>v) There is no obvious information in the Development Application documents that indicates what potential impact the development might have on the necessary waterflows downstream.</li> </ul> |
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|                                           | <p>w) It does not contain any information that outlines if there are any environmental or operational aspects of the proposed development that may have an impact on the adjacent woodland and wildlife or the adjacent landholders on the north of Narrabundah Lane and to the west of Mugga Lane. Additionally, there is no cultural assessment report available in the attachments.</p> <p>x) It has not considered the risk posed by snakes to patrons that would visit the crematorium, which are known to occur in the area.</p> <p>y) Anti-social behaviour, such as malicious damage, street racing, burnouts, burnt vehicles that have been stolen and rubbish dumping has not been considered.</p> |
| <i>Re. Regulatory and process issues</i>  | <p>a) The ACT Development Application lacks a comprehensive Environmental Impact Assessment (EIS), and fails to address cumulative impacts and climate change.</p> <p>b) Errors and inconsistencies in the ACT Development Application, including incorrect vegetation zoning, lack of detailed ecological surveys, and outdated information.</p> <p>c) Insufficient consultation with Traditional custodians and inadequate public comment periods.</p> <p>d) Lack of information on the machinery used in the cremation process.</p>                                                                                                                                                                       |
| <i>Re. Indigenous and heritage values</i> | <p>a) Inadequate consideration of Indigenous heritage values and Traditional custodians' perspective in the development process.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <i>Re. Alternative proposals</i>          | <p>a) Suggestions for alternative uses of the site that could better align with environmental protection goals.</p> <p>b) The potential to restore the site and preserve its ecological values, rather than proceeding with the current development plan.</p> <p>c) Should be left for recreational use, potentially converted into the adjacent Reserve.</p>                                                                                                                                                                                                                                                                                                                                                |
| <i>Re. Other</i>                          | <p>a) The removal of 58 habitat trees associated with Boral Quarry extension should be offset by adding the site to the Reserve.</p> <p>b) Government needs to show some foresight.</p> <p>c) What is currently an environmental jewel will be permanently destroyed for a facility that should and could easily be situated elsewhere.</p>                                                                                                                                                                                                                                                                                                                                                                  |

Public comments submitted directly to the ACT Assessments Mailbox

55) A public submission from the Conservation Council (ACT Region) was sent directly to the department's ACT Assessments Mailbox. Their original response (Comment 32), submitted during the public consultation period, was not based on the reconsideration documents as they were unable to access them.

56) I reviewed and considered the Conservation Council (ACT Region) submission received through the ACT Assessments Mailbox in response to the invitation to comment on the reconsideration

requests. The Conservation Council (ACT Region) submission included similar information provided within the public comments already received, as summarised below in Table 6.

**Table 6: Summary of comments from the Conservation Council (ACT Region)**

| Issue                                                        | Comment Summary                                                                                                                                                                                                                           |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Substantial new information</i></b>                    |                                                                                                                                                                                                                                           |
| <i>Re. Environment</i>                                       | a) Impacts to the Swift Parrot have not been adequately considered, whilst reiterating the expert opinions raised in the reconsideration request documents.<br>b) Importance of the Reserve for the Swift Parrot.                         |
| <i>Re. Administrative errors</i>                             | a) Incorrect listing status of the Swift Parrot at the time of the original referral.                                                                                                                                                     |
| <i>Re. Pollution</i>                                         | a) The type of cremator will create a significant carbon footprint, in addition to releasing various toxins, and a lack of information of how cremations will occur in the future, and how it will contribute to climate change.          |
| <i>Re. Operations</i>                                        | a) Operational detail has only been recently released.                                                                                                                                                                                    |
| <i>RE. Related works</i>                                     | a) Lack of consideration to the cumulative impacts associated with the Southern Memorial Park and Boral Mugga Quarry Extension within proximity to the proposed action.                                                                   |
| <b><i>Substantial change in circumstances</i></b>            |                                                                                                                                                                                                                                           |
| <i>Re Legislation, action plans, and conservation advice</i> | a) Updates and changes of relevant documents have not been considered.<br>b) Not consistent with the October 2020 Commonwealth commitment to phase out fossil fuel gas.<br>c) Not consistent with the ACT Waste-to-Energy Policy 2020-25. |
| <i>Re. TPG takeover of InvoCare Pty Limited</i>              | a) Not considered by the Commonwealth in the referral decision-making process.                                                                                                                                                            |

57) I acknowledge the views held by the individuals and organisations who responded and made comments. I do not doubt the genuineness of these views, and I considered each of the responses and submissions when making my decision. All submissions were attached to the decision brief.

Proponent’s submission on the reconsideration requests

58) On 5 August 2024, in accordance with section 78B(2) of the EPBC Act, the proponent was invited to comment on the reconsideration requests.

59) The proponent’s submission states that InvoCare remains strongly of the view that the matters set out in the reconsideration requests do not amount to ‘new information’ or an unforeseen ‘substantial change in circumstance’ for the purposes of section 78(1) of the EPBC Act. The proponent’s submission included information prepared by Capital Ecology, including a detailed response to the reconsideration requests.

60) The proponent’s submission addresses each of the concerns raised in the reconsideration requests, as summarised below in Table 7. The submission was attached to the decision brief.

**Table 7: Proponent’s response to the concerns raised in the reconsideration requests**

| Issue raised in reconsideration requests                                         | Proponent’s Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <i>Re. Policy framework not addressed</i>                                        | The reconsideration requests refer to specific departmental website text and the <i>Significant Impact Guidelines 1.1 - Matters of National Environmental Significance</i> (2013) in a selective manner, rather than giving consideration to all the factors available.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <i>Re. Lack of scientific certainty about the potential impacts of an action</i> | <p>The reconsideration requests assert that a lack of scientific certainty about the impacts of an action doesn’t justify a decision that it won’t have a significant impact.</p> <p>The proponent considers that the proposed action has been designed to avoid and minimise impacts on MNES to the greatest extent practicable; this being directly informed by scientifically robust assessment and documentation of the MNES as they occur in the project area and locality.</p>                                                                                                                                                                                                                                                                                                                                                                                                              |
| <i>Re. Error in the stated EPBC Act listing status of the Swift Parrot</i>       | The proponent notes that the incorrect listing status of the Swift Parrot was a mistake, however the difference in listing status would not have influenced the impact assessment of the species.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <i>Re. Site utilisation by the Swift Parrot</i>                                  | <p>The reconsideration requests refer to an ‘incorrect statement’ in the original referral documentation in regard to the presence of the Swift Parrot, specifically, “<i>The species may move through the site during winter; however this is unlikely due to the paucity of records of the species in the region.</i>” However, the proponent acknowledges that there have been instances of a larger presence of the species in the project area since the original referral, yet there have not been any similar observations since 2021 indicating that the large flock observed may have been an anomaly.</p> <p>The proponent notes that within the ‘likelihood of occurrence assessment’ in Capital Ecology’s <i>Environmental Impact Assessment</i> (2019), it correctly reflected the known occurrence of the Swift Parrot in the project area and locality at the time of writing.</p> |
| <i>Re. Threat to the Swift Parrot</i>                                            | <p>The proponent notes Dr. Saunders statement that “... <i>the single largest threat to the species continues to be the ongoing loss, degradation and fragmentation of habitat, with the cumulative impacts from many smaller scale impacts.</i>”</p> <p>However, the proponent considers that whilst that statement is correct in a broad sense, it is important to acknowledge that avoidance of impacts to potential autumn-winter foraging habitat on the Australian mainland will not in itself remove the ‘single largest threat’ to the Swift Parrot.</p>                                                                                                                                                                                                                                                                                                                                  |

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| <i>Re. Gang-gang Cockatoo not adequately considered</i>                                                           | The Gang-gang Cockatoo was not a listed MNES at the time of the original referral.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <i>Re. Increase in attendance and vehicle traffic will impact environment</i>                                     | <p>The reconsideration requests refer to an InvoCare statement that the proposed action has a capacity of 100 cars, therefore indicating the traffic (and associated noise/disturbance) of 100 cars for each cremation, 6-7 times a day, seven days a week.</p> <p>The proponent considers this is unrealistic and disingenuous, and additionally believes the noise generated by cremation/funeral events is unlikely to impact significant species in the area due to a lack of supporting evidence. Furthermore, they provide examples of other areas within the ACT which still attract significant species amongst development (e.g. Gang-gang Cockatoo at the Australian National University, Australian National Botanic Gardens and Telopea Park, and Swift Parrot utilising remnant trees behind the Campbell Shops and in Jenke Circuit, Kambah, ACT).</p>                                                   |
| <i>Re. InvoCare's proposal for a path directly linking to the Reserve and the lack of surrounding information</i> | <p>The proponent acknowledges that the proposed path into the Reserve wasn't included in the original referral; rather an addition during the ACT Development Application process upon request by the ACT Government.</p> <p>The proponent also states that the addition of the path would unlikely increase the current level of negative impacts in the Reserve (i.e. weed introduction, vandalism, etc.) due to the current access already available to the public.</p> <p>The reconsideration requests mention that the path will promote the spreading of ashes within the Reserve. The proponent states that this was never proposed and is unfounded.</p> <p>It is considered unreasonable to assess the impacts that are already occurring by other means, and the impacts of the proposed action should only be considered to the extent that it will contribute to or exacerbate impacts to the Reserve.</p> |
| <i>Re. Lack of information on the pollutants and toxic emissions created by the cremation process</i>             | The proponent understands that the cremation process will meet all applicable contemporary air quality standards and refutes the suggestion that it would have any adverse impacts on the adjacent environment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Re. InvoCare not stating it as a staged project</i>                                                            | Whilst there have been some design amendments to the proposed action, the proposed action and its impacts on MNES have not materially changed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <i>Re. Design changes to avoid impacts to significant Aboriginal heritage values</i>                              | The proponent states that design amendments occurred to avoid impacts of significant Aboriginal heritage value which were identified post-EPBC Act referral. These amendments ultimately reduced the impacts to the ecological communities as well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <i>Re. Changes in the Urban Forest Act 2023 weren't considered</i>                                                | The proponent notes that the reconsideration requests refer to changes to the ACT <i>Urban Forest Act 2023</i> and states that this legislation is not relevant to the EPBC Act assessment. Further, the proponent considers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                                                                                                                                                                                                                                                        | that the project area does not meet multiple definitions within the legislation to be considered.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Re. Introduction of the ACT Nature Conservation (Loss of mature native trees key threatening process) Action Plan 2023 and ACT Nature Conservation (Yellow Box – Blakely’s Red Gum Grassy Woodland) Conservation Advice 2020 was not considered</i> | As they are associated with ACT legislation and policy, they are not relevant to an assessment under the EPBC Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <i>Re. Conclusions regarding likely impacts to the threatened ecological community are not adequate</i>                                                                                                                                                | <p>The reconsideration requests refer to the proposed action destroying a significant area of endangered trees and ecosystems, in addition to threatening the viability of the ecological communities within the project area and adjacent Reserve.</p> <p>The proponent states that such impacts are unlikely as a key objective of the project design was to retain and preserve the Box Gum woodland in the project area through the implementation of the Woodland Conservation Management Plan. Further, the proponent believes that such statements are emotive and unsupported when considering the EPBC Act.</p> |
| <i>Re. Intention to develop the entire 9.73 ha site and into the Reserve</i>                                                                                                                                                                           | The proponent states that the project area is limited to 5.97 ha and that the notion that mourners could utilise the Reserve as part of the memorial was without basis.                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <i>Re. Risk to environmental assets of the Reserve have not been addressed, with only the positive outcomes post-development mentioned</i>                                                                                                             | The proponent states that the impacts of the proposed action were determined through scientific and evidence-based assessments. This method resulted in alterations to mitigate impacts to high biodiversity areas, in addition to measures and commitments to remediate and improve the retained areas.                                                                                                                                                                                                                                                                                                                 |
| <i>Re. Reported low value of planted trees and lack of consideration to the time it takes to replace the values they provide to the environment</i>                                                                                                    | The proponent agrees that planted trees do provide value to the environment through foraging resources. However, it’s an “indisputable fact” that naturally occurring trees of the natural ecological community cannot be replicated by planted non-local species. This was reflected during the design phase where remnant trees were given the highest priority for retention.                                                                                                                                                                                                                                         |
| <i>Re. Significance of impacts to mature remnant trees</i>                                                                                                                                                                                             | The reconsideration requests refer to Capital Ecology’s <i>Environmental Impact Assessment (2019)</i> stating the importance of the remnant trees within the project area; however, it then concludes that the loss of these trees is not “significant”.                                                                                                                                                                                                                                                                                                                                                                 |

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|                                                                                                                          | <p>The proponent reiterates the lengths it went to retain as many trees as possible, and the unavoidable trees to be impacted would not be considered significant in comparison to the trees that are retained.</p>                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><i>Re. Relevance of distinction between mature trees and planted trees</i></p>                                        | <p>The reconsideration requests refer to Capital Ecology's <i>Environmental Impact Assessment</i> (2019) stating that Box Gum woodland still exists within the project area, however the design has indicated that the driveway/parking area that runs through the woodland has been assessed to only impact planted Eucalypts, rather than the woodland community as a whole.</p> <p>The proponent reiterates the importance of distinguishing between the planted and remnant trees to identify those of which are not representative of the endangered woodland community to assist in retaining the remnant vegetation.</p> |
| <p><i>Re. Deterioration of woodland understorey due to ongoing 'clean ups'</i></p>                                       | <p>The proponent states that as outlined in Capital Ecology's <i>Environmental Impact Assessment</i> (2019), the understorey has historically been degraded by property use. However, it has committed to on-ground works that would result in a substantial improvement to the understorey of the Box-Gum woodland.</p>                                                                                                                                                                                                                                                                                                        |
| <p><i>Re. Impacts to habitat connectivity</i></p>                                                                        | <p>The proponent notes the reconsideration requests refer to the proposed action losing a portion of connectivity linking Red Hill, Mugga and the Reserve, but Capital Ecology's <i>Environmental Impact Assessment</i> (2019) dismisses the impacts as the vegetation is on the edge of a network of nature reserves.</p> <p>The proponent reiterates that the proposed action will result in impacts to 0.33 ha of BGW TEC and 9 mature remnant trees which, in the scheme of the surrounding vegetation communities, can be considered minor.</p>                                                                            |
| <p><i>Re. Increase in presence/abundance of Noisy Miner</i></p>                                                          | <p>The proponent states that the proposed action will not impact on the already over-abundant population of the Noisy Miner in the area. Additionally, the proponent states that the Woodland Conservation Management Plan will likely lead to an increase in habitat suitable for alternative bird species.</p>                                                                                                                                                                                                                                                                                                                |
| <p><i>Re. NTG TEC not adequately considered</i></p>                                                                      | <p>The proponent acknowledges that NTG TEC is known to occur in the project area as per the 2024 PMST report. However, the Capital Ecology's <i>Environmental Impact Assessment</i> (2019) did not identify it in the project area.</p>                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><i>Re. Impact to migratory birds not adequately considered</i></p>                                                    | <p>The proponent states that whilst the 2024 PMST report indicates that migratory birds are known to occur within five kilometres of the project area, there is no evidence to suggest that the dam in the project area is utilised by migratory birds now or post-development.</p>                                                                                                                                                                                                                                                                                                                                             |
| <p><i>Re. Hooded Robin being listed incorrectly, and only considered moderate in the likelihood of occurrence on</i></p> | <p>The proponent states that no records were recorded within 10 km of the project area since 1964. Further, whilst intact areas of vegetation adjacent the project area may be more suitable as habitat, it is apparent that the species does not frequent this particular degraded area.</p>                                                                                                                                                                                                                                                                                                                                   |

|                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>site even though the vegetation description appears to be consistent with their preferred habitat</i></p>                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><i>Re. Negligible likelihood of occurrence of the Golden Sun Moth and disregard of possible habitat</i></p>                            | <p>Golden Sun Moth occurrence and assessment of appropriate habitat was supported by an ecologist, Mr Robert Speirs, who has experience in habitat mapping and targeted surveys for the Golden Sun Moth.</p> <p>The proponent also deems it relevant that the Golden Sun Moth was downlisted from ‘critically endangered’ to ‘vulnerable’ under the EPBC Act.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><i>Re. Concept of ‘death by a thousand cuts’</i></p>                                                                                   | <p>The proponent notes the reconsideration requests refer to new research by Ms Michelle Ward and others which concludes that today’s losses of birds that once had a wide range in its full historical context so that isolating individual, apparently tiny and negligible, losses of habitat within one development and labelling them “not significant” is poor science and a sure step on the road to extinction for that woodland and the ecological community that depends on it.</p> <p>The proponent states that whilst there is validity to the concept of ‘death by a thousand cuts’ and that the precautionary principle should prevail, it does not believe that the proposed action can reasonably or practicably be expected to address this for relevant MNES.</p> <p>The proponent considers that a pragmatic consideration of the impacts which are actually likely to result from the proposed action, together with appropriate acknowledgement of the likely benefits from site remediation and Box-Gum woodland rehabilitation, indicate that the proposed action is unlikely to result in a significant impact on relevant MNES.</p> |
| <p><i>Re. A lack of post-construction management plan, rather relying on boundaries, signage, and vague Woodland Management Units</i></p> | <p>As outlined in Capital Ecology’s <i>Environmental Impact Assessment (2019)</i>, there is a commitment to develop and implement a Woodland Conservation Management Plan that will ensure the maintenance of retained BGW TEC. The plan will be prepared with endorsement from an ACT Government ecologist, and provide a substantial improvement in quality and overall habitat it provides to the project area.</p> <p>The proponent clarifies the term ‘units’ is in regard to the specific designation of areas for management.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## Findings on material questions of fact

### Statutory framework for reconsideration decisions

61) Under section 78C(1) of the EPBC Act, as soon as practicable after the end of the time within which information or comments may be given under section 78B of the EPBC Act in relation to a request under section 78A of the EPBC Act to reconsider a particular referral decision about an action, the Minister (or delegate) must:

- a) reconsider the decision; and

- b) either:
    - i. confirm the decision; or
    - ii. revoke the decision in accordance with section 78(1) of the EPBC Act and substitute a new decision for it.
- 62) As a delegate of the Minister, under section 78(1) of the EPBC Act, I may revoke a decision made under section 75(1) of the EPBC Act about an action and substitute a new decision under that subsection for the first decision, but only if I am satisfied that the revocation and substitution is warranted:
- a) by the availability of substantial new information (paragraph 78(1)(a)); or
  - b) by a substantial change in circumstances that was not foreseen at the time of the first decision has occurred (paragraph 78(1)(aa))
- about or relating to the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 of the EPBC Act (**protected matter**).
- 63) Under section 75 of the EPBC Act, I must decide whether the proposed action that is the subject of the referred proposal is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the action. In making my reconsideration decision, as when making a subsection 75(1) decision for the first time, I must consider all adverse impacts that the action has, will have, or is likely to have, on the matter protected by each provision of Part 3 of the EPBC Act. I must not consider any beneficial impacts the action has, will have or is likely to have on the matter protected by each provision of Part 3 of the EPBC Act. I considered that sufficient information was available for me to make this decision.
- 64) Section 67 of the EPBC Act provides that an action is a controlled action if the taking of the action, without the Minister's approval for the purposes of a provision of Part 3 of the EPBC Act, would be prohibited by the provision (the controlling provision for the action).
- 65) Section 391 of the EPBC Act provides that I must take account of the precautionary principle in making a decision under section 75 of the EPBC Act, to the extent I can do so consistently with the other provisions of the EPBC Act. While a reconsideration decision is not a decision listed in section 391 of the EPBC Act as a decision where the precautionary principle must be taken into account, the effect of exercising my power under section 78C(1) of the EPBC Act to revoke the earlier section 75(1) decision is that I will be making a new section 75 decision and I will be required to take account of the precautionary principle. I have taken account of the precautionary principle in paragraphs 128 to 136 below.
- 66) The only possible outcomes of the reconsideration are that I:
- a) confirm the original section 75 decision that the proposed action is not a controlled action; or
  - b) revoke the original section 75 decision and substitute a new decision under section 75(1) of the EPBC Act by deciding that:
    - i. the proposed action is a controlled action and requires assessment and approval under the EPBC Act; or
    - ii. the proposed action is not a controlled action with a component decision under section 77A of the EPBC Act about a particular manner.

## Protected matters and controlling provisions

- 67) The requests state that there is substantial new information that relates to the impacts that the proposed action has or will have, or is likely to have, on listed threatened species and communities protected by Part 3 of the EPBC Act, and that this warrants the revocation and substitution of the original referral decision.
- 68) My consideration of the requests, and corresponding decision, is set out below with respect to listed threatened species and communities (sections 18 and 18A) as specified in the requests.
- 69) I also considered whether any of the grounds at sections 78(1)(aa) to (d) of the EPBC Act may be the basis for a decision to reconsider the original referral decision. I determined they would not be for the following reasons:
- a) the requirements for the grounds at sections 78(1)(b) to (ca) are met because the original referral decision was a 'not a controlled action' decision;
  - b) the requirement for the ground at section 78(1)(d) is not met because the request was not made under section 79 of the EPBC Act; and
  - c) the requirements for the ground at section 78(1)(aa) are not met for the reasons set out within the reconsideration validity brief, stating that there has not been a substantial change in circumstances that was not foreseen at the time of the original referral decision that relates to the impacts that the proposed action has or will have, or is likely to have, on a protected matter. In particular, the requests do not demonstrate that a change in the potential impacts of the action are likely to happen with a high degree of certainty (regulation 4AA.01(4)(c)).

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

### Swift Parrot (*Lathamus discolor*) – Critically endangered

#### *Referral information*

- 70) The proponent concluded that the proposed action would not have a significant impact on any listed threatened species or threatened ecological community.
- 71) The original referral decision brief includes a significant impact assessment on the Swift Parrot. It states:
- a) The referral indicates that suitable habitat is present in the action area and Swift Parrot may move through the site in winter to forage, but there are few records of Swift Parrots in the region.
  - b) The proposed action will lead to a loss of some potential foraging resources, as a small number of remnant mature eucalypts (14 of 106) will be removed from the site. However, this will not substantially reduce the availability of key feed trees in the general location. Swift Parrots do not nest in the region.
  - c) The amount of potential foraging habitat within the action area would not be of great importance to the species. The small number of trees to be cleared from the site will not immediately impact Swift Parrots moving through the area.
  - d) Given the Swift Parrot may only visit the action area periodically and that most of the Box Gum Woodland and mature remnant trees on the site will be retained, the department considers

the proposed action is unlikely to lead to adverse effects to habitat critical to the survival of the species or interfere with its recovery.

- e) In accordance with the [EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of national environmental significance](#) (**Significant Impact Guidelines 1.1**), the department considers the proposed action is unlikely to have a significant impact on the species.

*Substantial new information on the impacts of the proposed action*

- 72) In the requests, Ms Collett and Ms Roberts identified four documents that they consider demonstrate the likely significant impacts that the proposed action will have on matters protected under this controlling provision. The documents include expert reports from Dr Saunders, Mr Speirs (Capital Ecology), Professor Heinsohn and Dr Raynor (Witness Statement) (see paragraphs 14 to 20 above).
- 73) I considered that this information is substantial new information as:
- a) much of the information contained in the requests was not before the delegate of the Minister and so is considered new information; and
  - b) the information is of substance and is not trivial or inconsequential and demonstrates that the proposed action has the potential to impact on this protected matter.
- 74) The expert report in the requests from Dr Saunders states that Swift Parrot individuals were repeatedly observed using the project area and habitats in the immediate vicinity in 2021. Individuals were observed:
- a) flying and calling above the tree canopy of the project area;
  - b) landing and foraging in the trees on the boundary of the project area and the Reserve; and
  - c) using dead standing trees within 50-100 m of the fence line as flock gathering points.
- 75) Dr Saunders further states that, based on an annual survey in 2021, a flock of up to 65 Swift Parrots were recorded at the Reserve adjacent to the project area. It is one of the largest flocks recorded in the ACT and equates to approximately 10% of the global population.
- 76) Dr Saunders states that the increase in flock sizes in the ACT is indicative of the growing importance of the region for the species. The species is increasing its dependence on ACT habitats throughout their wintering season (April to October) rather than only migrating through. Dr Saunders cites an annual survey report which states that the Reserve and adjacent areas were in the top 3% of sites across mainland Australia that supported flocks of 50 or more Swift Parrots in 2021.
- 77) The expert report in the requests from Professor Heinsohn states that from 21 April 2021 to 2 May 2021, flocks between six and 36 individuals were recorded in the Reserve. From experience, an estimated combined number of individuals using the Reserve can be extrapolated to at least 70 individuals. Hence, the Reserve has been shown to be an important component of the Swift Parrot's winter range as public sightings suggest that a high proportion of the entire population can aggregate there.
- 78) The expert report in the first request from Mr Speirs (Capital Ecology) states that with regard to Dr Saunders' expert advice report and updates to databases with recent observations (e.g. NSW Wildlife Atlas and NatureMapr), the Reserve and other adjoining woodland (including the project

area) clearly supports foraging habitat for the Swift Parrot during the autumn-winter migration period.

- 79) The witness statement in the first request from Dr Rayner (ACT Parks and Conservation Service) states that, based on consultation with the Office of the Conservator of Flora and Fauna in mid-2023, she was able to confirm that 12 Swift Parrot sightings have been recorded within one kilometre of the project area in the last 2 years.

#### *Public comments*

- 80) I acknowledge the support of the information in the reconsideration requests in the majority of the public comments. However, I considered no substantial new information was provided through the public consultation period regarding the Swift Parrot.

#### *Proponent's response to the reconsideration requests*

- 81) In response to the requests, the proponent states that whilst the Autumn 2021 visit involved a substantial number of Swift Parrots, substantial visitation and use of the Reserve and the adjoining parts of the site had not been recorded prior. Accordingly, the 'Appendix A – Likelihood of Occurrence Assessment' in Capital Ecology's *Environmental Impact Assessment (2019) (EIA)* correctly reflected the known occurrence of the Swift Parrot in the project area and locality at the time of writing.
- 82) The proponent also notes that the Swift Parrot visitation recorded in 2021 has not been recorded in the years since, and that it may be an anomaly and not the norm.
- 83) Further, the proponent agrees that although the loss, degradation and fragmentation of the Swift Parrots' habitat is accepted as the largest threat to the species, it is important to add the context that is missing; referring to Section 2.2 of the SP Recovery Plan: *"The main threats in Tasmania to the survival of the Swift Parrot are the predation of nestlings and incubating females by the introduced Sugar Glider, ongoing loss or degradation of breeding and foraging habitat through a range of processes including, forestry operations, land clearing and wildfire. The main threats on the Australian mainland include habitat loss from land clearing for agriculture and urban development, and to a lesser extent forest harvesting. Other identified threats include competition for foraging and nesting resources, mortality from collisions with human-made objects and impacts from climate change."*
- 84) Overall, the proponent considers that whilst habitat loss from land clearing for agriculture and urban development on the Australian mainland is one of the identified main threats, it is important to acknowledge that avoidance of impacts to potential autumn-winter foraging habitat on the Australian mainland will not in itself remove the 'single largest threat' to the Swift Parrot.

#### *Relevant ecology*

- 85) The [Conservation Advice Lathamus discolor swift parrot](#) (2016) (**SP Conservation Advice**) and SP Recovery Plan state that the Swift Parrot breeds in Tasmania during the summer and the entire population migrates north to mainland Australia for the winter, from Victoria up to south-eastern Queensland.
- 86) The SP Recovery Plan states that the current population size is uncertain (estimated to be 750 mature individuals in 2020) and research suggests that the population is likely undergoing dramatic declines due to predation by Sugar Gliders in Tasmania, and habitat loss and degradation.

- 87) The SP Conservation Advice and SP Recovery Plan state that the Swift Parrot disperses widely on the mainland to forage on flowers and *psyllid* lerps in *Eucalyptus* species, with the majority found in Victoria and NSW. In NSW, the species forage in forests and woodlands throughout the coastal and western slopes regions each year. Small numbers are observed in the ACT on a regular basis.
- 88) The SP Recovery Plan states that key foraging species on mainland Australia include Yellow Box, Spotted Gum (*Corymbia maculata*), Swamp Mahogany (*E. robusta*), Forest Red Gum (*E. tereticornis*), and White Box (*E. albens*). The Swift Parrot preferentially forages in large, mature trees that provide more reliable foraging resources than younger trees.
- 89) The SP Recovery Plan states that on mainland Australia, the Swift Parrot is regularly found feeding on lerp, with flocks of up to 50 birds feeding on lerp for up to an entire season.
- 90) The SP Recovery Plan states that there are 18 Key Biodiversity Areas (**KBAs**) which are recognised by the KBA partnership as important for Swift Parrot conservation and to support the long-term persistence of the species. The KBA is a program that aims to identify, map, monitor and conserve the critical sites for global biodiversity across the planet. It establishes a consultative, science-based process for the identification of globally important sites for biodiversity worldwide.
- 91) I noted that foraging habitat in the ACT is not recognised in any of the 18 KBAs.
- 92) Section 1.8 of the SP Recovery Plan states that habitat critical to the survival of the Swift Parrot includes all preferred foraging species within known and likely foraging habitat on the mainland.

#### *Species presence*

- 93) Table A1 of Appendix A to the EIA states that the Swift Parrot has a 'low' Likelihood-of-Occurrence/Impact because the species may move through the site during winter, however this is unlikely due to the paucity of records of the species in the region.
- 94) Based on the information available, particularly in the requests, I considered that the Swift Parrot is known to occur in the project area and surrounds.

#### *Environment within and surrounding the project area*

- 95) Section 2.1.1 of the EIA states that the project area is bordered by the Callum Brae Nature Reserve to the south, Mugga Lane to the north-west (Mount Mugga Mugga Nature Reserve on the other side), and Narrabundah Lane to the north-east (Figure 1 of the EIA).
- 96) Appendix D of the EIA states that the Reserve and Mugga Mugga Nature Reserve are connected to a wider network of reserves within Canberra Nature Park (Red Hill Nature Reserve, Isaacs Ridge Nature Reserve and Wanniasa Hill Nature Reserve).
- 97) The ACT Government states that the [Callum Brae Nature Reserve](#) is a 143-hectare protected area in Symonston, located on the lower eastern slopes of Mount Mugga Mugga. The ACT Government states that the [Mount Mugga Mugga Nature Reserve](#) is a 148-hectare protected area on the eastern edge of Woden Valley.
- 98) Both nature reserves are part of an extensive landscape of remnant wooded vegetation that enables wildlife movement through to NSW in the east, the Murrumbidgee River in the west and the southern ACT through Tuggeranong Hill and Rob Roy Range nature reserves.
- 99) The Reserve provides large hollow-bearing eucalypts dominated by Yellow Box-Blakely's Red Gum Woodlands, and is considered a refuge for threatened and declining woodland bird species.

- 100) Section 2.1.2 of the EIA states that the project area contains the *E. melliodora* – *E. blakelyi* Tableland Grassy Woodland (PCT-ACT16) (Figure 2 of the EIA), comprised of three vegetation zones:
- a) Zone 1 (2.89 ha): contains remnant Yellow Box and Blakely's Red Gum.
  - b) Zone 2 (0.44 ha): contains remnant mature Blakely's Red Gum trees.
  - c) Zone 3 (6.39 ha): contains scattered retained remnant eucalypts with numerous 20-30 year old planted eucalypts comprising PCT-ACT16 species (Yellow Box, Blakely's Red Gum and Apple Box), ACT species (Brittle Gum and Ribbon Gum) and non-ACT species (White Box, Mugga Ironbark, Argyle Apple and Blue Gum).
- 101) Section 2.6.2 of the EIA states that the project area supports 106 mature remnant eucalypt trees (86 Blakely's Red Gum, 14 Yellow Box, four Scribbly Gum and two Apple Box). Further, the EIA states that these trees would provide a nectar source for a number of fauna when in flower.
- 102) Paragraph 35 of the expert report from Mr Speirs (Capital Ecology) states that a supplementary tree assessment was undertaken in the project area in March 2024 to assess the value of the trees as foraging habitat for the Swift Parrot. Key results include:
- a) 100 trees of >20 centimetres (cm) DBH exist within the project area, 13 of which are remnant trees (13%), and the remainder (87%) are planted.
  - b) 23 trees (23%) are 10 m or taller.
  - c) 34 trees (34%) have a DBH of 50 cm or more.
  - d) 13 live trees (13%) are 10 m or taller, and have a DBH of 50 cm or more.
  - e) 3 live trees (3%) are 10 m or taller, have a DBH of 50 cm or more, and are Yellow Box trees.
- 103) The proponent does not state whether the vegetation in the project area forms habitat critical to the survival of the Swift Parrot. Based on the information available, I considered that the project area contains habitat critical to the survival of the species in the form of known foraging habitat (e.g. mature remnant Yellow Box and Blakely's Red Gum).

#### *Potential impacts*

- 104) The referral does not explicitly describe the direct and indirect impacts of the proposed action on the Swift Parrot.
- 105) Section 3 of the EIA states that the proposed action has a total development footprint of 5.97 ha, comprising the removal of 5.11 ha of native vegetation, 14 mature remnant trees and a substantial number of planted eucalypt trees in PCT-ACT16 (Zone 3). Of the 14 mature remnant trees, nine comprise Blakely's Red Gum and four comprise Yellow Box (Figure 3 of the EIA).
- 106) Section 3 of the EIA states that the proposed action has the potential to indirectly impact adjoining native fauna habitat (e.g. the Reserve, Mount Mugga Mugga Nature Reserve, etc.) from its operation through increased foot traffic, smoke, noise and lighting from vehicles.
- 107) The requests and some public comments state that indirect impacts from the proposed action on the Swift Parrot would include habitat fragmentation, an increased risk of vehicle collision, and noise and pollution created by the crematorium, including the fumes, greenhouse gases and toxic emissions. Further, there is the potential for edge effects on the adjacent Reserve and Swift Parrot habitat due to an increase in human disturbance in the area.

108) Further, the comment from the ACT Government (Conservator of Flora and Fauna) states that the proposed action would separate two areas of contiguous habitat used by the species, and the species is vulnerable to fatal collisions with cars and structures due to their idiosyncratic flight patterns. This combination raises the risks of increased mortality.

109) I noted that the proposed action will not impact on breeding habitat for the Swift Parrot because it breeds in Tasmania. However, it will have a direct impact on known foraging habitat for the species, including the removal of up to 14 mature remnant trees (comprising Blakely's Red Gum and Yellow Box), and indirect impacts on known foraging habitat mainly from an increase in human disturbance during construction and operation.

110) Further, I noted that the requests and public comments raised cumulative impacts with the nearby Boral Mugga Quarry Extension (EPBC 2018/8151), which was approved under the EPBC Act on 10 July 2019. The approval of that project was granted prior to the original referral decision, therefore its impacts on the Swift Parrot were known.

#### *Avoidance and mitigation measures*

111) The referral does not explicitly describe the proposed measures to avoid, mitigate and manage the potential impacts of the proposed action on the Swift Parrot. However, Section 4 of the EIA states that measures have been incorporated into the design of the proposed action to avoid or reduce impacts on the ecological values in the project area.

112) I considered the following measures are relevant to the Swift Parrot:

- a) The proposed action has been designed to retain as many of the remnant eucalypts as practicable, with 92 of 106 (87%) of large remnant mature eucalypts to be retained.
- b) The retained eucalypts will be managed in accordance with *AS4970-2009 Protection of trees on development sites* (2010).
- c) Planting of over 100 trees indigenous to PCT-ACT16 to help recreate a canopy representative of the climax community, and help integrate the project area's ecological values with the adjoining Reserve and nearby nature reserves.

113) The proponent's response to the reconsideration request reiterates that they have designed the proposed action to remove only a small number of remnant mature eucalypts. The proponent notes that due to heritage and environmental restrictions identified after the original decision, there has been a net reduction in the impact to mature remnant woodland trees of five trees (14 down to nine).

114) Further, the proponent states that the proposed action will be required to operate in a manner that meets all applicable contemporary air quality standards, and that such standards will require very minimal emissions.

#### *Conclusion – Swift Parrot*

115) In making my decision, I considered the original referral documentation, the requests, the nature, scale and potential impacts of the proposed action, relevant public comments, ACT Government comments, the proponent's response to the reconsideration requests, the SP Recovery Plan and the SP Conservation advice, and the Significant Impact Guidelines 1.1.

- 116) I considered that the Swift Parrot is known to occur in the project area and surrounds, noting the repeated observations in 2021 of individuals above and adjacent to the project area, and a record of a flock of up to 65 Swift Parrots at the Reserve adjacent to the project area.
- 117) I considered that the project area supports habitat critical to the survival of the species (as described in the SP Recovery Plan) due to the presence of known foraging habitat in the form of up to 106 mature remnant eucalypt trees, including Yellow Box and Blakely's Red Gum.
- 118) I considered that the proposed action has the potential to directly impact on the Swift Parrot due to the clearance of up to 14 mature remnant eucalypt trees which comprise known foraging habitat for the species. Also, the proposed action has the potential to indirectly impact on the Swift Parrot due to increased human disturbance (e.g. pollution, vehicles, structures) in the area during construction and operation.
- 119) However, based on the dispersive nature of the species throughout southern and eastern mainland Australia for winter foraging, high diversity of known foraging habitat outlined in the SP Recovery Plan, availability of extensive similar foraging habitat in the adjacent nature reserves and region, retainment of the majority (minimum 87%) of mature remnant eucalypt trees in the project area, and small scale of potential impacts of the proposed action, I considered these impacts to be minor.
- 120) Therefore, in accordance with the Significant Impact Guidelines 1.1, and regardless of proposed mitigation measures, I considered that there is not a real chance or possibility that the proposed action will:
- a) reduce the area of occupancy of the Swift Parrot; or
  - b) adversely affect habitat critical to the survival of the Swift Parrot; or
  - c) interfere with the recovery of the Swift Parrot.
- 121) I therefore concluded that the proposed action will not have a significant impact on the critically endangered Swift Parrot.

Gang-gang Cockatoo (*Callocephalon fimbriatum*) – Endangered

- 122) I noted that the Gang-gang Cockatoo was listed as endangered under the EPBC Act on 2 March 2022 (previously unlisted) which is after the original referral decision of 26 May 2020. As set out in section 158A of the EPBC Act, this is not considered a change in circumstance and nor can it otherwise form a ground for reconsideration under the EPBC Act.

Hooded Robin (south-eastern) (*Melanodryas cucullata cucullata*) – Endangered

- 123) I noted that the Hooded Robin was listed as endangered under the EPBC Act on 31 March 2023 (previously unlisted) which is after the original referral decision of 26 May 2020. As set out in section 158A of the EPBC Act, this is not considered a change in circumstance and nor can it otherwise form a ground for reconsideration under the EPBC Act.

Other listed threatened species and ecological communities

- 124) I noted the following listed threatened species and ecological communities were raised within the requests and public comments, and identified as having not been adequately considered within the original referral decision.
- a) Golden Sun Moth – Critically endangered (now vulnerable)

- b) White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland threatened ecological community – Critically endangered
- c) Natural Temperate Grassland of the South Eastern Highlands threatened ecological community – Critically endangered

125) Based on the information available, I considered that there is no substantial new information or unforeseen change in circumstances that would suggest impacts to these species or ecological communities that were not originally considered.

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

126) For the reasons discussed above, I considered that the information in the reconsideration requests do not warrant the revocation and substitution of the original referral decision in relation to the listed threatened species and communities controlling provision (sections 18 and 18A).

**Other matters for decision-making:**

**Significant impact guidelines**

127) I reviewed the information in the referral against the Significant Impact Guidelines 1.1 and other relevant material. While this material is not binding or exhaustive, I considered that the factors identified are adequate for decision-making in the circumstances of the referral. I also considered that adequate information was available for decision-making for the proposed action.

**Precautionary principle**

128) In making my decision under section 75 of the EPBC Act, I am required to take account of the precautionary principle, to the extent that it is not inconsistent with other provisions of the EPBC Act (section 391 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. The precautionary principle was taken into account in the original referral decision brief.

129) I took account of the precautionary principle by considering whether there are threats of serious or irreversible environmental damage with respect to the relevant matters protected by the EPBC Act that may be impacted by the proposed action and considering whether there is a lack of scientific certainty.

130) Either:

- a) I do not consider there is a threat of serious or irreversible environmental damage; or
- b) I do consider that there is a threat of serious or irreversible environmental damage but do not consider that there is a lack of full scientific certainty on the nature and/or extent of this threat.

131) Additional information on the threat of serious or irreversible damage to listed threatened species and communities (sections 18 and 18A), including the Swift Parrot, is discussed at paragraphs 70 to 126 above.

132) As such, I considered that there is a threat of serious or irreversible environmental damage to listed threatened species and communities because the Swift Parrot is listed as critically endangered under the EPBC Act. The SP Conservation Advice states that the main factors for its listing eligibility include:

- a) The species is likely to undergo a future very severe reduction in population size over three generation lengths.
- b) The primary threat to the species (predation of eggs and nesting females by Sugar Gliders) has not ceased.
- c) There is good evidence to support a restricted distribution and infer ongoing declines in the area of occupancy, area, extent and quality of habitat and number of mature individuals.

133) Further, the SP Recovery Plan identifies the main threats to the species on the Australian mainland include habitat loss from land clearing for agriculture and urban development, competition for foraging resources, and mortality from collisions with human-made objects.

134) However, I considered that there is not a lack of full scientific certainty as to the nature or scope of the threat of environmental damage to listed threatened species and communities. In particular, there is not a lack of full scientific uncertainty about the likely nature and/or extent of those threats to the Swift Parrot as the impacts of the proposed action are known and understood.

135) In relation to other protected matters for provisions which are not controlling provisions, I did not consider that there are threats of serious or irreversible environmental damage. This is based on the nature of the proposed action and the environment in which it will occur, and information available to me, including the original referral documentation, the requests, comments on the requests, and other information sources such as the Species Profiles and Threats Database, relevant statutory documents and Wylie Tool.

136) For these reasons, I considered that the precautionary principle does not apply and does not affect my decision that the revocation and substitution of the original referral decision is not warranted by the availability of substantial new information about the impacts that the proposed action has or will have, or is likely to have, on protected matters.

#### **Bioregional Plans**

137) In accordance with section 176(5) of the EPBC Act, I am required to have regard to a bioregional plan in making any decision under the EPBC Act to which the plan is relevant. I was advised by the department that there is no bioregional plan relevant to my decision.

#### **Management Plans for Commonwealth Reserves**

138) In accordance with section 362(2) of the EPBC Act, the Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve. I was advised by the department that there is no Commonwealth reserve management plan relevant to my decision.

#### **Conclusion**

139) In view of my findings above, and not having considered any matter which I am not required or permitted to consider, I considered that the taking of the proposed action would not have a significant impact on matters protected by Part 3 of the EPBC Act, and I therefore decided on 20 March 2025, under sections 78 and 78C of the EPBC Act, to confirm the decision of 26 May 2020 that the proposed action is not a controlled action in relation to sections 18 and 18A under subsection 75(1) of the EPBC Act.

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

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**signature**



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**date of decision** 18 June 2025

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## Annexure A – EPBC Act

### 78 Reconsideration of decision

#### *Limited power to vary or substitute decisions*

(1) The Minister may revoke a decision (the **first decision**) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:

(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(b) the following requirements are met:

(i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;

(ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or

(ba) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorization process for the purposes of the agreement;

(ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or

(c) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;

(ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or

(ca) the following requirements are met:

(i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;

(ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or

(d) the Minister is requested under section 79 to reconsider the decision.

Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry out the processes referred to in sections 73 and 74 again before making the new decision.

#### *Reversing decision that provision of Part 3 is not controlling provision*

(2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the **prohibiting provision**) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

#### *Decision not to be revoked after approval granted or refused or action taken*

(3) The Minister must not revoke the first decision after:

(a) the Minister has granted or refused an approval of the taking of the action; or

(b) the action is taken.

#### *General effect of change of decision*

(4) When the first decision is revoked and a new decision is substituted for it:

(a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and

(b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

#### *Change of designation of proponent*

(5) If the Minister believes a person (the **first proponent**) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister

may revoke the designation and designate another person (the **later proponent**) as proponent of the action.

*Consent to designation*

- (6) The Minister may designate the other person as proponent of the action only if:
- (a) he or she consents to it and the person proposing to take the action agrees to it; or
  - (b) the other person is the person proposing to take the action.

*Effect of change of designated proponent*

- (7) If the Minister revokes the designation of the first proponent and designates the later proponent:
- (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  - (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
  - (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

**78A Request for reconsideration of decision by person other than State or Territory Minister**

(1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) set out the basis on which the person thinks the decision should be reconsidered; and
  - (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.
- (3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:
- (a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but
  - (b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).
- (4) If:
- (a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
  - (b) the Minister confirms the decision that is the subject of the request under subsection (1);
- then:

(c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and

(d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the request; and

(ii) on or before the day the Minister confirms the decision.

### **78B Minister must inform interested persons of request and invite comments**

(1) The Minister (the **Environment Minister**) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

#### *Informing designated proponent of request and inviting comments*

(2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:

(a) inform the designated proponent of the request in accordance with subsection (3); and

(b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.

(3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

#### *Inviting other Commonwealth Ministers to provide information*

(4) The Environment Minister must:

(a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and

(b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

#### *Inviting comments from appropriate State or Territory Minister*

(5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister 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), the Environment Minister must:

(a) inform the appropriate Minister of the State or Territory of the request; and

(b) invite that Minister to give the Environment Minister, within 10 business days:

(i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and

(ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (5) also applies in relation to a request that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Inviting public comment*

(6) The Environment Minister must publish on the internet:

(a) the request; and

(b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

**78C Minister must reconsider decision and give notice of outcome**

*Reconsideration of decision*

(1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:

(a) reconsider the decision; and

(b) either:

(i) confirm the decision; or

(ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

*Notice of outcome of reconsideration*

(2) The Minister must give written notice of the outcome of the reconsideration to:

(a) the person who requested the reconsideration; and

(b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and

(c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and

(d) if the reconsideration relates to an action referred to in subsection 78B(5)— the appropriate Minister of the State or Territory.

(3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

*Reasons for outcome of reconsideration*

(4) The Minister must give reasons for the outcome of the reconsideration to a person who:

(a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and

(b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.