



## Statement of Reasons for a Decision that an action is Not a Controlled Action under the *Environment Protection and Biodiversity Conservation Act 1999*

I, KATE GOWLAND, Branch Head, Environment Assessments (NSW, ACT), Department of Climate Change, Energy, the Environment and Water (**department**), delegate for the Minister for the Environment and Water, provide the following statement of reasons for my decision of 10 November 2025, under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the proposed action by Sapphire Pastoral Land Holdings Pty Ltd (**proponent**) to restart rhyolite extraction at the previously operational Bournda Downs Quarry, including a small amount of native vegetation clearing, provision of a site office and amenities, and rehabilitation of the quarry pit (EPBC 2024/09785), is not a controlled action under the EPBC Act.

### Legislation

- 1) Some relevant excerpts of the EPBC Act are set out in **Annexure A**.

### Background

#### The proposed action

- 2) The proposed action is to restart rhyolite extraction at the previously operational Bournda Downs Quarry, including a small amount of native vegetation clearing, provision of a site office and amenities, and rehabilitation of the quarry pit.
- 3) The proposed action area is located within a 340-hectare (**ha**) property known as 'Bournda Downs'. Bournda Downs consists of Lot 42 DP 815711, Lot 34 DP 875572, and Lot 85 DP 750194 at 1399 Sapphire Coast Drive, Wallagoot NSW.
- 4) Bournda Downs Quarry (**the original quarry**) was previously approved in 1997 by Bega Valley Shire Council (DA 96.1332), and has an existing footprint of 1.97 ha. During the time the original quarry operated, the material extracted was used as road base in the local area. The original approval was for a maximum extraction of 30,000 cubic metres (**m<sup>3</sup>**) per annum with no crushing or screening work to be carried out on site. Most of the site was previously cleared of vegetation for the original quarry consent. A stormwater management system and haul road connecting the site to Sapphire Coast Drive were also constructed for the original quarry.
- 5) The referral states that the proposed action would be contained within the 1.97 ha original quarry footprint, and that the direct disturbance footprint is expected to be approximately 1.38 ha (Figure 1).
- 6) According to the referral, the proposed action will comprise the following:
  - a) Operations not to exceed the original quarry's previously approved footprint of 1.97 ha.
  - b) A total disturbance footprint of 1.38 ha.

- c) Excavation to a greater depth within the approved footprint to a maximum depth of 44.5 reduced levels (**RL**), from a maximum starting landform of 80 RL (pit depth up to approximately 36 m).
- d) Annual extraction limit of 29,000 m<sup>3</sup>.
- e) Annual processing onsite of up to 29,000 tonnes, via screening and crushing.
- f) Material to be extracted via ripping and blasting:
  - i) Blasting will occur a maximum of three times per year.
  - ii) Blasting is expected to release approximately 10,000 m<sup>3</sup> per blast.
- g) Use of 1.8 km of existing roads (constructed during development of the original quarry), which do not require upgrading.
- h) Use of the existing sediment basin from the original quarry, which will not be increased in size. Being at a high point in the topography, the quarry does not receive any runoff from outside the quarry footprint. Modelling undertaken for the sediment basin estimates it has a capacity of 975 m<sup>3</sup>, and will not require expansion provided it is pumped out within 5 days following rainfall. Pumped out water will be used onsite for dust suppression. Any water discharged into riparian areas will meet water quality targets set by the NSW Government, aided also by scour protection at the outlet.
- i) Provision of site office and staff amenities.
- j) Clearing of 2,375 square metres (m<sup>2</sup>) (or 0.24 ha) of native vegetation within the quarry footprint that has regrown since closure of the original quarry (**quarry clearing area, Figure 1**). No additional clearing is required for the sediment basin, office, or car park.
- k) Operational hours of 7am – 5pm on Mondays to Fridays, and 7am – 1pm on Saturdays, with no operations on Sundays or public holidays.
- l) An operational life span of 15 years, with an option to add a further five years.
- m) Rehabilitation at project closure will include undertaking effective soil management, appropriate weed control, and revegetation suitable to the altered landform with benches and soil conditions and that assist in reestablishment of habitat values in the longer term.



Figure 1. Proposed action area, showing existing cleared quarry footprint and 2,375 m<sup>2</sup> ha area of vegetation to be cleared in the southern end of the footprint.

- 7) A noise and vibration impact assessment (the **SoundIn report**) was provided to the department following a request for further information, which presents modelled blasting and operational noise emissions. Modelled noise contours in the SoundIn report were used to guide areas of focus for the additional surveys completed by the project ecologist as part of the request for further information.

### Description of the environment

#### **Broader landscape**

- 8) Bournda Downs adjoins both heavily forested vegetation and largely cleared areas used for cattle grazing. It adjoins the Bournda Nature Reserve to the west and south (Figure 3), and freehold land to the north and east. Bournda Nature Reserve abuts Bournda National Park further to the southeast.
- 9) The proposed action area has an elevation of approximately 80 m using the Australian Height Datum, and is located on the side of a hill sloping gently downhill to the northwest. As a previously operational quarry site, most of the proposed action area is surrounded on three sides by substantial walls of rock face and overburden.
- 10) Surface water flows from the existing quarry footprint to the northwest via a small artificial channel into the existing sediment basin, out to several tributaries of Jellat Jellat Creek, finally flowing into Benooka Lake and Horseshoe Lagoon. While the proposed action area is physically closer to Wallagoot Lake (Figure 3), a Nationally Important Wetland, the referral states that it is not within the Wallagoot Lake catchment. Being located at a high point in the local topography, the proposed action area does not receive any runoff from outside the existing quarry footprint.

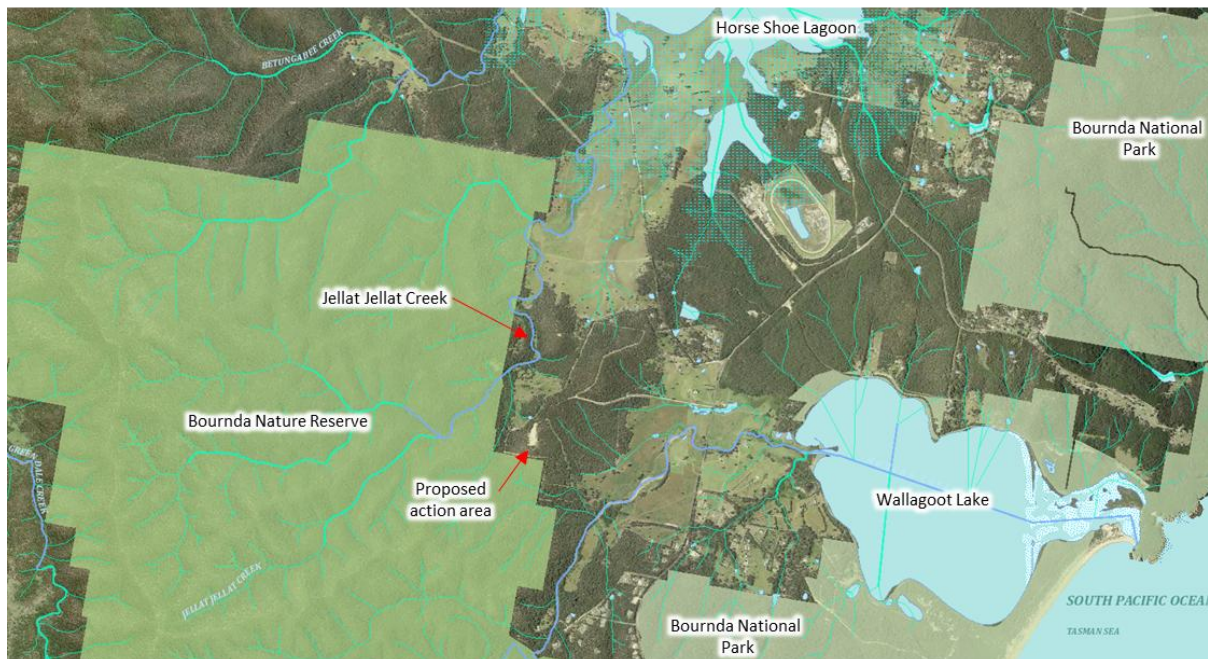


Figure 2 Proposed action area within the broader landscape context.

### Field surveys

- 11) As a previously operational quarry site, most of the proposed action area was originally cleared. A small, 2,375 m<sup>2</sup> (0.24 ha) area of regrowth native vegetation has regrown and will require re-clearing (**quarry clearing area, Figure 1**).
- 12) Flora and fauna surveys to support the referral were conducted on 15 and 17 October 2021, and additional surveys conducted on 6-8 June 2025 as part of the department's request for further information (**2025 Flora and Fauna Assessment**). These surveys were undertaken within the quarry clearing area, the broader area adjacent the quarry, and along the quarry access road.
- 13) The project's ecologist could not match the vegetation in the 2,375 m<sup>2</sup> quarry clearing area to a formal plant community type (**PCT**) as it is too small and disturbed, but the vegetation could be broadly identified as South East Dry Sclerophyll Forests (class), Dry Sclerophyll Forests (Shrubby subformation) (formation). The dominant overstorey species are *Acacia mearnsii* (both dead and living) and mixed age regrowth *Allocasuarina littoralis*. The ecologist identified a total of 42 flora species in this area, comprised of 38 native species and 4 exotic species. No threatened flora were recorded in the quarry clearing area.
- 14) The 2025 Flora and Fauna Assessment states that the quarry clearing area has limited habitat values with no large trees, termite mounds, trees with hollows, nests, dreys, and limited fallen timber. No threatened fauna were recorded during surveys of this area, though the ecologist notes the brevity of the survey area as a limitation.
- 15) The project's ecologist did not undertake vegetation plots to formally identify PCTs adjacent the proposed action area due to survey time limitations. Older surveys referenced in the 2025 Flora and Fauna Assessment conclude that the vegetation surrounding the proposed action area consists of a range of dry Eucalypt forest types which appear to be regrowth (these were

estimated to be 40-50 years old in a 1997 survey) following clearing and forestry activities, with some remnant trees remaining.

- 16) Fauna surveys were undertaken over the broader area surrounding the quarry footprint, including searches for physical evidence of fauna and their habitats, nocturnal spotlighting and call playback surveys, hollow bearing tree mapping, and chewed *Allocasuarina* cone searches. The 2025 Flora and Fauna Assessment states that the ground, mid-storey and canopy flora in this area would provide good foraging resources and habitat features for native fauna, including hollow bearing trees and *Allocasuarina/casuarina* cones.
- 17) The sediment basin provides habitat for some frog species, including the Common Eastern Froglet (*Crinia signifera*) and Striped Marsh Frog (*Limnodynastes peronii*). No threatened frog species were recorded calling during surveys.

#### **Related unREFERRED action – quarry fence**

- 18) After submitting the referral, the proponent advised the department in response to a request for further information (detailed below at **paragraphs 33) to 37)**), that it planned to install fencing around the quarry area (**quarry fencing works and associated clearing**) and had already undertaken steps to do so.
- 19) The proponent provided the following details about the quarry fencing work and associated clearing:
  - a) The fence will be approximately 2.6 km in length (Figure 3), approximately 6 feet (1.8 m) high, and continuous for the most part, with vehicle access gates at several points.
  - b) The alignment was chosen to follow existing cleared tracks as much as possible, to limit the amount of clearing required.
  - c) Clearing has occurred through one 77 m x 4 m (308 m<sup>2</sup>, or 0.03 ha) stretch of vegetation without an existing track (labelled red bracketed area, Figure 3).
  - d) The remainder of the fence will run adjacent to existing tracks.
  - e) Some fence posts have already been erected, though the department understood that no fence mesh or gates had been installed yet.



Figure 3 Proposed fence alignment showing approximate area where clearing has occurred along a stretch with no existing track (modified from Figure 3 of the Fence Assessment Report).

#### Quarry fencing survey

- 20) The project's ecologist traversed the proposed fence alignment on foot, inspecting the habitat 10 m either side of the alignment.
- 21) Clearing that had already occurred through the stretch of vegetation without an adjacent track (labelled red bracketed area, [Figure 3](#)) was reported to have contained no large trees, and minimal shrubs and groundcovers. The ecologist's report states that approximately 50 *Allocasuarina littoralis* and *Eucalyptus muelleriana* have been felled and pushed into the adjoining vegetation. None of these trees contained hollows or had a diameter at breast height (dbh) greater than 15 cm.
- 22) The ecologist's report stated that an estimated 600 m<sup>2</sup> of clearing also occurred adjacent to existing tracks to allow construction of fence posts, including clearing of small *Allocasuarina littoralis* and *Acacia* sp. Sapphire Pastoral clarified that the only works undertaken along the existing tracks was cutting/mowing of overgrown grass that encroached on road, not cutting, felling or uprooting of native vegetation, as described in the ecologist's report.
- 23) No hollow bearing trees or glider feed trees were removed or are proposed to be removed for the fence. No threatened flora were recorded during the ecologist's traverse of the proposed fence alignment.

***Treatment of the unrefereed action in my decision-making***

- 24) The quarry fencing work and associated clearing are not part of the referred action and cover a larger area than what was referred to the department as the proposed action area. My decision regarding whether the referred action is a component of a larger action including the quarry fencing work and, if so, whether I should accept the referral under s 74A(1) is discussed below at **paragraphs 48) to 53).**

**Procedural history**

- 25) On 3 June 2024 a valid referral of the proposed action was received by the department from Junor Investments Pty Ltd (the original proponent) in accordance with section 68 of the EPBC Act. The original proponent stated that it was of the belief that the proposal was not a controlled action for the purposes of the EPBC Act.
- 26) On 3 June 2024, in accordance with section 74(1) of the EPBC Act, comments on the referral were invited for a period of 10 business days from the following Commonwealth Ministers having administrative responsibilities relating to the proposed action:
- a) The Hon Linda Burney MP, Minister for Indigenous Australians.
  - b) The Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia.
- 27) On 3 June 2024, in accordance with section 74(2) of the EPBC Act, comments on the referral were invited for a period of 10 business days from the Hon Paul Scully MP, NSW Minister for Planning and Public Spaces, through his nominated delegate, Mr Tim Kirby, as the State Minister with administrative responsibilities relating to the proposed action.
- 28) In accordance with section 74(3) of the EPBC Act, the referral was published on the department's website on 19 June 2023 and public comments were invited for a period of 10 business days until 3 July 2023.
- 29) Eighty-seven (87) public comments were received on the referral during the 10-day comment period. Twenty-seven (27) included attachments. In addition, the department received correspondence from 3 members of the public outside the public comment period. The content of these public comments is discussed below.

***Change of person proposing the action***

- 30) On 8 May 2025 the person proposing the action was changed from Junor Investments Pty Ltd to Sapphire Pastoral Land Holdings Pty Ltd (the proponent).

***Suspensions of referral and assessment approach decision timeframes***

- 31) Following receipt of the referral, there were three suspensions of referral decision and assessment approach timeframes under subsections 75(7) and 88(5) of the EPBC Act, resulting in a final referral decision due date of 10 November 2025.
- 32) The reason for the suspensions was that the department considered that the referral documentation did not contain sufficient information regarding potential noise impacts from the proposed action, and adequate surveys for threatened species known to occur within and

surrounding the proposed action area. The proponent requested three suspensions to allow sufficient time to provide the requested information.

***Further information sought regarding quarry fencing works and associated clearing***

- 33) On 26 May 2025, the department requested information from the proponent after becoming aware of potential vegetation clearing activity within the vicinity of the proposed action area.
- 34) On 12 June 2025, the proponent responded with a letter stating that:
- a) Due to ongoing trespassing at the quarry site, they planned to install fencing around the quarry area, in part using existing fire trails and tracks for the fence alignment to limit the amount of clearing required.
  - b) They understood that the installation of the fence would be considered ‘exempt development’ under relevant NSW state planning legislation.
  - c) Clearing and erection of some fence posts occurred before a member of the public notified Bega Valley Shire Council (**BVSC**) of the works. BVSC visually inspected the works and issued a stop work order, with a requirement that a Development Application for the fence be lodged and approved by the council.
- 35) On 16 June 2025, the department requested any available information from the proponent regarding the scale of the clearing, and the PCTs or vegetation types cleared, if known.
- 36) On 8 July 2025, the proponent provided a report drafted by the project’s ecologist containing an assessment of the extent of clearing and associated potential impacts (**fence assessment report**), followed up with clarification on the location of the intended fence and scope of clearing as detailed at **paragraphs 18) to 23)** above.
- 37) My decision on how to consider the unreferral proposed quarry fence is discussed below at **paragraphs 48) to 53)** under the heading ‘referral of a larger action’.

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

- 38) I made my decision under section 75 of the EPBC Act after considering the referral decision brief prepared by the department (**decision brief**), which I signed on 10 November 2025. The decision brief included the following attachments:
- a) Referral documentation and attachments that were submitted in accordance with section 68 of the EPBC Act:
    - i) Referral
    - ii) Attachment A: Flora and Fauna Report 2023
    - iii) Attachment B: Statement of Environmental Effects 2021
    - iv) Attachment C: Bournda Quarry Rehabilitation Plan (no date)
    - v) Attachment D: Plan Set Oct 2021

- vi) Attachment E: Aboriginal Due Diligence Assessment 2021 - SENSITIVE, NOT PUBLISHED
  - vii) Attachment F: Final Landform Plan Oct 2021
  - viii) Attachment G: Assessment of existing sediment basin 2021.
- b) Other information:
- i) Environmental History check conducted by the Department
  - ii) Internal correspondence with the department's Compliance and Enforcement branch
  - iii) The department's Protected Matters Search Tool (**PMST**) report dated 11 November 2025, listing all species with the potential to occur in or within 2 km of the project area
  - iv) Department's assessment of impacts to threatened and migratory species identified in the PMST report
  - v) Expert advice on Gang-gang Cockatoo and Glossy Black-Cockatoo.
- c) Additional information requested from the proponent:
- i) Noise and Vibration Impact Assessment (SoundIn report) (April 2025), provided on 5 May 2025 following request for further information
  - ii) Letter from the Department requesting information regarding potential clearing
  - iii) Letter response from proponent regarding the department's request for information about reported clearing for fence (12 June 2025)
  - iv) Fence Assessment Report, written by project's ecologist regarding scope of clearing and assessment of impacts
  - v) Clarification of fence alignment from proponent (12 September 2025)
  - vi) Clarification regarding scope of clearing from proponent (3 October 2025)
  - vii) Updated Flora and Fauna Report (8 September 2025), provided on 23 September 2025 following request for further information.
- d) Public comments:
- i) Public comments received during the 10-day public comment period
  - ii) Public comments received after the close of the 10-day public comment period.
- e) Comments from State and Commonwealth Ministers.
- f) The proposed decision notice.
- g) Proposed letter to the proponent.

39) I considered that there was enough information provided for me to make a decision under section 75 of the EPBC Act.

**Public comments**

40) I considered the eighty-seven (87) public comments received in response to the referral during the public comment period.

41) One public comment was in support of the proposed action, one was neutral and provided some information on Glossy Black-Cockatoos and Gang-gang Cockatoos in the area, and 85 were in opposition to the proposed action.

42) I noted that in addition, the department received correspondence from three members of the public outside the public comment period. One objected to the proposed action, one requested information on making a submission on the referral, and one inquired as to whether the referral decision had been made.

43) I agreed with the department that the public submissions raised the issues outlined in the table below and I noted the department’s consideration of these issues as set out in the table.

| Concern/Issue  | Department’s consideration   |
|--|--|
| <p>Impacts to EPBC Act listed threatened species and communities, including:</p> <p>Birds</p> <ul style="list-style-type: none"> <li>• Australasian Bittern (<i>Botaurus poiciloptilus</i>) – Endangered</li> <li>• Gang-gang Cockatoo (<i>Callocephalon fimbriatum</i>) – Endangered</li> <li>• South-eastern Glossy Black-Cockatoo (<i>Calyptorhynchus lathami lathami</i>) – Vulnerable</li> <li>• Hooded Plover (eastern) (<i>Thinornis cucullatus cucullatus</i>) – Vulnerable</li> </ul> <p>Mammals</p> <ul style="list-style-type: none"> <li>• Spot-tailed Quoll (southeastern mainland population) (<i>Dasyurus maculatus maculatus</i>) – Endangered</li> <li>• Southern Brown Bandicoot (eastern) (<i>Isodon obesulus obesulus</i>) – Endangered</li> <li>• Broad-toothed Rat (mainland) (<i>Mastacomys fuscus mordicus</i>) - Endangered</li> <li>• Greater Glider (southern and central) (<i>Petauroides volans</i>) – Endangered</li> <li>• Yellow-bellied Glider (south-eastern) (<i>Petaurus australis australis</i>) – Vulnerable</li> <li>• Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory) (<i>Phascolarctos cinereus</i>) – Endangered</li> <li>• Long-nosed Potoroo (southern mainland) (<i>Potorous tridactylus trisulcatus</i>) – Vulnerable</li> <li>• Smoky Mouse (<i>Pseudomys fumeus</i>) – Endangered</li> <li>• Grey-headed Flying-fox (<i>Pteropus poliocephalus</i>) – Vulnerable</li> </ul> | <p>The department has considered impacts to these species in the document referenced at paragraph 38(b)(iv).</p> |

| Concern/Issue  | Department's consideration  |
|--|---|
| <p>Amphibians</p> <ul style="list-style-type: none"> <li>Green and Golden Bell Frog (<i>Litoria aurea</i>) – Vulnerable</li> </ul> <p>Fish</p> <ul style="list-style-type: none"> <li>Australian grayling (<i>Prototroctes maraena</i>) – Vulnerable</li> </ul> <p>Plants</p> <ul style="list-style-type: none"> <li>Thick-leaf Star-hair (<i>Astrotricha crassifolia</i>) – Vulnerable</li> <li>Cotoneaster Pomaderris (<i>Pomaderris cotoneaster</i>) – Endangered</li> <li>Scrub Turpentine (<i>Rhodamnia rubescens</i>) – Critically Endangered</li> </ul> <p>Threatened Ecological Communities</p> <ul style="list-style-type: none"> <li>Lowland Grassy Woodland in the South East Corner Bioregion – Critically Endangered</li> </ul>   |   |
| <p>Impacts to EPBC Act listed migratory species, including:</p> <ul style="list-style-type: none"> <li>Sanderling (<i>Calidris alba</i>) – Migratory</li> </ul>  | <p>The department has considered impacts to these species in the document referenced at paragraph 38(b)(iv).</p>  |
| <p>Impacts to fauna and flora generally, and impacts to threatened species listed only under the NSW <i>Biodiversity Conservation Act 2016</i> (BC Act), including:</p> <p>Birds</p> <ul style="list-style-type: none"> <li>Dusky Woodswallow (<i>Artamus cyanopterus</i>)</li> <li>Varied Sitella (<i>Daphoenositta chrysoptera</i>)</li> <li>White-bellied Sea-Eagle (<i>Haliaeetus leucogaster</i>)</li> <li>Powerful Owl (<i>Ninox strenua</i>)</li> <li>Scarlet Robin (<i>Petroica boodang</i>)</li> <li>Eastern Ground Parrot (<i>Pezoporus wallicus wallicus</i>)</li> <li>Masked Owl (<i>Tyto novaehollandiae</i>)</li> <li>Sooty Owl (<i>Tyto tenebricosa</i>)</li> </ul> <p>Mammals</p> <ul style="list-style-type: none"> <li>Eastern Pygmy-possum (<i>Cercartetus nanus</i>)</li> <li>Eastern False Pipistrelle (<i>Falsistrellus tasmaniensis</i>)</li> <li>Eastern Coastal Free-tailed Bat (<i>Micronomus norfolkensis</i>)</li> <li>Large Bent-winged Bat (<i>Miniopterus orianae oceanensis</i>)</li> <li>Brush-tailed Phascogale (<i>Phascogale tapoatafa</i>)</li> <li>Greater Broad-nosed Bat (<i>Scoteanax rueppellii</i>)</li> </ul> <p>Plants</p> <ul style="list-style-type: none"> <li>Bodalla Pomaderris (<i>Pomaderris bodalla</i>)</li> <li>Matted Bush-pea (<i>Pultenaea pedunculata</i>)</li> </ul> | <p>Consideration of impacts to species listed only under the BC Act falls under the jurisdiction of the state consent authority, Bega Valley Shire Council.</p> |
| <p>Impacts to species habitat related to the proposed action's location, including:</p> <ul style="list-style-type: none"> <li>Concern that the proposed action is located in a habitat corridor</li> <li>Concern that the proposed action area and surrounding environment is a habitat refuge that remained untouched by the 2019-20 bushfires</li> </ul>  | <p>The department has considered landscape-scale impacts to the extent that they relate to MNES.</p>  |

| Concern/Issue  | Department's consideration   |
|--|--|
| <ul style="list-style-type: none"> <li>Concern that the area of clearing required is underestimated and that more will be required in future</li> </ul>  |  |
| <p>Inadequacies in surveys, assessment, and documentation for the proposed action, including:</p> <ul style="list-style-type: none"> <li>Inadequate surveys for threatened species and habitats, and reliance on/reference to old surveys</li> <li>Inadequate assessment of impacts to species and habitats, and impacts from noise, dust, traffic, acid sulphate soils</li> <li>Inadequate proposed mitigation and management measures</li> <li>Inadequate or inconsistent documentation regarding the project scope, including the footprint, extraction limits, operational hours and project lifespan, site amenities, sediment basin infrastructure.</li> <li>Concerns about conflicts of interests and qualifications of various personnel who prepared reports</li> <li>Inadequate environmental history check</li> </ul>   | <p>The department has requested and received additional information required for adequate assessment of impacts to MNES.</p> <p>The department has conducted its own environmental history check and has initiated a compliance investigation with respect to the fence.</p>   |
| <p>General environmental impacts (which may impact species), including:</p> <ul style="list-style-type: none"> <li>Vegetation clearing generally</li> <li>Pollution generally</li> <li>Noise impacts from blasting, machinery operation, and truck movements</li> <li>Dust impacts from blasting, processing and transport of material</li> <li>Hydrological impacts and impacts to water sources from dust, and from runoff and sedimentation in the event that the tailings dam is inadequate</li> <li>Increased risk of wildlife collision from increased truck movements</li> <li>Cumulative impacts</li> </ul>  | <p>General environmental impacts have been considered to the extent that they relate to MNES.</p>  |
| <p>Economic and social impacts, including:</p> <ul style="list-style-type: none"> <li>Degradation of intrinsic natural values of the local area</li> <li>Degradation of quality of life of local residents generally</li> <li>Health concerns from silica dust, including silicosis and asthma</li> <li>Other impacts from increased dust, including reduced efficiency of solar panels, contamination of home-grown food, and contamination of tank water</li> <li>Impacts to fisheries and recreational waterways from potential runoff</li> <li>Impacts to tourism</li> <li>Impacts from increased truck movements, including increased risk of accidents, and faster degradation of local roads</li> <li>Prioritisation of corporate profit with no local community benefits</li> <li>The quarry is not necessary or regionally important, and alternatives are available</li> <li>There is a Change.org petition in opposition to the proposed action, currently with over 10,800 signatures</li> </ul> | <p>Economic and social matters are required to be considered by the minister when deciding whether or not to approve an action. Consideration of economic and social matters is not required at the referral decision stage. Economic and social matters should be considered by the state consent authority, Bega Valley Shire Council.</p> |

| Concern/Issue  | Department's consideration  |
|--|---|
| State and Commonwealth regulatory and legal matters, including:  |   |
| <ul style="list-style-type: none"> <li>• The impact of noise and dust on species is poorly understood, and therefore the Precautionary Principle must be applied</li> <li>• Concern that regulators will not follow their own policies and procedures designed to protect threatened species</li> <li>• Failure of the government's Nature Positive promises</li> </ul>  | <p>The department has considered impacts to MNES in accordance with the EPBC Act and Regulations, relevant policies, and statutory documents.</p> <p>The department has considered the Precautionary Principle.</p>   |
| <ul style="list-style-type: none"> <li>• The land is currently zoned C3 Environmental Management under the <i>Bega Valley Local Environmental Plan 2013</i> (LEP):               <ul style="list-style-type: none"> <li>– and the proposed action is incompatible with the objectives of C3 zoning (including to protect and manage ecologically valuable areas)</li> <li>– The LEP prohibits industry in C3 zoning</li> </ul> </li> </ul>   | <p>Land zoning is not a matter regulated by the EPBC Act.</p>   |
| <ul style="list-style-type: none"> <li>• Documents released by Bega Valley Shire Council as part of an information request submitted by opponents of the proposed action indicate that:               <ul style="list-style-type: none"> <li>– the target resource covers a much larger area than the proposed action footprint</li> <li>– a draft planning proposal was submitted in 2021 to rezone the lot containing the proposed action area to RU1, which permits industry</li> <li>– the NSW Biodiversity Conservation Division provided advice on the draft rezoning proposal. They considered the proposed quarry is incompatible with the current zoning, they would object to an RU1 rezoning</li> <li>– the NSW Department of Primary Industries provided advice on the draft rezoning proposal, supporting the rezoning to protect the larger resource from sterilisation</li> </ul> </li> </ul> | <p>Land rezoning is not considered an 'action' under the EPBC Act.</p> <p>Potential expansion of the quarry footprint is not proposed in the referral description of the action or any documentation provided with the referral, and is therefore not relevant to the referral decision.</p>  |
| <ul style="list-style-type: none"> <li>• Monitoring and compliance concerns, including:               <ul style="list-style-type: none"> <li>– Concern that the proposed extraction volumes deliberately fall just under the threshold which requires greater regulatory oversight and compliance monitoring</li> <li>– Concern that there will be no way to monitor or ensure compliance with extraction limits (no weighbridge)</li> <li>– Concern around monitoring and compliance generally, and how infringements would be dealt with</li> </ul> </li> </ul>  | <p>Compliance with extraction volumes is not a matter regulated by the EPBC Act, and should be considered by the state consent authority, Bega Valley Shire Council.</p> <p>The department is satisfied that if the proposed action is undertaken in the manner specified in the referral, then significant impacts are not likely.</p> |
| <ul style="list-style-type: none"> <li>• Concern that there has been illegal extraction and clearing occurring at the site</li> </ul>  | <p>The department has initiated a compliance investigation with respect to alleged clearing.</p>  |
| <ul style="list-style-type: none"> <li>• Opponents of the action are seeking legal advice, including from the Environmental Defender's Office</li> </ul>   | <p>The department has considered impacts to MNES in accordance with the EPBC Act and Regulations, relevant policies, and statutory documents.</p>   |

| Concern/Issue  | Department's consideration  |
|--|---|
| Proximity to multiple sensitive receivers, including: <ul style="list-style-type: none"> <li>• Bournda National Park</li> <li>• Bournda Nature Reserve</li> <li>• Wallagoot Lake/Lagoon and other waterways</li> <li>• Residential properties</li> <li>• Bournda Environmental Education Centre</li> </ul> | The department has considered the proximity of the proposed action to sensitive receivers to the extent that they are relevant to MNES.   |
| The site has indigenous cultural significance  | The National Indigenous Australians Agency (NIAA) responded on behalf of the invitation to the Minister for Indigenous Australians to comment on the referral. Recommendations from the NIAA will be provided to Sapphire Pastoral. |
| Ongoing impacts to species from climate change   | Climate change is not a matter regulated by the EPBC Act.   |

44) In accordance with s 75(1A), I considered the public comments when making my decision about whether the proposed action is a controlled action and which (if any) were controlling provisions. I noted that the public comments were taken into consideration by the department in the discussion and recommendations in the decision brief.

#### Comments from Commonwealth Ministers

45) I noted that the National Indigenous Australians Agency (**NIAA**) responded on behalf of the Hon Linda Burney MP, Minister for Indigenous Australians on 18 June 2024. The NIAA provided comments and recommendations to the proponent in relation to engagement with First Nations stakeholders, Native Title, cultural heritage protection and economic opportunities.

46) I noted that Geoscience Australia responded on behalf of Minister King on 11 June 2024. Geoscience Australia noted that their advice on MNES relates to proposed nuclear actions, Commonwealth marine areas and actions likely to have a direct or indirect impact on a water resource from unconventional gas or large coal mining development under Part 3 of the EPBC Act. Geoscience Australia agreed with the proponent that the proposal is not associated with any of these three MNES and had no further comments.

#### Comments from State Ministers

47) I noted that a representative of the NSW Department of Planning and Infrastructure responded on behalf of the delegated contact for the NSW Minister for Planning and Public Spaces, the Hon Paul Scully MP, to advise that the proposed action will not be assessed in a manner specified in Schedule 1 to the Bilateral Agreement made under section 45 of the EPBC Act between the Commonwealth and the New South Wales Government, relating to environmental assessment if it is a controlled action.

## Findings on material questions of fact

### Referral of a larger action

- 48) I considered whether the proposed action was a component of a larger action under s 74A of the EPBC Act and, if so, whether I should accept the referral pursuant to the discretion prescribed in s 74A(1) of the EPBC Act. The *Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement: Staged Developments – Split referrals: Section 74A of the EPBC Act* provides guidance on when the discretion should be exercised.
- 49) I considered that the referred action and the unreferred proposed quarry fence to be components of a larger action, as the proponent have stated that the purpose of the fence is for the protection of the quarry. The fence is therefore not a standalone action, and the same person is proposing to take both actions. The quarry fence was not described in any of the referral documents and covers a larger area than what was referred to the department as the proposed action area. The department obtained further information regarding the quarry fence through a request for further information (discussed above).
- 50) Therefore, I considered that the referred action and the activities described as the unreferred proposed quarry fence comprise a larger action proposed to be undertaken by the same person.
- 51) However, in determining if the Minister’s discretion not to accept the referral should be exercised, I considered that acceptance of the referral would not prevent sufficient assessment of the impacts of the larger action. The department advised that the proponent provided adequate information for the department to assess potential additional impacts that may arise from the proposed quarry fence. I agreed and when considering the potential impacts of the proposed action, I took into account the quarry fencing works and associated clearing which form part of the larger action.
- 52) I did not consider that the larger action, when considered in its entirety, is likely to have a significant impact on a protected matter.
- 53) I decided to exercise my discretion to accept the referral because, consistent with the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement: Staged Developments – Split referrals: Section 74A of the EPBC Act*, the splitting of the larger action was unlikely to reduce the ability to achieve the objectives of the Act.

### Part 3 provisions that are not controlling provisions

- 54) As a delegate of the Minister for the Environment and Water, I was aware of my obligation under section 75 of the EPBC Act to decide whether the referred action is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the proposed action.
- 55) 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, would be prohibited by the provision (the controlling provision for the action).
- 56) In making my decision I considered all adverse impacts the proposed action has, will have, or is likely to have on matters protected by each provision of Part 3 of the EPBC Act. In making my

decision, I did not consider any beneficial impacts the proposed action has, will have or is likely to have on the matters protected by each provision of Part 3 of the EPBC Act.

- 57) I noted the department's recommendation that sufficient information was available to make this decision.
- 58) I noted the department's recommendation in the decision brief that I decide that the proposal is not a controlled action because it is unlikely to have a significant impact on a matter protected by Part 3 of the EPBC Act.
- 59) I agreed with the department's recommendations noted above. The basis of my decision is detailed below.

***Listed threatened species and communities (s18 & s18A of the EPBC Act)***

- 60) I noted that the department's Protected Matters Search Tool (**PMST**) report dated 5 November 2025 indicated that a total of 49 threatened species and 4 threatened ecological communities may occur within 2 km of the proposed action area.
- 61) I considered the department's assessment of the potential impacts to each of the species and communities identified in the PMST report.
- 62) Based on the nature and location of the action and likely habitat present within and surrounding the proposed action, I considered that impacts may arise in relation to the following matters:

**Yellow-bellied Glider (south-eastern) (*Petaurus australis australis*) – Vulnerable**

*Protected matter ecology*

- 63) According to the *Conservation Advice for Petaurus australis australis (yellow-bellied glider (south-eastern))*<sup>1</sup> (**YBG Conservation Advice**), Yellow-bellied Glider (south-eastern) (YBG) habitat consists of eucalypt-dominated woodlands and forests with a preference for large patches of mature old growth forest that provides suitable trees for foraging and shelter. The subspecies feeds on the sap of preferred tree species, as well as nectar and pollen, invertebrates, and their exudates.
- 64) Family groups of between 2-6 YBG occupy and defend very large home ranges. Due to these large home ranges, large areas of forests are required to maintain subpopulation viability. Research summarised in the YBG Conservation Advice suggests that habitat areas of between

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<sup>1</sup> Department of Agriculture, Water and the Environment (2022). *Conservation Advice for Petaurus australis australis (yellow-bellied glider (south-eastern))*. Canberra: Department of Agriculture, Water and the Environment. Available from: <http://www.environment.gov.au/biodiversity/threatened/species/pubs/87600-conservation-advice-02032022.pdf>. In effect under the EPBC Act from 02-Mar-2022.

180-350 km<sup>2</sup> (18,000-35,000 ha) would be required to support a viable subpopulation of 150 gliders.

- 65) YBG have very low dispersal capabilities over spaces larger than their gliding distance. The maximum gliding distance may be up to 120 m–140 m, though average gliding performance in low canopy forest has been documented at 25.2 m.
- 66) The subspecies is nocturnal, and shelters in hollows in large, old trees during the day. Preferred hollow bearing trees are living, smooth barked eucalypts of multiple species; stags are far less commonly occupied (2%). I noted that the YBG Conservation Advice does not provide information on preferred hollow size.
- 67) I noted that habitat critical to the survival of the species includes any habitat that meets any of the following summarised criteria:
- a) large contiguous areas of floristically diverse eucalypt forest, dominated by winter-flowering and smooth-barked eucalypts, including mature living hollow-bearing trees and sap trees
  - b) areas identified as refuges under future climate change scenarios
  - c) short or long-term post-fire refuges (i.e., unburnt habitat within or adjacent to recently burnt landscapes)
  - d) habitat corridors required to facilitate dispersal of the subspecies between fragmented habitat patches and/or that enable recolonization or movement away from threats
  - e) areas in which some trees have evidence of use for sap extraction.
- 68) The YBG Conservation Advice identifies multiple known important populations of the species but also notes that all known populations should be considered important.
- 69) The main threats to the subspecies identified in the YBG Conservation Advice which the department considered, and I agreed, to be relevant to the proposed action include:
- a) Habitat clearing and fragmentation, identified as a known and major threat. The subspecies is particularly vulnerable to impacts of clearing and fragmentation due to its large, exclusive home ranges, requirement for large areas of forest, and inability to cross even small areas of cleared land.
  - b) Barbed wire fencing (entanglement), identified as a known but minor threat. Occasional losses of individuals have been known to occur due to entanglement in barbed wire fencing.

*Environment within and surrounding the proposed Action area*

- 70) I agreed with the department's conclusion that the regrowth vegetation to be cleared in the quarry footprint does not constitute critical habitat for the species, as it does not contain sap feed trees or hollow-bearing trees, and is dominated by *Allocasuarina littoralis* and *Acacia mearnsii*.

- 71) However, I accepted the department's finding that the area surrounding the proposed action area constitutes habitat critical for the survival of the species. The large area of contiguous forested habitat surrounding the proposed action area is known to support YBG. During surveys undertaken for the proposed action in this area, at least two individuals were heard during call-playback surveys, three feed trees were identified, and 20 hollow bearing trees (HBTs) were identified. The 2025 Flora and Fauna Assessment states that of the 20 HBTs, 10 are suitable for Yellow-bellied gliders, however, does not provide justification as to why they are suitable.
- 72) As per the YBG Conservation Advice, the individuals recorded adjacent the proposed action area would be considered part of an important population.

#### *Potential impacts*

- 73) I considered that the clearing of 0.24 ha of regrowth vegetation within the quarry footprint, and the clearing of 0.03 ha of regrowth *Allocasuarina littoralis* and *Eucalyptus muelleriana* for the fence (which I considered as part of the larger action) will not significantly impact Yellow-bellied Glider.
- 74) I noted that none of the contiguous forested habitat surrounding the proposed action area is proposed to be cleared (with the exception of the fence clearing discussed further below). Any impacts to the species are likely to arise from noise, and potentially through habitat fragmentation from the erection of the fence. As the fence is not described as having barbed wire (fence assessment report), wire entanglement is not likely.

#### Noise impacts

- 75) There is limited research on the effects of anthropogenic noise on Australian fauna generally, and the department advised that it is not aware of any on YBG specifically. Some species are tolerant of noise and have adapted to live in noisy urban environments, whereas others are avoidant of noise and urban areas. The 2025 Flora and Fauna Assessment notes that there may be an alteration in behaviour of some species in response to blasting and operational noise, but that responses are likely to be species-specific.
- 76) I noted that the noise from blasting will be intrusive, however the blasts will occur singly at a maximum of three times per year. I accepted the statement in the 2025 Flora and Fauna Assessment, with which the department agreed, that animals are exposed and have adapted to natural loud noises at similar levels, such as lightning/thunder. I considered that the proposed infrequent blasts are unlikely to trigger a long-term behavioural avoidance response.
- 77) I considered the modelled operational noise contours provided in the noise and vibration impact assessment (SoundIn report) to assess how noise is expected to propagate out from the quarry footprint and access road, and how much habitat is likely to be most impacted by operational noise. The noise contours are modelled at 50, 45, 40, 35, and 30 decibels (dB) for material extraction and processing. As a guide, 60 dB is roughly equivalent to normal conversation, 40 dB

quiet radio music, and 30 dB to whispering<sup>2</sup>. I noted that habitat receiving noise over 40-45 dB is likely to be most impacted.

- 78) I noted the following departmental estimates, which were formulated by overlaying areas of contiguous forested habitat with the material extraction, processing and transport noise contours, and habitat features mapping in the 2025 Flora and Fauna Assessment:
- a) Approximately 8 ha of contiguous forest habitat may be subject to operational noise levels of 50 dB, 16 ha to levels  $\geq 45$  dB, and 34 ha to levels  $\geq 40$  dB.
  - b) One feed tree will be subject to operational noise of 40 dB, one to 30 dB, and one is outside the noise contours.
  - c) Three hollow-bearing trees noted by the project ecologist as suitable for YBG will be subject to noise levels of 40, 45 and 50 dB.
- 79) Based on the above assessment, and in the absence of any research of noise sensitivity in this species, the department conservatively considered, and I agreed, that up to 34 ha of critical habitat for YBG may be subject to noise impacts. One feed tree and 7 hollow-bearing trees, of which 3 are described by the project's ecologist as suitable hollow-bearing trees for the species, may be impacted by noise  $\geq 40$  dB.
- 80) However, I noted that the noise impact area is connected to an extremely large area of contiguous forest habitat, including protected Bournda Nature Reserve and Bournda National Park. As the species occupies very large home ranges necessitated by ephemeral resource availability, any individuals recorded near the quarry can and will move out of the area as required. If the operation noise of the quarry does cause a negative behavioural response, there are very large areas of protected contiguous habitat adjacent the quarry that the species can move into.

#### Fencing

- 81) I agreed with the department's conclusion that the 0.03 ha of clearing undertaken for the fence will not have a significant impact on YBG, as this is a very small area and no sap trees or hollow-bearing trees were cleared.
- 82) As YBG glide an average of 25.2 m in low canopy forest, the 4 m wide cleared area is not likely to constitute a significant barrier to movement. The areas of fence alignment along existing tracks

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<sup>2</sup> Infographic: Noise hazards and sound levels (2022). SafeWork Australia. Accessed October 2025 at [https://www.safeworkaustralia.gov.au/sites/default/files/2022-09/nswm22\\_noise\\_infographic.png](https://www.safeworkaustralia.gov.au/sites/default/files/2022-09/nswm22_noise_infographic.png)

are already cleared, and the construction of the fence is unlikely to add additional barriers over and above what the cleared tracks already present.

*Avoidance and mitigation measures*

- 83) No alternative sites are proposed, as the proposed quarry is sited within an old quarry footprint, underlain by the target rhyolite resource.
- 84) I noted that the referral outlined the following mitigation measures:
- a) Avoid blasting during the months of September to December when a large number of mammals and birds are breeding and/or have young.
  - b) Use a siren to warn mobile animals that the blasting is about to occur.
  - c) Provide additional nesting boxes on the Lot further away from the quarry so that any animals needing to relocate have alternative den sites. As the forest community is largely regrowth with limited hollows, these nestboxes will provide additional hollows to fauna who relocate but need to stay within their home range. This task should be completed in conjunction with a nestbox expert who can design a suite of boxes to target key threatened species for the subject site.
  - d) Assume that endangered Greater Glider (southern and central) (*Petauroides volans*)<sup>3</sup> use the subject site within 300 m of the Quarry and seek advice on specific nestbox design for this species that offer extra noise protection.
- 85) The fence assessment report, also makes recommendations to ensure the proposed fence does not impact native fauna:
- a) The fence must allow for fauna movement by designing and constructing access points along the fence.
  - b) The fence is approximately 2.6 km in length and therefore, 12 openings are recommended for this length of fence line.
  - c) The 12 openings should be 50 cm x 50 cm in size with a strong, reinforced frame that can be maintained over time.
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<sup>3</sup> The department assessed the likelihood of impacts to Greater Glider and advised that the species is unlikely to use habitat within the vicinity of the quarry area. The species was not recorded during nocturnal surveys, and there are no nearby species records either on NSW BioNet Atlas or the Atlas of Living Australia (ALA). The closest ALA record is approximately 6 km northeast in Bournda National Park, dating from 1997.

### Conclusion

- 86) I considered that the proposed action is unlikely to significantly impact the Yellow-bellied Glider. In forming this conclusion, I considered the information provided by the department outlined above, the nature of the proposed action, the referral documentation, relevant conservation advices and recovery plans, and the [EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).
- 87) I was satisfied that, in the context of the wider availability of suitable foraging habitat for the species, the clearing of 0.24 ha of regrowth vegetation within the quarry footprint and clearing of 0.03 ha for the construction of the fence (which I considered as part of the larger action is not likely to significantly impact foraging habitat critical to the species. I agreed with the department that the proposed fence is not likely to create a barrier to movement; therefore the proposed action will not fragment an existing important population into two or more populations.
- 88) Conservatively, the quarry operational noise levels  $\geq 40$  dB may impact an estimated 3 hollow-bearing trees potentially suitable for denning, and potentially reduce the area of occupancy of an important population by up to an estimated 34 ha within the land surrounding the quarry footprint.
- 89) However, I was satisfied that the Yellow-bellied Glider can use retained vegetation around the proposed action area and has a requirement for such large areas of habitat already, that the conservative potential noise impacts on up to 34 ha are unlikely to be significant.

### **South-eastern Glossy Black-Cockatoo (*Calyptorhynchus lathami lathami*) – Vulnerable**

#### *Protected matter ecology*

- 90) According to the *Conservation Advice for Calyptorhynchus lathami lathami (South-eastern Glossy Black Cockatoo)*<sup>4</sup> (**GBC Conservation Advice**), South-eastern Glossy Black-Cockatoos (Glossy Black-Cockatoo) are uncommon but widespread. They feed almost exclusively on the seeds of nine species of *Allocasuarina* spp. and *Casuarina* spp., usually relying on one or two species within a region. They also show a strong preference for individual feed trees and often will not feed on proximate trees of the same species. Foraging habitat is considered habitat critical to the survival of the species.

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<sup>4</sup> Department of Climate Change, Energy, the Environment and Water (2022). Conservation Advice for Calyptorhynchus lathami lathami (South-eastern Glossy Black Cockatoo). Canberra: Department of Climate Change, Energy, the Environment and Water. Available from: <http://www.environment.gov.au/biodiversity/threatened/species/pubs/67036-conservation-advice-10082022.pdf> . In effect under the EPBC Act from 10-Aug-2022.

- 91) Glossy Black-Cockatoos require hollow bearing trees for nesting, utilising hollows in living or dead trees with an entrance diameter >15 cm, >8 m above the ground, in branches >30 cm diameter no more than 45 degrees from vertical. The GBC Conservation Advice notes preferred tree species for nesting for some regions, but preferred species for the NSW south coast is not included. The species is also known to nest close to foraging habitat. Breeding habitat is considered habitat critical to the survival of the species.
- 92) The GBC Conservation Advice does not note any important populations, but identifying important populations is listed as a recovery action.
- 93) Key threats identified in the GBC Conservation Advice that the department considered, and I agreed, are relevant to the proposed action include habitat loss, degradation and fragmentation, particularly loss of hollow bearing trees and the associated resource competition. The GBC Conservation Advice also notes that actions that have indirect impacts on habitat critical to the survival, including noise and light pollution, should be minimised.

#### *Environment within and surrounding the proposed action area*

- 94) I considered that the vegetation to be cleared in the quarry footprint did not constitute critical habitat for the species. While it does contain regrowth *Allocasuarina littoralis*, these are reported to be too young to be producing adequate cones for food, and no chewed cones were recorded under trees in this area. I accepted the department's advice that the regrowth vegetation is too young to contain hollow-bearing trees.
- 95) I considered that the forested areas adjacent to the quarry footprint constituted habitat critical for the survival of the species. The area surrounding the quarry footprint is known to support Glossy Black-Cockatoo. According to the 2025 Flora and Fauna Assessment, the species was directly observed during field surveys. A chewed cone search in the area surrounding the quarry footprint identified 63 *Allocasuarina littoralis*, with chewed cones under 4 of these trees. Seven hollow-bearing trees were identified as suitable for Glossy Black-Cockatoo.

#### *Potential impacts*

- 96) The proposed action involves clearing of 0.24 ha of regrowth vegetation within the quarry footprint, and in addition the unreferral fence would involve the clearing of 0.03 ha of regrowth *Allocasuarina littoralis* and *Eucalyptus muelleriana*. I noted that these areas do not contain appropriate feeding or breeding resources in the form of hollow-bearing trees or mature cone-producing *Allocasuarina*.
- 97) I noted that none of the contiguous forested habitat surrounding the proposed action area is proposed to be cleared (with the exception of the fence clearing). Any impacts to the species are likely to arise from noise. As a mobile aerial species, I considered that the fence is not likely to significantly impact this species.
- 98) As in the case of the Yellow-bellied Glider, the department advised that it is not aware of any research specifically investigating how anthropogenic noise may impact this species. I noted that Glossy Black-Cockatoos are however known to forage along the edge of urban settings where

their mature feed trees are retained<sup>5</sup>. The GBC Conservation Advice advises avoiding noise and light pollution but provides no referenced research to support this recommendation.

- 99) As in the case of the Yellow-bellied Glider, I agreed with the department that blasting three times a year is not likely to induce a negative behavioural response over and above that of similar natural loud noises like thunder.
- 100) I noted that using the same conservative habitat impact assessment method as used for the Yellow-bellied Glider, the department estimated that:
- a) Approximately 8 ha of forest habitat likely supporting *Allocasuarina littoralis* may be subject to operational noise levels of 50 dB, 16 ha to levels  $\geq 45$  dB, and 34 ha to levels  $\geq 40$  dB.
  - b) Two hollow-bearing trees noted by the project ecologist as suitable for GBC will be subject to noise levels of 40 and 45 dB.
  - c) Four *Allocasuarina littoralis* trees with chewed cones found under them (signifying individual tree preference) may be subject to noise impacts. The department is unable to determine from the 2025 Flora and Fauna Assessment mapping where these trees are in relation to the noise contours.
- 101) However, given the species observed tolerance for suburban noise, I considered that the quarry operational noise levels are unlikely to cause a negative behavioural response to the extent that the species would be significantly impacted. If the operational noise of the quarry does cause a negative behavioural response, there are very large areas of contiguous habitat adjacent the quarry, including protected Bournda Nature Reserve and Bournda National Park, that the species can move into.

#### *Avoidance and mitigation measures*

- 102) The department considered, and I agreed, that the general avoidance and mitigation measures provided for the Yellow-bellied Glider are also applicable to this species.

#### *Conclusion*

- 103) I considered that the proposed action is unlikely to significantly impact the Glossy Black-Cockatoo. In reaching this conclusion, I considered the information from the department outlined above, the nature of the proposed action, the referral documentation, relevant

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<sup>5</sup> Robinson, T., & Paull, D. (2009). Comparative evaluation of suburban bushland as foraging habitat for the Glossy Black-Cockatoo. *Corella*, 33(1), 7-12.

conservation advices and recovery plans, and the [EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).

- 104) I was satisfied that, in the context of the wider availability of suitable foraging habitat for the species, the clearing of 0.24 ha of regrowth vegetation within the quarry footprint and clearing of 0.03 ha for the construction of the fence (which I considered as part of the larger action) is not likely to significantly impact foraging habitat critical to the species. I noted that the proposed fence will not create a barrier to movement for this species, therefore the proposed action will not fragment an existing important population into two or more populations.
- 105) Conservatively, the quarry operational noise levels  $\geq 40$  dB may impact an estimated 2 hollow-bearing trees potentially suitable for nesting, and potentially reduce the area of occupancy of an important population by up to an estimated 34 ha within the land surrounding the quarry footprint.
- 106) However, I was satisfied that Glossy Black-Cockatoo can use the large area of retained vegetation around the proposed action area such that potential noise impacts are unlikely to be significant.

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

*Protected matter ecology*

- 107) According to the *Conservation Advice for Callocephalon fimbriatum (Gang-gang Cockatoo)*<sup>6</sup> (**GGC Conservation Advice**), habitat critical to the survival of the Gang-gang Cockatoo includes all foraging habitat during both the breeding and non-breeding season. In summer months, Gang-gang Cockatoos generally occur in tall mountain forests and woodlands, particularly within mature, wet sclerophyll forests, dominated by eucalypts with dense, shrubby acacia and banksia understories. During winter months, they rely on drier more open eucalypt forests and woodland assemblages at lower altitudes.
- 108) I noted that habitat critical to the survival also includes hollow bearing trees with known or potential Gang-gang Cockatoo hollow chambers that are generally around 20 cm in floor diameter, around 50.5 cm deep (range 22–90 cm) and occur between around 7.5 m (range 5–9.4 m) above the ground.

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<sup>6</sup> 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 from: <http://www.environment.gov.au/biodiversity/threatened/species/pubs/768-conservation-advice-02032022.pdf>. In effect under the EPBC Act from 02-Mar-2022.

109) I noted that the main threat in the GGC Conservation Advice relevant to the proposed action is habitat loss and degradation, and resultant increased competition for hollows.

*Environment within and surrounding the proposed action area*

110) While Gang-gang Cockatoos were not observed during surveys, I noted that there are NSW BioNet Atlas records nearby, and that public commenters noted their presence in the region. The species opportunistically uses areas depending on food availability, and therefore may be absent from an area one year and present another.

111) I noted that the regrowth vegetation in the quarry footprint is dominated by *Allocasuarina littoralis* and *Acacia mearnsii*, *Acacia* spp. being recognised as an important resource. The department received advice on noise impacts from a species expert, who also noted that *Acacia* spp. are the species' main food group during the breeding season, but represent only 8% of food sources outside this period. Casuarinaceae are not a food source. I considered that the vegetation to be cleared in the quarry footprint may constitute critical foraging habitat for the species. It is too young to contain hollow-bearing trees, and does not constitute breeding habitat.

112) I considered that the environment surrounding the quarry footprint is also likely to constitute habitat critical, given the presence of suitable foraging vegetation in the form of *Eucalyptus* spp. and *Acacia* spp. The 2025 Flora and Fauna Assessment identifies 7 hollow-bearing trees as being suitable for Gang-gang Cockatoo.

*Potential impacts*

113) I considered that the clearing of 0.24 ha of regrowth vegetation within the quarry footprint, and the clearing of 0.03 ha of regrowth *Allocasuarina littoralis* and *Eucalyptus muelleriana* for the fence to be a small area in contrast to the large area of protected forests adjacent the quarry. I also noted that the area to be cleared does not contain hollow-bearing trees. In his advice to the department, the species expert noted that the Gang-gang Cockatoo diet is broad, flexible and abundant, and the department considers that the species would easily be able to find alternate food sources in the surrounding landscape.

114) I noted that none of the contiguous forested habitat surrounding the proposed action area is proposed to be cleared (with the exception of the fence clearing). As a mobile aerial species, the fence is not likely to significantly impact this species.

115) As in the case of the Yellow-bellied Glider, I considered that blasting three times a year is likely to induce a negative behavioural response over and above that of similar natural loud noises like thunder.

116) I noted that whilst there was no published research or data on the effects of anthropogenic noise on Gang-gang Cockatoo, the species expert was able to provide the following insights:

- a) Gang-gang Cockatoos are not expected to be overly perturbed by low level fairly constant noise. They are often observed feeding by busy roadsides (in Canberra), with no apparent reaction to passing vehicles.

- b) In a study of 92 known nests, one is in a planted *Eucalyptus mannifera*, 2 m from Northbourne Avenue, one of Canberra's busiest roads. One is on the edge of a sporting oval and is at times very close to the noise generated by sports activities and small crowds. Several nests are on suburban nature strips or urban open space and subject to low level urban noise. Around 25 nests are on golf courses or next to or close to fairly busy walking tracks in nature reserves or other parks, or close to houses on rural residential blocks.
- c) Most animals, including Gang-gang Cockatoos, would respond to loud infrequent noise (e.g., blasting). The species has been observed to take flight in response to a chainsaw starting and a loud exhaust backfire. However, their diet is so adaptable and their potential food source so widespread that it would be unlikely for such a disruption, even if it meant permanent avoidance of a particular paddock or farm, to have a significant impact on foraging.
- d) If the infrequent noise was a long-term occurrence, this may dissuade Gang-gang Cockatoos from nesting in an area.

117) In light of the above, I considered that the operational noise of the quarry is not likely to have a significant impact on Gang-gang Cockatoo foraging habitat.

118) I noted that using the same conservative habitat impact assessment method as for the Yellow-bellied Glider, the department estimates that of the 7 hollow-bearing trees identified by the project's ecologist as suitable breeding habitat for the species, only 2 will be subject to noise levels  $\geq 40$  dB.

#### *Avoidance and mitigation measures*

119) The department considered, and I agreed, that the general avoidance and mitigation measures provided for the Yellow-bellied Glider are also applicable to this species.

#### *Conclusion*

120) I considered that the proposed action is unlikely to significantly impact the Gang-gang Cockatoo. In reaching this conclusion, I considered the information from the department outlined above, the nature of the proposed Action, the referral documentation, relevant conservation advices and recovery plans, and the [EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).

121) I was satisfied that, in the context of the wider availability of suitable foraging habitat for the species, the clearing of 0.24 ha of regrowth vegetation within the quarry footprint and clearing of 0.03 ha for the construction of the fence (which I considered as part of the larger action) is not likely to significantly impact foraging habitat critical to the species. I considered that the proposed fence will not create a barrier to movement for this species; therefore the proposed action will not fragment an existing important population into two or more populations.

122) Conservatively, the quarry operational noise levels  $\geq 40$  dB may impact an estimated 2 hollow-bearing trees potentially suitable for nesting. However, observational evidence suggests that this species is not likely to be perturbed by the operational quarry noise, and therefore foraging habitat is not likely to be impacted.

123) I was satisfied that the Gang-gang Cockatoo will be able to use the large areas of retained vegetation around the proposed action area, much of which is protected in reserves, such that potential noise impacts are unlikely to be significant.

#### **Other listed species**

124) I considered the PMST report which identifies the potential presence of additional threatened species or communities within 2 km of the proposed action area. Based on information available to the department, such as the Species Profile and Threats database, relevant recovery plans and information from the referral documentation, the department advised that significant impacts to these species or communities are unlikely. These species were addressed in the document referred to at paragraph 38(b)(iv). I accepted the department's advice.

#### **Other Part 3 provisions which are not controlling provisions**

##### ***Listed migratory species (sections 20 and 20A of the EPBC Act)***

125) I noted and agreed with the department's assessment in the document referred to at paragraph 38(b)(iv) that significant impacts to migratory species were not likely.

##### ***Other protected matters that are not controlling provisions***

126) I noted that the PMST report did not identify any other protected matters within 2 km of the proposed action and therefore considered significant impacts were not likely.

#### **Other matters for decision-making**

##### ***Significant Impact Guidelines***

127) I considered (and noted the department 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 were adequate for decision-making in the circumstances of this referral. I considered there was adequate information available for decision-making in relation to the proposed action.

##### ***Precautionary principle***

128) In making my decision under section 75, I had regard to the precautionary principle under section 391 of the EPBC Act, which provides 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.

129) I took into account 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 will or are likely to be significantly impacted by the proposed action, and considering whether there is a lack of scientific certainty.


130) I considered the information provided in the referral documents, information on the species in relevant statutory documents and provided by species experts, and given the nature of the

proposed action and the environment in which it will occur, I did not consider that the impacts from noise are likely to have a threat of serious or irreversible environmental damage.

**Conclusion – not a controlled action**

131) In light of my findings, I was satisfied that the proposed action is not likely to have a significant impact on any matter protected by Part 3 of the EPBC Act. I therefore decided on 10 November 2025 that the proposed action is not a controlled action.

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|                          |   |
|--------------------------|---|
| <b>name and position</b> | Kate Gowland<br>Branch Head<br>Environment Assessments (NSW, ACT)                 |
| <b>Signature</b>         |  |
| <b>date of decision</b>  | 24 February 2026  |

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## ANNEXURE A – LEGISLATION

### Section 68 – Referral by person proposing to take action

Section 68 of the EPBC Act relevantly provides:

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

### Section 74 – Inviting provision of information on referred proposal

Section 74 of the EPBC Act relevantly provides:

*Inviting other Commonwealth Ministers to provide information*

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

*Inviting comments from appropriate State or Territory Minister*

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

*Inviting public comment*

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

**Section 75 – Does the proposed action need approval?**

Section 75 of the EPBC Act relevantly provides:

*Is the action a controlled action?*

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

*Minister must consider public comment*

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

*Considerations in decision*

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

(ii) *is likely to have;*

*on the matter protected by each provision of Part 3.*

*Timing of decision and designation*

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

**Section 391 – Minister must consider precautionary principle in making decisions**

Section 391 of the EPBC Act relevantly provides:

*Taking account of precautionary principle*

(1) *The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.*

*Precautionary principle*

(2) *The precautionary principle is that 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.*

*Decisions in which precautionary principle must be considered*

(3) *The decisions are:*

| <b><i>Decisions in which precautionary principle must be considered</i></b> |  |   |
|---|--|---|
| <b><i>Item</i></b>  | <b><i>Section decision is made under</i></b> | <b><i>Nature of decision</i></b>  |
| <i>1</i>  | <i>75</i>                                    | <i>whether an action is a controlled action</i>   |
| <i>2</i>  | <i>133</i>                                   | <i>whether or not to approve the taking of an action</i>  |
| <i>3</i>  | <i>201</i>                                   | <i>whether or not to grant a permit</i>   |
| <i>4</i>  | <i>216</i>                                   | <i>whether or not to grant a permit</i>   |
| <i>5</i>  | <i>238</i>                                   | <i>whether or not to grant a permit</i>   |
| <i>6</i>  | <i>258</i>                                   | <i>whether or not to grant a permit</i>   |
| <i>6A</i>   | <i>269AA</i>                                 | <i>whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community</i> |
| <i>7</i>  | <i>269A</i>                                  | <i>about making a recovery plan or adopting a plan as a recovery plan</i>   |
| <i>7A</i>   | <i>270A</i>                                  | <i>whether or not to have a threat abatement plan for a key threatening process</i>                                       |

| <b><i>Decisions in which precautionary principle must be considered</i></b> |  |   |
|---|--|---|
| <b><i>Item</i></b>  | <b><i>Section decision is made under</i></b> | <b><i>Nature of decision</i></b>  |
| 7B  | 270B   | <i>about making a threat abatement plan or adopting a plan as a threat abatement plan</i>   |
| 8   | 280  | <i>about approving a variation of a plan adopted as a recovery plan or threat abatement plan</i>  |
| 9   | 285  | <i>about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan</i>   |
| 10  | 295  | <i>about approving a variation of a plan adopted as a wildlife conservation plan</i>  |
| 10A   | 303CG  | <i>whether or not to grant a permit</i>   |
| 10AA  | 303DC  | <i>whether or not to amend the list of exempt native specimens</i>  |
| 10B   | 303DG  | <i>whether or not to grant a permit</i>   |
| 10C   | 303EC  | <i>about including an item in the list referred to in section 303EB</i>   |
| 10D   | 303EN  | <i>whether or not to grant a permit</i>   |
| 10E   | 303FN  | <i>about declaring an operation to be an approved wildlife trade operation</i>  |
| 10F   | 303FO  | <i>about declaring a plan to be an approved wildlife trade management plan</i>  |
| 10G   | 303FP  | <i>about declaring a plan to be an accredited wildlife trade management plan</i>  |
| 10H   | 303GB  | <i>whether or not to grant an exceptional circumstances permit</i>  |
| 11  | 316  | <i>about making a plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas</i>  |
| 11A   | 324S   | <i>about making a plan for managing a National Heritage place</i>   |
| 12  | 328  | <i>about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas</i> |
| 13  | 338  | <i>about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas</i>  |
| 13A   | 341T   | <i>about endorsing a plan for managing a Commonwealth Heritage place</i>  |
| 14  | 370  | <i>about approving a management plan for a Commonwealth reserve</i>   |