Australian Government
Department of Climate Change, Energy, the Environment and Water

Statement of Reasons for a Decision that an action is a Controlled Action Under the *Environment Protection and Biodiversity Conservation Act 1999*

I, SARAH REACHILL, Acting Branch Head of Environment Assessments (NSW and ACT), Nature Positive Regulation Division, Department of Climate Change, Energy, the Environment and Water (the **department**), delegate for the Minister for the Environment and Water, provide the following statement of reasons for my decision of 28 February 2024 under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the proposed action by Maules Creek Coal Pty Ltd (the **proponent**) to extend open cut coal mining at the existing Maules Creek Coal Mine (**MCCM**) (EPBC 2010/5566) including the development and use of supporting infrastructure, a water transfer pipeline and rehabilitation, 17 kilometres north-east of Boggabri, NSW (EPBC 2024/09936) (the **proposed action**), is a controlled action under the EPBC Act.

LEGISLATION

1. Excerpts of the EPBC Act relevant to my decision are set out in Annexure A.

BACKGROUND

Description of the proposed action (including location)

2. The proposed action is an extension of the existing open cut MCCM (EPBC 2010/5566) which will include the development and use of supporting infrastructure, a water transfer pipeline and rehabilitation.

3. The water transfer pipeline is proposed to connect the existing MCCM water pipeline network with the separately approved Vickery Coal Mine (EPBC 2016/7649 and 2012/6263) to Tarrawonga Coal Mine water transfer pipeline (EPBC 2019/8531 and 2011/5923). The new water transfer pipeline will facilitate bi-directional water transfers between the three mines.

4. MCCM is located in the Gunnedah Coalfield, approximately 17 kilometres northeast of Boggabri in the Narrabri Shire Local Government Area in NSW. The proposed new water transfer pipeline is located approximately 5 kilometres northeast of Boggabri NSW.

5. The total area is approximately 3,796 ha with an additional disturbance footprint of approximately 690 ha (Figure 1) (**proposed action area**).

6. Approximately 144 ha of the proposed action area is within the post mine landform currently undergoing rehabilitation. Sections of the proposed action area that have been rehabilitated are reportedly showing a high species diversity of regenerating grasses, forbs and shrubs among the planted trees on otherwise bare soils. This area will be re-disturbed as part of the proposed action.

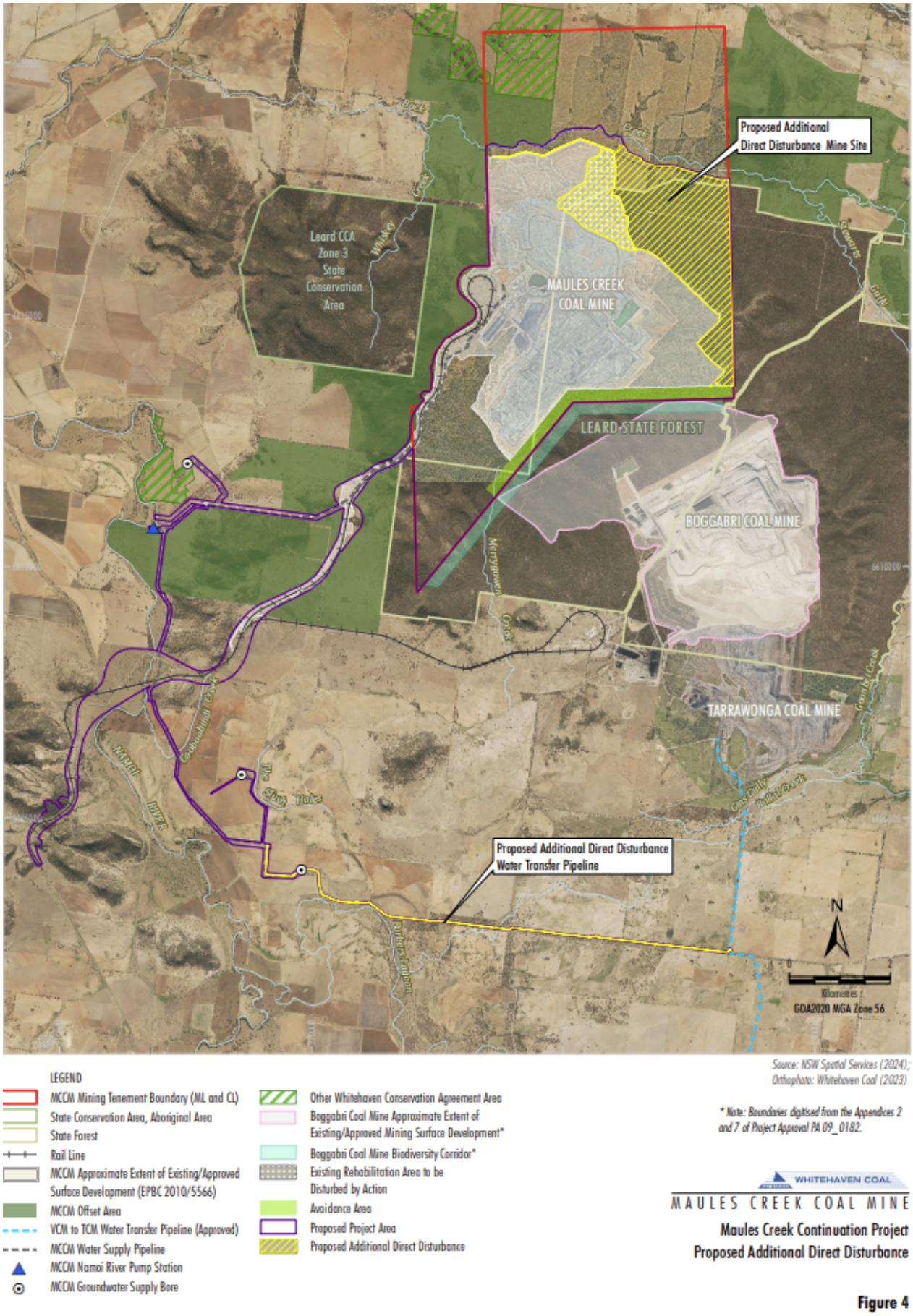

Figure 1: Existing MCCM and the additional proposed area. Source: Referral documentation

7. The MCCM currently operates 24 hours per day and 7 days a week. This will remain unchanged as a result of the proposed Action. MCCM already has noise and air quality management plans in effect that will be updated and provided to the NSW Government for approval to account for additional effects from the expansion as well as cumulative impacts of the MCCM with the other nearby mines.

8. The proposed action will involve an 11 year extension on the current coal lease (CL 375), mining leases (ML 1701 and ML 1719) and authorisation (AUTH 346) for open-cut mining operations to continue until 31 December 2045 (followed by post-mining rehabilitation).

9. The key features of the proposed action are:

- extraction of up to 14 million tonnes per annum (Mtpa) of run-of-mine (ROM) coal from within the proposed project area using open cut mining methods. This is an increase of 1 Mtpa from the current approved rate of extraction for the MCCM;
- development of a waste rock emplacement landform, which is to be integrated with the landform currently approved to be constructed under EPBC 2010/5566;
- construction and use of a remote go-line, access and infrastructure area;
- use of the existing MCCM Namoi River water supply infrastructure, and the water supply infrastructure associated with existing bores, to extract/transfer water for the purpose of the MCCM;
- construction and operation of new water storages and water management infrastructure to facilitate mining operations (including rehabilitation and closure);
- construction and operation of a new water transfer pipeline between the existing MCCM water pipeline network and the separately approved Vickery Coal Mine to Tarrawonga Coal Mine water transfer pipeline, to facilitate water sharing between the three mines. The water transfer pipeline is expected to have a disturbance footprint of 32 ha;
- transfers of coal, overburden, coal rejects, water and other materials between the development areas already subject to the existing MCCM approval decision (EPBC 2010/5566) and the new development area for the proposed expansion of mining operations for the MCCM,
- progressive rehabilitation of areas mined as part of the MCCM to establish a final landform,
- use of (and potentially upgrades to) the existing MCCM infrastructure area, associated infrastructure (such as the Coal Handling and Preparation Plant) and transport infrastructure, and
- use, creation and /or changes to other associated infrastructure, equipment and activities to support the proposed expansion of mining operations (including the use of existing MCCM infrastructure and equipment for the purpose of the MCCM, and activities associated with integrating the existing approved operations and proposed new MCCM operations).

Description of the environment

10. The proposed action area is located within the Brigalow Belt South Interim Biogeographic Regionalisation for Australia (IBRA) region and the Liverpool Plains IBRA subregion. The Boggabri Coal Mine and the Tarrawonga Coal Mine are located approximately 4 kilometres to the south to the south of the MCCM. Leard State Forest borders the mine site in all directions except to the north where the adjoining lands consist generally of cleared land and/or farmland.

11. The proposed Action is zoned RU1 (Primary Production) and RU3 (Forestry) under the Narrabri Local Environmental Plan 2012. RU1 zones allow open-cut mining with consent. Approximately 75% of the proposed Action area is within the Leard State Forest, which is zoned for forestry and mining purposes under the *Brigalow and Nandewar Community Conservation Area Act 2005* (NSW).

12. The portion of the proposed action area that falls within the Leard State Forest has been subjected to logging and there is evidence of historic clearing due to the dominance of young eucalypts and White Cypress Pine. There have been no recent bushfires in the area.

13. The Namoi River, located to the west of the proposed action area, is the most significant watercourse in the region, with three named watercourses near the proposed action area. Back Creek borders the north of the existing mining area. It is a tributary of Maules Creek, located 2 kilometres north of the proposed action area, which drains westwards into the Namoi River approximately 30 kilometres south-east of Narrabri. The referral documentation states that there are no watercourses within the proposed action area.

14. The hydrogeology of the action area consists of a Quaternary alluvium groundwater system, weathered bedrock, permian/conglomerate/sandstone/siltstone/shale interburden, permian coal seams and Permian Boggabri Volcanics.

PROCEDURAL HISTORY

15. A referral was received from the proponent on 19 August 2024, stating the proponent's belief that the proposed action is a controlled action for the purposes of the EPBC Act.

Requests for additional information

16. On 2 September 2024, the department issued a request for further information (RFI) to the proponent seeking further information about the proposed activities. On 11 September 2024, additional information was received from the proponent.

17. The department considered that the information received was not adequate to support my decision. On 24 October 2024, a further RFI was issued to the proponent and on 6 November 2024, additional information was received by the proponent. I agreed with the department that the information received was sufficient for me to make my decision.

18. On 12 December 2024, the department sent the proponent an RFI on the greenhouse gas (GHG) emissions associated with the proposed action. On 14 January 2025, the proponent responded to the RFI, providing updated emissions data. The department reviewed the information and considered the response was adequate. The details of this data is set out in my discussion of GHG emissions at [139]–[172] below.

Public Comments

19. On 19 August 2024, the referral was published on the department's website and comments were invited from the public in accordance with section 74(3) of the EPBC Act. In total, 17 public comments were received by the department.

20. Twelve submissions were received from individuals, and five submissions were received from the following groups / organisations:

    - The Environmental Defenders Office,
    - The Lock the Gate Alliance,
    - Maules Creek Branch of the Country Women's Association of NSW,
    - People for the Plains, and
    - The Hunter Valley Coal Chain Coordinator Limited.

21. One submission, received from the Hunter Valley Coal Chain Coordinator Limited, supported the proposed action and stated that the project should not be considered as a controlled action. Sixteen submissions opposed the project and stated the proposed action should be considered as a controlled action.

22. I considered each of these submissions and took them into account in making my decision.

23. The department provided a summary of the key concerns raised in the public submissions, which I agreed with. The key issues raised in the public submissions include:

    a. The proposed action should be a controlled action,

    b. Impacts on listed threatened species and communities,

    c. Significant impacts on water resources,

    d. Impacts on migratory species,

    e. Concerns around climate change or a changing climate,

    f. Increase in GHG emissions, exacerbating climate change and its impacts,

    g. Concerns relating to rehabilitation,

    h. Impacts on farming, agriculture and farmland,

    i. Inadequate mitigation and avoidance measures,

    j. the environmental history of the proponent.

24. Three submissions identified concerns relating to rehabilitation, particularly noting a history of poor rehabilitation efforts and the potential for the proposed action to undermine previous conditions of approval relating to rehabilitation, if the proponent was approved to mine previously rehabilitated areas. In this respect, I note that State approval condition B40 provides that the applicant must prepare a decommissioning and rehabilitation plan, including the management of waste generated by decommissioning and condition B41 states that the applicant must rehabilitate the site ensuring all infrastructure is removed.

25. I also note that as a controlled action, the proposed action will be assessed further for impacts to listed threatened species and communities in a manner specified in Schedule 1 to the Bilateral Agreement with NSW. This assessment will consider rehabilitated areas which may

include listed threatened species or provide habitat to threatened species. Further, I have taken into account that the NSW Planning Secretary Environmental Assessment Requirements (SEARs) require the proponent to include a rehabilitation strategy in their Environmental Impact Statement (EIS).

26. Similarly, I took into account the public submissions relating to inadequate mitigation and avoidance measures and the five submissions which raised concerns relating to the environmental history of the proponent (including, but not limited to, delays in securing offsets, failure to comply with offset obligations, polluting waters, and acquiring water without a licence). I noted that the further assessment process will require the proponent to include detailed information regarding the mitigation, avoidance and management measures proposed for the action and that the environmental history of the proponent will require further consideration through the assessment and approval process.

27. I also took into account that five submissions raised concerns regarding impact on farming, agriculture and farmland, including loss of agricultural productivity due to reduced water availability and quality. As a controlled action, the proposed action will be assessed further for impacts to water resources according to the Bilateral Agreement with NSW, which involves preparation of ground and surface water assessments as part of the EIS. Further, I note that the SEARs request the proponent assess the compatibility of the proposed action with other land uses, particularly agriculture.

28. The other public submissions concerning impacts on threatened species, water resources and climate change/GHG emissions are discussed further in my reasons below.

Commonwealth Minister's Comments

29. On 19 August 2024, comments were invited from the following Commonwealth Ministers:

    a. The Hon Katy Gallagher, Minister for Finance

    b. The Hon Chris Bowen MP, Minister for Climate Change and Energy

    c. The Hon Madeleine King, MP, Minister for Resources and Minister for Northern Australia

30. The delegate for the Minister for Finance responded on 23 August 2024, advising they had no comments on the referral.

31. No comments were received from the Minister for Climate Change and Energy.

32. On 2 September 2024, the Department of Industry, Science and Resources responded on behalf of the Minister for Resources and Minister for Northern Australia. While the department stated they had no comments on the referral, they noted the following:

    a. The MCCM, a large open cut coal mine producing mostly thermal and some metallurgical coal entirely for the export market, is owned by Whitehaven (75%), Itochu (15%) and J Power (10%).

    b. The MCCM is located 17 kilometres north-east of Boggabri in north-eastern NSW and employs around 800 predominantly local personnel. It has been in operation since 2015 and is approved to produce 13 Mt of ROM coal per annum until 2034.

c. The proposed action, which will likely have a significant impact on threatened species and ecological communities, includes:

   i. Extending open cut mining operations within current leases to 2045 – an 11 year extension – followed by rehabilitation.

   ii. Increasing extraction approval to 14 Mtpa of ROM coal, an increase of 1 Mtpa.

   iii. Development of a waste rock emplacement landform.

   iv. Construction and use of a remote go-line, access and infrastructure area.

   v. Use of existing water infrastructure to extract/transfer water for the purposes of the continuation project.

   vi. Construction and operation of a new water transfer pipeline between the existing MCCM network and Vickery Coal Mine to Tarrawonga Coal Mine water transfer pipeline.

   vii. Additional surface disturbance area of approximately 690 ha, which compares to the maximum disturbance area already approved of approximately 2,040 ha .

d. Maules Creek has been convicted by the Land and Environment Court of NSW for polluting waters due to heavy rains spilling in 2020, paying $158,750 to the Environmental Trust plus associated costs.

e. Whitehaven Coal has been fined $200,000 in the Land and Environment Court for unlawfully taking 1,000 megalitres of water at MCCM between 2016 and 2019.

33. I took into account these comments when making my decision.

State Minister Comments

34. On 19 August 2024, comments were invited from the following State or Territory Ministers having responsibilities relating to the proposed action:

   a. Mr Tim Kirby, delegate for the Hon Paul Scully MP, NSW Minister for Planning and Public Spaces

35. On 21 August 2024, a delegate for the Minister for Planning and Public Spaces responded confirming that if the proposed action is determined to be a controlled action, it will be assessed in a manner specified in Schedule 1 to the Bilateral Agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999*, relating to environmental assessment between the Australian and the New South Wales government.

State Legislation and Assessment Approach

36. The proposed project is declared State Significant Development under section 4.36 of the *Environmental Planning and Assessment Act 1979*.

37. As stated above, the NSW Department of Planning, Housing and Infrastructure has advised that if the proposed action is determined to be a controlled action, it will be assessed in a

manner specified in Schedule 1 of the Bilateral Agreement made under section 45 of the EPBC Act.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

38. In making my decision, I have read and considered the referral decision brief prepared by the department (**decision brief**), and all of its attachments (as set out in Annexure B below). Where relevant to my decision, I refer to these materials below.

39. I agreed with the department that there was sufficient information for me to make my decision.

FINDINGS ON MATERIAL QUESTIONS OF FACT

Is the proposed action part of a 'Larger Action'?

40. Before determining whether the proposed action was a controlled action, I considered whether the proposed action was a component of a larger action under section 74A of the EPBC Act, and if so, whether I should accept the referral pursuant to the discretion under section 74A(1).

41. I took into account that the proposed action involves the extension of the existing open cut MCCM (EPBC 2010/5566), including the development and use of supporting infrastructure, rehabilitation and the construction and operation of a new water transfer pipeline between the existing MCCM water pipeline network and the separately approved Vickery Coal Mine (EPBC 2016/7649 and 2012/6263) to Tarrawonga Coal Mine (EPBC 2019/8531 and 2011/5923) water transfer pipeline (to facilitate bi-directional water transfers/sharing between the three mines). I noted that the department advised that the proposed action could be considered a stand-alone action, because those related actions have already been considered under the EPBC Act.

42. Based on the information provided in the referral (including the identification of approved related actions) and the department's advice, I was satisfied that the proposed action is a stand-alone action which is not dependent on other components that have not been referred. I was also satisfied that the proposed action does not comprise a larger action proposed to be undertaken by the same person.

43. I was satisfied that the proposed action was not part of a larger action.

Is the proposed action a controlled action?

44. 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 (a controlling provision for the action). Section 75(1) of the EPBC Act provides that the Minister must decide whether the proposed action is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the action.

45. In accordance with section 75(2) of the EPBC Act, in making my decision, I considered all adverse impacts that the proposed action has, or will have, or is likely to have on matters protected under Part 3 of the EPBC Act. I did not consider any beneficial impacts that the proposed action has, will have or is likely to have, on matters protected under Part 3 of the EPBC Act.

46. I noted that there are no bioregional plans or management plans for Commonwealth reserves relevant to the proposed action under sections 176(5) or 362(2) of the EPBC Act.

47. Having considered the department's advice and all of the information before me, and for the reasons explained below, I decided that the proposed action is a controlled action because there are likely to be significant impacts on the following Part 3 protected matters:

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

    b. A water resource, in relation to large coal mining development (section 24D and section 24E)

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

48. The proponent identified potential impacts to matters of national environmental significance (MNES) through field surveys commencing in 2022 and a desktop review of publicly available databases. I agreed with the department that there was sufficient information within the referral documentation to make a referral decision.

49. I noted that the Department's Protected Matter Search Tool identified 52 listed threatened species and communities that are likely or known to occur within 10 kilometres of the proposed action, as at 19 February 2025.

50. Based on the location of the proposed action, likely habitat present in the area, known threatened species records in the locality of the proposed action, and targeted survey work to date, I considered that significant impacts will potentially arise in relation to, but not limited to, the following listed threatened species and communities:

    a. White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland – critically endangered, and

    b. Swift Parrot (*Lathamus discolor*) – critically endangered.

<u>White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland – Critically Endangered</u>

51. The department provided me with a summary of information on White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (**box-gum grassy woodland**) in the decision brief. I also considered information about the ecological community provided in the *Approved Conservation Advice for the White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland* (**box-gum grassy woodland Conservation Advice**) and the *National Recovery Plan White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland* (**box-gum grassy woodland Recovery Plan**).

Protected matter ecology

52. Box-gum grassy woodland is an ecological community characterised by a species-rich understorey of native tussock grasses, herbs and scattered shrubs, an overstorey dominated or co-dominated by white box (*Eucalyptus albens*), yellow box (*Eucalyptus melliodora*) or Blakely's red gum (*Eucalyptus blakelyi*) trees and a sparse or patchy scrub layer. The tree cover is generally discontinuous and consists of widely spaced trees of medium height in which the canopies are clearly separated.

53. The ecological community is found in an arc along the western slopes and on elevated flat lands of the Great Dividing Range from Southern Queensland through NSW to central Victoria. In NSW, it is found in the Brigalow Belt South, Nandewar, New England Tableland, Sydney Basin, NSW North Coast, South-eastern Highlands, Southeast Corner, NSW South Western Slopes and Riverina Bioregions.

54. I took into account the box-gum grassy woodland Conservation Advice, which identifies that the ecological community has been preferentially cleared and grazed due to its occurrence on fertile soils and that more than 90% of the original ecological community has been cleared. As a result, large areas of healthy, regenerating overstorey are rare. Less than 5% of the original community remains in sufficient condition and size to be included in the listed ecological community.

55. I also took into account the box-gum grassy woodland Recovery Plan, which states that given the current highly fragmented and degraded state of the box-gum grassy woodland, all areas of the ecological community that meet the minimum condition criteria outlined in the conservation advice should be considered critical to the survival of this ecological community.

56. I noted that according to the box-gum grassy woodland Conservation Advice, ongoing major threats to the ecological community include soil nutrient increase, land clearance and fragmentation legacies, inappropriate grazing regimes, introduced plants, changes in hydrology, dryland salinity, soil erosion and acidification, predation, hunting and persecution causing changes the native faunal assemblage, climate change, tree dieback, senescence and lack of regeneration, and habitat simplification and removal of woody debris. Other moderate threats include fire regimes that cause declines in biodiversity.

57. I also noted that the box-gum grassy woodland Conservation Advice states that changes in climate – such as reduced rainfall, reduced frost incidence and increases in the occurrence and severity of drought – are likely to exceed the tolerances of some species in the ecological community, having flow-on effects to fauna that rely on the habitat this ecological community provides. Further, raised carbon dioxide levels may cause thickening of vegetation at the expense of a diverse grassy ground layer, which is a key diagnostic characteristic of this ecological community.

58. According to the box-gum grassy woodland Recovery Plan, the priority recovery and threat abatement actions include improving baseline information, increasing protection of box-gum grassy woodland, improving community engagement, continuing ecosystem function and management research, and improving compliance and regulatory activities.

Environment within and surrounding the proposed action area

59. I noted that the proponent has not provided any plant community type mapping for the proposed action area. While the referral documentation states that approximately 78.6 ha of box-gum grassy woodland exists within the proposed action area, occurring along the northern and eastern extent of the proposed action area, the lack of plant community type data means that these areas of impact could not be confirmed.

60. The proponent identifies that these areas of box-gum grassy woodland meet the EPBC Act condition criteria for Class A (good quality understorey and mature overstorey present) and Class B (good quality understorey with characteristic tree species absent).

61. Without additional information, I was unable to consider how these areas of box-gum grassy woodland met the minimum condition thresholds.

62. The referral documentation states that there is approximately an additional 5,608 ha of this threatened ecological community outside of the action area in the MCCM existing offset areas.

Potential impacts

63. On the basis of the department's advice, I found that the proposed action is likely to have the following potential impacts on the box-gum grassy woodland:

    a. Approximately 78.6 ha of box-gum grassy woodland will be removed as a result of the proposed action, which will reduce the extent of the community.

    b. The proposed action may fragment or increase fragmentation of this community.

    c. There is a risk of increased weed and pest animal incursion due to the proposed action.

    d. The proposed action may lead to reduction in vegetation health and habitat quality of retained vegetation due to impacts from dust.

Avoidance, mitigation, and management measures

64. No specific avoidance, mitigation and/or management measures have been identified for this threatened ecological community beyond general site-level measures. However, the proponent has stated they intend to develop such measures during the NSW assessment process, through the creation and implementation of Environmental and Construction Management Plans.

Public submissions

65. I noted that twelve public submissions stated that listed threatened species would be impacted by the action, including five submissions which stated specifically that listed threatened species and communities should be a controlling provision. I noted that a number of those submissions raised concerns regarding impacts to box-gum grassy woodland, and concerns that a reliance on offsets will not mitigate or offset the impacts of clearing and loss of ecological function. I considered that the impacts to this ecological community and the offset liability requirements for any impacts will be identified through the assessment process. In particular, I noted the department's recommendation that the proposed action be assessed further for impacts to listed threatened species and communities according to the Bilateral Agreement with NSW, which involves preparation of a Biodiversity Development Assessment Report as part of the EIS.

Conclusion

66. In making my decision, I took into consideration the nature of the proposed action, the referral documentation and material in the decision brief, box-gum grassy woodland Conservation Advice and box-gum grassy woodland Recovery Plan and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

67. Based on the material before me, I found that the proposed action will clear 78.6 ha of Class A and B box-gum grassy woodland. There is a real chance or possibility that the proposed action will:

a. reduce the extent of an ecological community,

b. fragment or increase fragmentation of an ecological community, and

c. adversely affect habitat critical to the survival of an ecological community.

68. On this basis, and in accordance with the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance (critically endangered and endangered ecological communities), I found that the proposed action is likely to significantly impact box-gum grassy woodland and that sections 18 and 18A of the EPBC Act are controlling provisions for the proposed action. I noted that impacts on box-gum grassy woodland will be further considered during the assessment process before the Minister or a delegate determines whether to approve the proposed action under Part 9 of the EPBC Act.

Swift Parrot (*Lathamus discolor*) – Critically endangered

69. The department provided me with a summary of information on the swift parrot in the decision brief. I also considered information about the species provided in the approved *Conservation Advice,* Lathamus discolor*, swift parrot* (**swift parrot Conservation Advice)** and the *National Recovery Plan for the Swift Parrot (Lathamus discolor)* (**swift parrot Recovery Plan**).

Protected matter ecology

70. The swift parrot is mostly bright green, with dark-blue patches on the crown, a prominent red face, and the chin and throat are narrowly bordered with yellow. It is approximately 25 cm in length, the wingspan is 32 cm to 36 cm with angular pointed wings and a slender tail.

71. The swift parrot is a migratory bird that breeds in Tasmania and migrates to mainland Australia during autumn and winter. They occupy habitats across all tenures, with the majority of habitats occurring outside formal conservation reserves. In NSW, swift parrots are primarily found in dry forests and woodlands, likely due to them containing key eucalypt species which provide foraging habitat. The swift parrot Conservation Advice states that the species is known to exhibit high site fidelity, returning to locations on an irregular cyclic basis.

72. I took into account that the swift parrot Recovery Plan states that habitat critical to the survival of the species includes those areas of priority habitat for which the swift parrot has a level of site fidelity or possesses phenological characteristics likely to be of importance. Conserving a combination of known priority habitats and potential habitats in perpetuity, in different regions, is essential for the long-term survival of the swift parrot.

73. I also took into account that the Swift Parrot Recovery Plan states that habitat critical for the survival of the species on mainland Australia includes all foraging habitat. I noted that key foraging species on the mainland for the Swift Parrot include Yellow Gum (*E. leucoxylon*); Red Ironbark (*E. tricarpa*); Mugga Ironbark (*E. sideroxylon*); Grey Box (*E. microcarpa*); White Box (*E. albens*); Yellow Box (*E. melliodora*); Swamp Mahogany (*E. robusta*); Forest Red Gum (*E. tereticornis*); Blackbutt (*E. pilularis*); and Spotted Gum (*Corymbia maculata*).

74. I took into consideration that major threats to the survival of the swift parrot include the loss and alteration of foraging and habitat through forestry activities, including firewood harvesting, and residential, industrial and agricultural development. Other identified threats

include competition for foraging resources, mortality from collisions and impacts from climate change.

Environment within and surrounding the proposed action area

75. Referral documentation states that the swift parrot was not recorded during field surveys. However, I noted the department's advice that there are 29 BioNet records for the species locally, with almost all of them occurring within the last 10 years.

76. I also noted that the referral documentation states that preferred foraging trees were identified within the proposed action area, including yellow box along the proposed water transfer pipeline alignment, and in the northern-most extent of the action area, grey box within the pipeline easement, and white box throughout the action area.

Potential impacts

77. On the basis of the department's advice, I found that the proposed action is likely to have the following impacts on the species:

    a. Approximately 574 ha of foraging habitat, constituting habitat critical to the survival of the species will be removed through the proposed action.

    b. Habitat quality of retained and adjoining vegetation will potentially be reduced due to increased noise, dust, and weed incursion.

Avoidance, mitigation and management measures

78. I noted that the referral documentation states that the disturbance footprint has been minimised as far as practicable.

79. I also observed that no specific avoidance, mitigation and/or management measures were identified for this species. The proponent stated that measures to be implemented to maintain or improve biodiversity would be identified in the Biodiversity Development Assessment Report which would be prepared for the EIS in accordance with the Biodiversity Assessment Method.

80. The proponent states that the Biodiversity Development Assessment Report would include weed control measures.

81. I considered that the primary impact of the proposed action on the species is loss of habitat through clearing of vegetation, which cannot be mitigated.

Public submissions

82. As outlined above, I noted that twelve submissions raised impacts of the proposed action on threatened species. A number of public submissions raised concerns regarding the loss of habitat for the swift parrot, with one submission suggesting that the threat of climate change would only intensify impacts to the species.

83. While I acknowledge that anthropogenically emitted GHGs are responsible for global climate change, the department advised, and I agree, that the flow-on physical effects of climate change are not 'impacts' of the proposed action as further outlined at [139]–[172] below.

Conclusion

84. In making my decisions, I took into account the nature of the proposed action, the referral documentation and material in the decision brief, the swift parrot Recovery Plan and swift parrot Conservation Advice and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

85. Based on the material before me, I found that the proposed action will clear 574 ha of potential habitat for the swift parrot. I considered that there is a real chance or possibility that the proposed action will adversely affect habitat critical to the survival of the species. On this basis, I found that the proposed action is likely to have a significant impact on the swift parrot, as outlined in the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance and that sections 18 and 18A of the EPBC Act are controlling provisions for the proposed action.

86. I noted that the assessment process will further consider impacts on the swift parrot before the Minister or a delegate determines whether to approve the proposed action under Part 9 of the EPBC Act.

Other listed species

87. On the basis of all the available information, and without further detailed assessment of potential impacts, I found that the proposed action may significantly impact on additional listed threatened species and ecological communities. These include, but are not limited to, the following species or communities which the department identified as being present in the area of the proposal as at 19 February 2025 using the Protected Matter Search Tool:

    a. Poplar Box Grassy Woodland on Alluvial Plains – endangered
    b. Koala (combined populations of Queensland, NSW and the Australian Capital Territory) (*Phascolarctos cinereus*) - endangered
    c. Large-eared pied bat (*Chalinolobus dwyeri*) – endangered
    d. Corben's long-eared bat (*Nyctophilus corbeni*) - vulnerable
    e. Brown treecreeper (south-eastern) (*Climacteris picumnus victoriae*) – vulnerable
    f. Regent honeyeater (*Anthochaera phrygia*) – critically endangered
    g. Painted honeyeater (*Grantiella picta*) – vulnerable
    h. South-eastern glossy black-cockatoo (*Calyptorhynchus lathami lathami*) - vulnerable
    i. South-eastern hooded robin (*Melanodryas cucullata cucullata*) – endangered
    j. Diamond firetail (*Stagonopleura guttata*) – vulnerable
    k. Southern whiteface (*Aphelocephala leucopsis*) - vulnerable
    l. *Vincetoxicum forsteri* (syn. *Tylophora linearis*) – endangered
    m. Blue grass (*Dicanthium setosum*) - vulnerable

88. I noted that several public submissions raised potential impacts of the proposed action on threatened species. Listed threatened species and communities identified in the submissions

included the Koala, Diamond Firetail, Corben's long-eared Bat, Brown Treecreeper, Southern Whiteface, Painted Honeyeater, Hooded Robin, *Vincetoxicum forsteri* and bluegrass.

89. As outlined above, I considered that the impacts on other species will be identified through the assessment process. In particular, I noted the department's recommendation that the proposed action be assessed further for impacts to listed threatened species and communities according to the Bilateral Agreement with NSW, which involves preparation of a Biodiversity Development Assessment Report as part of the EIS.

90. I noted that some of the public submissions suggest that the proposed action will exacerbate the impacts of climate change on listed threatened species and communities including but not limited to, poplar box grassy woodlands, koala, and the painted honeyeater, while also making general statements regarding the impacts of climate change impacting native flora and fauna.

91. While I acknowledged that anthropogenically emitted GHGs are responsible for global climate change, the department advised, and I agreed, that the flow-on physical effects of climate change are not 'impacts' of the proposed action as further outlined at [139]–[172] below.

92. On this basis, I did not consider that there is a real chance or possibility that GHG emissions resulting from the proposed action will significantly impact listed threatened species and communities.

93. In any event, as I have concluded that the proposed action is likely to have a significant impact on listed threatened species and communities, I decided that the proposed action is a controlled action and ss 18 and 18A are controlling provisions for the action.

Water Resources (sections 24D and 24E)

94. The decision brief provided information on the water resources relevant to the proposed action, including the EPBC Act Policy Statement – Significant Impact Guidelines 1.3 – Coal seam gas and large coal mining developments - impacts on water resources.

Surface water

Environment within and surrounding the proposed Action area

95. The Namoi River, located west of the proposed action area, is the most significant watercourse in the region. The proposed action area is located on the southern side of Back Creek, a tributary of Maules Creek. Maules Creek drains westwards into the Namoi River about 30 km south-east of Narrabri.

96. I noted that the referral documentation states that in the proposed action area, surface water generally flows along gullies and ephemeral drainage lines in a northward direction to Back Creek. The proposed water transfer pipeline sits within the Bollol Creek floodplain.

97. The proponent states that the water management system for the proposed action would be integrated with the existing infrastructure for MCCM, with the development of additional mine water dams, sediment dams, clean water diversions and highwall dams as required. The existing mine water dam and raw water dam would continue to be used for the proposed action, with storage capacity to be increased through the construction of additional mine water dams within the footprint of the open cut pit water management system.

Potential impacts

98. Based on the information within the referral and subsequent RFIs, I agreed with the department's advice that there is a real possibility that the proposed action will result in the following impacts to surface water:

    a. Change to the quantity of surface water in the receiving environment (Back and Maules Creeks) as a result of the excavation of overburden and coal within the open cut extension area.

    b. Change to the integrity of hydrological or hydrogeological connections and change the area or extent of a water resource, as a result of the expanding development footprint within the Back Creek and Maules Creek catchments, resulting in progressive loss of baseflow.

    c. Change to groundwater-surface water interactions, as the proposed action will depressurise the Permian coal measures, which subcrop underneath the Maules Creek alluvium, and other surface water features near to the MCCM, resulting in a reduction of baseflow.

    d. Accumulation of salt or other potentially harmful substances in the environment, as the proposed action is expected to result in salt accumulation in the pit lake and around the final void walls/batters as the final void water level rises and falls with climatic conditions post-closure.

    e. Potential changes in water quality which could result in a risk to humans or animal health and/or affect the habitat or lifecycle of native species dependent on an affected water resource.

99. I noted that the significance of these changes will be assessed in the EIS Surface Water Assessment and Groundwater Assessments.

Avoidance, mitigation, and management measures

100. I noted that progressive rehabilitation will be undertaken during the life of the proposed action. Surface water runoff from rehabilitated areas will be directed off-site once it is of suitable quality (e.g., meets the applicable water quality limits specified in an Environment Protection Licence).

101. I noted that the site water management system has been designed to divert and store mine water so that it is not released to the receiving environment.

<u>Groundwater</u>

Environment within and surrounding the proposed Action area

102. The referral documentation states that the terrain of the region is characterised by wide and flat alluvial plains, bounded by wooded hills and ridgelines. Surface elevation is controlled by the underlying geology, with areas of higher elevation comprised of outcropping volcanic and sedimentary sequences, overlain by alluvial sediments in low lying areas.

103. Groundwater generally flows from east to west within the Maules Creek/Back Creek alluvial plain, and generally towards the southwest within the Bollol Creek alluvial plain.

104. The hydrogeological regime in the MCCM region consists of the following hydro-stratigraphic units:

    a. Quaternary alluvium associated with river and creek floodplains that form productive aquifer systems, typically in deeper and coarser grained sediments,

    b. weathered bedrock (regolith) that is generally unsaturated in the mining areas, but acts as a temporary water store and pathway during sustained wet periods,

    c. Permian conglomerate/sandstone/siltstone/shale interburden that act as an aquitard,

    d. Permian coal seams of the Maules Creek Formation that form a low yielding aquifer, and

    e. Permian Boggabri Volcanics that typically acts as an aquiclude/aquitard.

105. Recharge to the hydro-stratigraphic units occurs through diffuse rainfall recharge, as well as seepage through creek and riverbeds when flowing. Discharge from the groundwater systems occurs through multiple mechanisms including baseflow to river/creeks (mainly the Namoi River), through water supply bores and via evapotranspiration in areas where shallow water tables promote this process.

106. The proponent stated that the proposed extension of the open cut within the proposed action area would be located beyond the extent of any alluvial aquifer systems and would not intersect any watercourses.

Potential impacts

107. Based on the information within the referral and subsequent RFI's, I accepted the department's advice that the proposed action is likely to result in the following impacts on groundwater:

    a. Changes to the water quantity of the receiving environment, including the timing of variations in water quantity resulting from the continuation of project mining for approximately 10 years longer than would otherwise occur for the existing operation which would delay the recovery of groundwater levels whilst the open cut remains a groundwater sink.

    b. Changes to the groundwater table and potentiometric surface levels, recharge rates and aquifer pressure, as a result of the excavation of overburden and coal within the open cut extension area (i.e. depressurisation of the Permian coal measures).

    c. Changes to the inter-aquifer connectivity as the proposed action would depressurise Permian coal measures which subcrop underneath the Maules Creek alluvium.

    d. Changes to the water quality so that there is potential to result in a change in the risk to humans or animal health and/or cause affects to the habitat or lifecycle of a native species, dependent on a water resource.

108. I considered that that these changes will be assessed in the EIS Surface Water Assessment and Groundwater Assessment.

Avoidance, mitigation, and management measures

109. I took into consideration that regular monitoring of groundwater levels around the MCCM and surface water levels and along Maules Creek and Back Creek is currently undertaken in accordance with the MCCM Water Management Plan, and results are reported in the MCCM Annual Reviews. The Boggabri-Tarrawonga-Maules numerical groundwater model is validated on a three-yearly basis and is used to assess groundwater and surface water impacts over the life of the Boggabri-Tarrawonga-Maules mines.

Public submissions

110. Sixteen of the 17 public submissions received in relation to the proposed action raised concerns regarding impacts to water resources, with 11 submissions specifically stating that the water trigger must apply. Submissions identified the following concerns relating to water resources:

    a. Impacts on surface water, groundwater, water quality and contamination, water availability,

    b. GDE's,

    c. Impacts of increased groundwater drawdown from irrigation bores,

    d. Impacts of increased water extraction from the Namoi River, reduced flow and impacts to the catchment,

    e. Impacts to Back Creek with flow on pollution to the catchment,

    f. Exacerbation of the effects of climate change on water resources,

    g. Cumulative impacts from the water demands of Bogabri, Tarrawonga, Maules and Vickery's mines,

    h. Soil dehydration,

    i. Increased runoff and flash flooding, and

    j. Lack of modelling data.

111. I took into account that the proposed action would be assessed further for impacts to water resources according to the Bilateral Agreement with NSW, which involves preparation of groundwater and surface water assessments as part of the EIS.

112. A number of public submissions suggested that the proposed action will exacerbate the impacts of climate change on water resources, including reduced stream flows, soil dehydration and increased evaporation outside of the project area. While I accepted that anthropogenically emitted GHGs are responsible for global climate change, the I agreed with the department's advice that the flow-on physical effects of climate change are not 'impacts' of the proposed action, as further outlined at [139]–[172] below.

113. On this basis, I did not consider that there is a real chance or possibility that GHG emissions resulting from the proposed action will result in additional impacts to water resources.

114. In any event, as I concluded that the proposed action is likely to have a significant impact on water resources, I decided that the proposed action is a controlled action and ss 24D and 24E are controlling provisions for the action.

Conclusion

115. In making my decision, I took into account the nature of the proposed action, the referral documentation and material in the decision brief, the proponent's subsequent responses to RFIs, and the Significant Impact Guidelines 1.3 - Coal seam gas and large coal mining developments - impacts on water resources. I found that there is a real chance that the proposed action will directly or indirectly result in a change to:

    a. the hydrology of a water resource, and

    b. the water quality of a water resource

    that is of sufficient scale or intensity as to reduce the current or future utility of the water resource for third party users, including environmental and other public benefit outcomes, or to create a material risk of such reduction in utility occurring.

116. Based on the material before me, I concluded that significant impacts to water resources are likely and therefore determined that the proposed action is a controlled action under sections 24D and 24E of the EPBC Act. Further information will be sought from the proponent at the assessment stage to allow for a comprehensive consideration of impacts to surface and groundwater as a result of the proposed action.

Other protected matters that are not controlling provisions

World Heritage properties (sections 12 and 15A), National Heritage places (sections 15B and 15C) and Great Barrier Reef Marine Park (sections 24B and 24C)

117. I noted that the department's Protected Matter Search Tool report did not identify any World Heritage properties or National Heritage places located within or adjacent to the project area. The Great Barrier Reef Marine Park is located approximately 710 km away from the proposed action. I agreed with the department's advice that it is unlikely that the proposed action will result in direct impacts on these matters.

118. I also considered the potential for indirect impacts from the proposed action – and specifically, climate change – to impact matters protected by controlling provisions at sections 12 and 15A, 15B and 15C, and 24B and 24C. This assessment is set out at [139]–[172] below.

119. I took into account:

    a. the below assessment regarding the effect of climate change on these matters;

    b. the distance to World Heritage properties, National Heritage places and the Great Barrier Reef Marine Park;

    c. and the other information available to the department, including the referral documentation, public submissions and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

120. I found that the proposed action is not likely to have an impact on the matters protected by controlling provisions at sections 12 and 15A, 15B and 15C, and 24B and 24C.

Ramsar wetlands (sections 16 and 17B)

121. The department's Protected Matter Search Tool did not identify any declared Ramsar listed wetlands of international importance within or adjacent to the proposed action area. The

nearest Ramsar Wetland is approximately 900 km to the southwest. Given the information contained within the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to Ramsar listed wetlands of international importance, I was satisfied that the proposed action is unlikely to significantly impact on the ecological character of Ramsar listed wetlands of international importance.

122. Further, as discussed below, I agreed with the department that the proposed action will not be a substantial cause of the physical effects of climate change, and as such, GHG emissions resulting from the proposed action will not impact Ramsar listed wetlands of international importance.

123. For these reasons, I found that sections 16 and 17B are not controlling provisions for the proposed action.

Migratory species (sections 20 and 20A)

124. Using the Protected Matters Search Tool, the department identified the potential presence of 8 migratory species within or adjacent to the proposed Action area.

125. I took into account three public submissions which stated that migratory species will be impacted by the proposed action, including two submissions which specifically stated that listed migratory species should be a controlling provision and one submission which identified that the fork-tailed swift may be impacted by the proposed action.

126. I accepted the department's advice that based on the available information, such as the Species Profile and Threats database, the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, a significant impact to these migratory species is unlikely. I found that the proposed action is not likely to seriously disrupt the lifecycle of an ecologically significant proportion of the population of a migratory species.

127. Further, as discussed below, I agreed with the department that the proposed action will not be a substantial cause of the physical effects of climate change, and as such, GHG emissions resulting from the proposed action will not impact migratory species.

128. I found that sections 20 and 20A are not controlling provisions for the proposed action.

Nuclear Action (sections 21 and 22A)

129. The proposed action does not meet the definition of a nuclear action as defined in the EPBC Act. Accordingly, I find that sections 21 and 22A are not controlling provisions for the proposed action.

Commonwealth marine environment (sections 23 and 24A)

130. The proposed action is not being undertaken within a Commonwealth marine area.

131. Further, given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to a Commonwealth marine area, I agreed with the department that the proposed action is unlikely to have a significant impact on the environment in a Commonwealth marine area.

132. Further, as discussed below, I agreed with the department that the information does not demonstrate that the proposed action will be a substantial cause of the physical effects of

climate change and therefore GHG emissions resulting from the proposed action will not impact the Commonwealth marine environment.

133. I found that sections 23 and 24A are not controlling provisions of the proposed action.

Commonwealth land (sections 26 and 27A)

134. The proposed action is not being taken on Commonwealth land.

135. Further, given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to Commonwealth land, I agreed with the department that the proposed action is unlikely to have a significant impact to the environment on Commonwealth land.

136. For these reasons, I agreed with the department that sections 26 and 27A are not controlling provisions for the proposed action.

Commonwealth Heritage places overseas (sections 27B and 27C)

137. As the proposed action is not being undertaken overseas, I found that sections 27B and 27C are not controlling provisions for the proposed action.

Commonwealth action (section 28)

138. As the person proposing the action is not the Commonwealth or a Commonwealth agency, I found that section 28 is not a controlling provision for the proposed action.

GHG Emissions and anthropogenic climate change

139. I took into account that several submissions raised concerns regarding climate change, including:

    a. Five submissions regarding the impacts of climate change on water resources,

    b. Three submissions regarding the impacts of climate change on species and species habitat due to increased drought, flood and fire, and

    c. One submission which raised concerns about the increase in GHG emissions exacerbating climate change and its impacts.

140. I noted that the NSW SEARs issued for the proposed action requires the proponent to include an assessment of the likely GHG impacts of the development, including consideration of the current New South Wales and Commonwealth climate change policy settings, programs and guidelines; and requests a GHG mitigation plan and climate change adaptation plan. In relation to the impacts of climate change on water resources, I noted that the NSW SEARs requires the proponent to include an assessment of the reliability of water supply, including consideration of a range of climatic conditions and climate change projections.

141. While I acknowledge that anthropogenically emitted GHGs are responsible for global climate change, I agreed with the department that the flow-on physical effects of climate change are not ‘impacts’ of the proposed action, for the reasons explained below.

RFI data

142. As outlined above, on 12 December 2024, the department sent the proponent an RFI on the GHG emissions associated with the proposed action. On 14 January 2025, the proponent responded to the RFI, providing updated emissions data.

Response to RFI Question 1: Information regarding scope 1,2 and 3 emissions

143. The proponent identified the following activities resulting in scope 1, 2 and 3 GHG emissions associated with the proposed action:

    a. Scope 1 emissions from the proposed action are expected to occur through diesel fuel consumption of mining equipment during mining operations (92%), the release of fugitive emissions through mining coal seams (4%), GHG emissions emitted from blasting activities (3%) and land/vegetation clearing (1%).

    b. Scope 2 emissions from the proposed action come from the generation of purchased electricity consumed by the proponent associated with the Action (100%).

    c. Scope 3 emissions are derived from the combustion of saleable product coal by third parties overseas. Specifically, downstream emissions from the combustion of diesel used during domestic rail transport and shipping of product coal (< 1%), the shipping of product coal to export destinations overseas (3%), the combustion of saleable product coal by third parties overseas by energy production (75%) and coking coal use (21%).

144. The proponent quantified the emissions data in Table 1, which is reproduced below. The department advised that scope 1 and 2 emissions represent approximately 1.191% of total emissions, with the remaining associated with scope 3 emissions (98.808%).

Table 1: Proponent's estimate of GHG emissions associated with the proposed action (Mt CO_2-e)

	Scope 1	**Scope 2**	**Scope 3**		**Total (Scope 1, 2 and 3)**	
	Australia		Australia	Overseas	Australia	Globally (includes Australia)
Annual average*	0.147-0.201	0.0004-0.0005	0.087-0.119	12.136-16.607	0.234-0.320	12.370-16.927
Total**	2.939-4.022	0.008-0.011	1.737-2.376	242.716-332.138	4.684-6.410	247.400-338.548

*The proponent advises that the annual average values exclude the decommissioning phase to avoid distorting the calculation with unrepresentative emissions values (i.e. lower emissions values), but the total values include the decommissioning phase.

**The department is basing analysis on the highest figures provided by the proponent to ensure that the maximum quantum of impact is considered.

145. The proponent advised that the proposed action's total average annual emissions within Australia represent up to 0.0740% of Australia's estimated annual national emissions, as reported with the most recent available data.

146. The proponent advised that the action's total average annual emissions globally represent up to 0.0349% of global emissions (measured in CO_2-e) from 2021, which is the most recent global emissions data.

Response to RFI Question 2: Management Measures

147. The proponent identified a series of key measures to avoid, reduce and monitor emissions associated with the proposed action (if approved), including:

    a. implementing the current GHG mitigation measures from the Maules Creek Coal Mine Air Quality & Greenhouse Gas Management Plan,

    b. regular reporting under the National Greenhouse and Energy Reporting Act 2007 (NGER Act) and the Safeguard Mechanism for scope 1 and 2 emissions, and

    c. continued purchase of Climate Active certified carbon neutral electricity to produce net zero scope 2 emissions.

Response to RFI Question 3: Customers (Consumers of end-product)

148. The proponent estimated that 100% of the coal produced at MCCM would continue to be provided to international customers. The proponent estimated that Japan, Taiwan and Malaysia will make up approximately 95% of the export destinations for the coal from MCCM.

149. The department advised me that while MCCM has previously sold coal to France and New Caledonia, the proponent has not included these customers in their forward export estimates. The proponent noted that given the variable nature of the international coal markets it can be difficult to project ongoing percentages of exports into each market. I noted that a full list of product destinations was provided in Table 2 to the proponent's RFI response, which was based on estimates of future consumers and is reproduced below.

Table 2: Product destination by percentage of product volume

Rank	Country/Jurisdiction	Product volume (%)
1.	Japan	65%
2.	Taiwan	15%
3.	Malaysia	15%
4.	India	5%
5.	Republic of Korea (**ROK**)	
6.	The Netherlands	
7.	Indonesia	
8.	China	

150. I noted that, apart from Taiwan, each customer is a party to the Paris Agreement. These customers have announced or adopted domestic laws and policies to achieve GHG reduction targets, as set out in their nationally determined contributions (NDCs – being emission reduction commitments) set out in Table 3 below.

Table 3: The NDCs of each consumer country party to the Paris Agreement

Rank	Country/Jurisdiction	NDC
1.	Japan	Reduce GHG emissions by 46 % by 2030 from 2013 levels. Net zero commitment by 2050.
2.	Taiwan	N/A

Rank	Country/Jurisdiction	NDC
3.	Malaysia	Reduce GHG emissions by 45 % per unit of Gross Domestic Product (**GDP**) by 2030 from 2005 levels.
4.	India	Reduce GHG emissions by 45 % per unit of Gross Domestic Product (**GDP**) by 2030 from 2005 levels. Net zero commitment by 2070.
5.	ROK	Reduce GHG emissions by 40 % by 2030 from 2018 levels. Net zero commitment by 2050.
6.	The Netherlands (as a member state of the European Union (**EU**))	Reduce GHG emissions by 55 % by 2030 from 1990 levels.
7.	Indonesia	Reduce GHG emissions by 31.89 % by 2030 compared to business-as-usual projection for 2030 (unconditional commitment with domestic resources) Reduce GHG emissions by 43.20 % by 2030 compared to business-as-usual projection for 2030 (conditional commitment with international support) Vision to achieve net zero by 2060.
8.	China	Reduce GHG emissions by 65 % per unit of GDP by 2030 from 2005 levels. Net zero commitment by 2060.

151. I also noted that the GHG emissions RFI contains additional commentary regarding NDCs of customer countries. The department also researched the relevant NDCs and provided me with a list of their initiatives to reduce coal consumption.

International frameworks for addressing climate change

152. As the department noted in the decision brief, the primary multilateral mechanisms governing the international response to climate change are the United Nations Framework Convention on Climate change (**UNFCCC**), and the Paris Agreement, adopted on 12 December 2025. The UNFCCC is the parent treaty of the Paris Agreement.

153. The Paris Agreement "aims to strengthen the global response to the threat of climate change … by:

> holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that that would significantly reduce the risks and impacts of climate change".

154. The Paris Agreement requires all parties to prepare, communicate and maintain successive NDCs and pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. At the 28th Conference of the Parties (**COP28**) the UNFCCC saw all parties agree to transition away from fossil fuels in energy systems. This was the first time that all parties to the Paris Agreement have acknowledged the need to transition away from fossil fuels.

155. In Australia, the emissions reduction targets and national climate mitigation policies are the responsibility of the Minister for Climate Change and Energy, the Hon Chris Bowen MP. Australia submitted its first NDC to the UNFCCC in 2015, in June 2022 Australia submitted their updated NDC that strengthen the 2030 target to 43 % below 2005 levels and reaffirms the net zero emissions by 2050 target.

156. The Australian Government also agreed to the first Global Stocktake under the Paris Agreement in 2023.

157. In addition to the UNFCCC and the Paris Agreement, there are multiple international and regional initiatives which seek to reduce global coal consumption including the Powering Past Coal Alliance, the Global Pledge on Renewables and Energy Efficiency, the ASEAN Plan of Action on Energy Cooperation and the Asia Zero Emissions Community. A list of these initiatives and their objectives is available at **Attachment I1**.

Domestic Measures

158. The *Climate Change Act 2022* (Cth) enshrines Australia's emissions reduction targets in legislation – 43 % below 2005 levels by 2030 and net zero emissions by 2050. There is a suite of measures which support these legislated targets including:

    a. Australian Government commitment to 82 % renewable electricity by 2030

    b. The Capacity Investment Scheme, to encourage new investment in renewable energy

    c. Reforms to the Safeguard Mechanism.

Coal Markets

159. The International Energy Agency has been publishing coal market reports every December since 2011. *Coal 2024*, released in December 2024, provides an analysis of recent trends in coal demand, supply and trade, as well forecasts to 2027. I noted that key findings of the *Coal 2024* report included:

    a. In 2023 global coal demand increased to a record 8.69 billion tonnes and is expected to reach another new record high of 8.77 billion tonnes in 2024.

    b. Global coal demand is expected to grow by 1 % in 2024 and is set to plateau through to 2027, representing a considerable slowdown in growth from previous years.

    c. In 2024 global coal production is expected to reach a record high surpassing 9 billion tonnes, with Australia set to become the fourth largest coal producer by 2027, surpassing the United States and Russia, due to international sanctions.

Impact of GHG emissions on MNES

160. I accepted that anthropogenically emitted GHGs are responsible for global climate change. Some of the impacts of this anthropogenic-related climate change in Australia include rising temperatures, changing rainfall patterns, rising sea levels and increasing ocean acidification (the physical effects of climate change). I noted that the combustion of coal and/or gas results in GHG emissions, which, on a global scale, increase the effects of climate change including the regularity, scope and intensity of climate hazards.

161. I noted that the EPBC Act does not regulate GHG emissions as a matter of national environmental significance. For the proposed action to have an impact upon a protected matter under section 527E of the EPBC Act, it must be shown that the proposed action directly causes, or is a substantial cause of an indirect impact, on a protected matter.

162. In that light, I considered whether GHG emissions from the proposed action will, or are likely to, result in a 'significant impact' on a MNES. Overall, I considered that the proposed action is not a substantial cause of the physical effects of climate change.

An impact of the proposed action

163. I noted that section 527E of the EPBC Act provides that for the purposes of the Act:

> (1) An event or circumstance is an impact of a proposed action if:
>
> (a) the event or circumstance is a direct consequence of the action (s 527E(1)(a)); or
>
> (b) for an event or circumstance that is an indirect consequence of the action – subject to s 527E(2), the action is a substantial cause of that event or circumstance (s 527E(1)(b)).

164. I agreed with the department that while the proposed action will result in GHG emissions, the relevant 'events or circumstances' that may impact MNES for the purposes of s 527E are the physical effects of climate change. Based on the information available, I assessed that the physical effects of climate change on MNES, such as increased temperatures, changing rainfall patterns, rising sea levels and increasing ocean acidification, are, if anything, indirect consequences of the proposed action. They are events or circumstances that are removed in time and distance from the taking of the action, which is the expansion and operation of an existing coal mine.

165. I did not consider that the information before me demonstrated that the effects of climate change on MNES were 'impacts'. I agreed with the department's assessment that:

a. The available information did not demonstrate that the proposed action will cause a net increase in GHG emissions and global average temperature, and so, any physical effects of climate change on MNES. Whether this will happen is subject to multiple variables.

b. Even if a likely net increase were demonstrated, any contribution from the proposed action to global GHG emissions would be very small. It is, therefore, not possible to say that the proposed action will be a 'substantial cause' of the physical effects of climate change on water resources in relation to unconventional gas or large coal mining developments.

166. I agreed with the department that the likely contribution of the proposed action towards a net increase in global GHG emissions and global average temperature is subject to a number of variables. These include whether emissions generated by the combustion of the coal produced as part of the proposed action will be mitigated or abated. The prospective buyers of the coal are expected to comply with relevant policies and regulations within the relevant countries borders. The expected customer countries each have NDCs to reduce national emissions and adapt to the impacts of climate change.

167. I noted that under the Paris Agreement, each party must submit an NDC every five years. These NDCs are required to reflect increased ambition over time. Parties may also submit new or updated NDCs at any time. The emissions generated by combusting coal (including coal from the proposed action) would be counted as scope 1 emissions in the country where

combustion occurred and may be subject to mitigation actions. These emissions may also qualify as the indirect scope 3 emissions of the source country (in this case, Australia).

168. I also noted that, as outlined in the International Energy Agency's coal market report released in December 2024, while coal demand continues to fall in advanced economies, this decline is expected to be offset by growth in emerging and developing economies such as China, India, Indonesia and Vietnam, where the additional energy demand is associated with economic growth. The department considers it is reasonable to assume that should the proposed action not proceed, the global market would respond through an increase in supply from elsewhere. I agreed with this assumption.

169. Even if a likely net increase were demonstrated, in relation to s 527E(1)(b), I found that the impacts caused by an increase to global temperature on protected matters listed above (i.e. the physical effects of climate change) are not 'impacts' of the proposed action because the proposed action's contribution to global GHG emissions would be so small that the proposed action could not be considered to be a substantial cause of those impacts.

170. Further and alternatively, I considered that even if the particular contribution of the proposed action's emissions to global climate change were a *direct consequence* of the proposed action, the relative increase to global temperature would be so small that it would not meet the level of 'significant' impact on MNES.

171. In making the above conclusions I took into account the department's advice that:

    a. The GHG emissions from the proposed action represents up to 0.0740 % of Australia's estimated annual national emissions, as reported with the most recent available data and up to 0.0349 % of global emissions (measured in CO_2-e) from 2021.

    b. The potential maximum increase in global temperature that could arise from the proposed action's estimated total GHG emissions, in a scenario where it could be shown that the proposed action would result in a maximum net increase in global GHG emissions and global average temperature, is approximately 1.75×10^{-4}°C or 0.000174847°C. I noted that the department prepared this estimate assuming a one-for-one relationship based on the information provided by the Intergovernmental Panel on Climate Change Working Group 1 that the relationship between anthropogenic CO2 and global temperature has thus far been approximately linear, meaning that each 1,000 gigatons of cumulative CO_2 emissions contributes to an approximate 0.45°C increase in global temperature.

172. I also noted that the proponent has already developed a series of management plans to mitigate scope 1 GHG emissions from the MCCM, as outlined above at [147]. While I noted these current and potential emission mitigation and management measures, they did not affect my conclusion that the proposed action is not likely to have a significant impact on MNES arising from the physical effects of climate change.

Precautionary principle

173. In making my decision under section 75, I am required to take account of the precautionary principle to the extent I can do so consistently with the other provisions of the EPBC Act (see section 391 of the EPBC Act). The precautionary principle 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.

174. I accepted the department's advice that there are threats of serious or irreversible damage to the listed threatened species and communities. In particular, I considered that significant impacts to box-gum grassy woodland and the swift parrot are likely.

175. In its consideration of impacts to listed threatened species and communities, the department undertook an analysis of information available in the referral documentation, the NSW BioNet Vegetation Classification, aerial imagery, the NSW State Vegetation Type Mapping (SVTM) and departmental mapping tools. The department determined that there was insufficient data available within the referral documentation to determine the extent of impacts to other listed threatened species and communities. Based on this, the department determined that there was insufficient scientific certainty about the likely nature and/or extent of impacts to listed threatened species and communities. I agreed with this conclusion.

176. I took account of the precautionary principle and considered that the principle confirmed my conclusion that the proposed action is a controlled action.

177. As outlined above, I also considered that there are threats of serious or irreversible damage to water resources. I agreed with the department that the proposed action is likely to cause changes to surface and groundwater hydrology, surface water quality, and groundwater quality.

178. In its consideration of the impacts of the proposed action on water resources, the department undertook an analysis of the referral documentation and the scoping report provided to the state, which was provided to me. The department concluded that based on the age of the data and modelling available, there is scientific uncertainty surrounding the impacts of the proposed action on water resources, and accordingly, the precautionary principle applies to this matter. The precautionary principle confirms my conclusion that the proposed action is a controlled action in relation to its impacts to water resources.

179. In relation to the matters protected by provisions which I have not found to be controlling provisions (set out above), I agreed with the department that there are no threats of serious or irreversible environmental damage. Further, I do not consider that there is a lack of scientific certainty as to the nature or scope of the threat of environmental damage in relation to these other protected matters. For these reasons, the precautionary principle does not apply and does not affect my conclusion that those other protected matters are not controlling provisions.

CONCLUSION

180. For the reasons given above, having taken into account all of the relevant considerations, I concluded that the proposed action is a controlled action because there are likely to be significant impacts on listed threatened species and communities (section 18 & section 18A) and a water resource, in relation to unconventional gas development and large coal mining development (section 24D & section 24E).

name and position	Sarah Reachill Acting Branch Head Environment Assessments (NSW, ACT)
signature	
date of decision	4 July 2025

Annexure A – Relevant Legislation

Section 68 of the EPBC Act relevantly provides:

181. 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.

182. A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

Section 74 of the EPBC Act relevantly provides:

Inviting other Commonwealth Ministers to provide information

1) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:

    a. inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and

    b. invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from appropriate State or Territory Minister

183. 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

184. As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:

    a. the referral; and

    b. an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

1) The Minister must decide:

    c. whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

    d. 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

    e. within the period specified in the invitation.

Considerations in decision

185. 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

186. 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.

Annexure B – Documents Considered

Referral Documentation

- EPBC Referral
- Action Description
- Scoping Report
- Environmental management and Compliance Report
- EPBC Act MNES Review
- EPBC Act PMST Report
- Scoping Report

Other Documentation

- NSW Planning Secretary Environmental Assessment Requirements (SEARs)

Protected Matters Search Tool report and statutory documentation

- Protected Matters Search Tool Report 10 km dated 19 February 2025
- Conservation Advice for the White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland
- National Recovery Plan White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland
- Conservation Advice, *Lathamus discolour* swift parrot
- National Recovery Plan for the Swift Parrot (*Lathamus discolor*)
- EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance
- EPBC Act Policy Statement – Significant Impact Guidelines 1.3 – Coal seam gas and large coal mining developments - impacts on water resources
- EPBC Act Policy Statement – Staged Developments – Split referrals: Section 74A of the EPBC Act

International Policy Documents

- NDC and International Government Policies
- International Energy Agency *Coal 2024 Analysis and forecast to 2027*

Requests for further information

- Request for information sent to proponent from department – 2 September 2024
- Response from proponent – 11 September 2024
- Request for information sent to proponent from department - 24 October 2024
- Response from proponent – 6 November 2024

- Request for information sent to proponent from department – 12 December 2024
- Response from proponent – 14 January 2025

Ministerial Comments

- Comments from Commonwealth Minister for Resources and Minister for Northern Australia
- Comments from Commonwealth Minister for Finance
- Comments from NSW Minister for Planning and Public Spaces

Public Comments

- Table of public comments provided through EPBC Portal and attachments.