



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

I, BRENDAN LINTON-SMITH, Acting Branch Head, Environment Assessments (Vic and Tas) and Post Approvals Branch, Department of Climate Change, Energy, the Environment and Water, delegate for the Minister for the Environment, provide the following statement of reasons for my decision of 28 July 2025, under subsection 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, to approve the Marinus Link Interconnector Project proposed by Marinus Link Pty Ltd, being the construction, operation and decommissioning of a high voltage direct current electricity interconnector comprised of dual transmission lines between Victoria and Tasmania, including subsea cable and onshore cable and converter facilities (EPBC 2021/9053).

Legislation

- 1) Extracts of the key provisions of the EPBC Act relevant to my decision are set out in Annexure A.

Background

- 2) Marinus Link Pty Ltd (ACN: 630 194 562) (the **proponent**) proposed to construct, operate and decommission a 1,500 megawatt (**MW**) High Voltage Direct Current (**HVDC**) electricity interconnector, including a subsea cable and onshore cable and converter facilities, between Victoria and Tasmania (**proposed action**).
- 3) The proponent is jointly owned by the Australian Government (49%), the Victorian Government (33.3%) and the Tasmanian Government (17.7%).
 - a) The proponent's Board includes nominees representing each of the three governments to ensure balanced governance and oversight.
 - b) The Rewiring the Nation Office within the department is also responsible for being the project proponent, and a future shareholder of the Proponent. The Clean Energy Finance Corporation is the financing arm of the Rewiring the Nation Program.
- 4) The proposed action will be implemented in two stages. Stage One, which is scheduled for construction between 2026 and 2030, involves a 750 MW HVDC cable across the Bass Strait, along with converter stations in both Tasmania and Victoria. Stage Two would add a second 750 MW HVDC cable, effectively doubling the transmission capacity. The timing of Stage Two had not been announced as at the time of my decision. Vegetation, including trees within this corridor, may be cleared to prevent root interference, facilitate maintenance access, or reduce fire risk. The extent and design of vegetation clearance will be guided by environmental assessments and agreements with landholders.
- 5) The subsea transmission cables will cross the Bass Strait starting from Heybridge in Tasmania to Waratah Bay in Victoria. There are approximately 255 km of subsea cable proposed to be

laid across the Bass Strait from Heybridge to Waratah Bay, where it will continue about 90 km underground to Hazelwood in the Latrobe Valley. The cable will be laid in two stages at approximately 2 km apart and buried at 0.5 – 1.5 m depth. The two cables will sit parallel at the shore crossings at Heybridge in Tasmania and Waratah Bay in Victoria.

- 6) There are two proposed shore crossings at Heybridge and Waratah Bay, and the cable installation will begin at a temporary drill pad located behind the dunes and extend underground via horizontal directional drilling (**HDD**), emerging on the seabed approximately 1 kilometre offshore beyond the surf zone at Waratah Bay and Heybridge.
- 7) A high voltage alternating current (**HVAC**) switching station and HVAC–HVDC converter station are proposed at Heybridge in Tasmania. The proposed converter station construction footprint is approximately 10 ha.
- 8) A land-sea cable joint or transition station is proposed in Victoria where the subsea cables will connect to the land cables, as well as a fibre optic cable inspection and test hut (communications building) adjacent to Waratah Bay.
- 9) Approximately 90 km of underground land transmission cables are proposed from Waratah Bay to a HVAC switching station and HVAC–HVDC converter station site adjacent to the existing Hazelwood Terminal Station, Victoria. This is where the project will connect to the existing Victorian transmission network. Land cables are to be laid in separate trenches approximately 2 m apart and a minimum depth of 1.5 m.
- 10) The HVDC cables will be laid within a construction corridor that is typically 20 to 36 m wide. This corridor accommodates trenching for the cables, joint bays, and associated infrastructure. In sensitive areas, such as major roads, railways, watercourses, and important patches of native vegetation, the cables will be installed using HDD to avoid direct surface disturbance.
- 11) Within Tasmania, the habitat surrounding the converter station and shore crossing components include dry forests, woodlands, scrub, patches of swamp, wet forests along the Blythe River, and a coastal dune and beach system supporting native coastal scrub vegetation. The proposed Heybridge converter station is located within a site that is mostly cleared of native vegetation which abuts the Bass Highway and proposed shore crossing at Tioxide Beach to the north.
- 12) The Bass Strait, approximately 255 km wide with an average depth of 60 m, is characterised by islands, deep ocean drop-offs, and the merging currents of the Pacific and Southern Oceans, resulting in a complex oceanic environment with varied water temperatures and complex large-scale ocean currents. The subsea interconnector route between Tasmania and Victoria would lie wholly within the Bass Strait Shelf Province of the South-east Marine Region and passes through three marine bioregions namely, the Boags, Central Bass Strait, and Flinders bioregions. In the nearshore areas of Tasmania and Victoria, the seabed consists of both soft sediments and hard bedrock, where geophysical surveys conducted during the assessment stage were able to map and analyse the seabed composition along the route.

- 13) The Victorian terrestrial route spans the Gippsland Plain and Strzelecki Ranges bioregions, covering the South Gippsland Shire and City of Latrobe areas. Native vegetation is mostly cleared in southern and central sections of the cable route which have been replaced by pastoral lands with fragmented woodlands. In the Strzelecki Ranges, vegetation becomes denser, featuring plantations of native and introduced species. Exiting the northern foothills, the route returns to pastoral lands with scattered woodlands in the Latrobe Valley. Key ecological highlights include Waratah Bay's dune and beach system, coastal forests, heathy woodlands, swamp scrub, wetlands, intersecting waterways, forested gullies, creek lines, and roadside and woodland remnants providing habitat for grassy woodland and grassland species.
- 14) The proposed action would partly traverse the Gippsland and Bass Strait off Northern Tasmania areas declared under the *Offshore Electricity Infrastructure Act 2021* (Cth) (**OEI Act**), including areas where proponents of offshore renewable projects have applied for feasibility licence permits.
- 15) The Marinus Link project is closely linked to several other projects currently undergoing assessment under the EPBC Act in Tasmania. These include:
 - a) Robbins Island Renewable Energy Park (EPBC 2017/8096), a large-scale wind farm in northwest Tasmania that may supply renewable energy for export to mainland Australia via Marinus Link;
 - b) Jim's Plain Renewable Energy Park (EPBC 2017/8065), a companion project to Robbins Island, also contributing renewable generation capacity;
 - c) North West Transmission Developments which will connect energy generation sites to the Marinus Link infrastructure. Relevant referrals include:
 - i) Staverton to Hampshire Hills transmission line (EPBC 2020/8817); and
 - ii) Remaining North West Transmission Developments (EPBC 2022/09247).

Procedural history

Referral, control action and assessment approach decision

- 16) The proponent referred the proposed action under the EPBC Act on 5 October 2021. On the same day, the proposal was published on the department's website where public comments were invited until 19 October 2021.
- 17) Three public submissions were received on the referral. The submissions raised concerns that the project should be included as part of a larger strategic assessment which considers the related transmission infrastructure upgrade projects, due to the linkages between them, and that the broader impact of the proposed action and other related actions should be assessed together rather than as separate referrals.
- 18) On 4 November 2021, a delegate of the Minister decided that the proposed action was a controlled action due to likely significant impacts to listed threatened species and communities (sections 18 and 18A), listed migratory species (section 20 and 20A) and the environment of the Commonwealth Marine Area (sections 23 and 24A). I noted that, on the

same day, it was determined that the proposed action was to be assessed by Environmental Impact Statement (EIS) as the project involved impacts in Tasmania, Victoria and the Commonwealth Marine Area.

Assessment documentation

- 19) The assessment processes between the states and the Commonwealth were aligned to minimise duplication of effort, align timeframes and to avoid potential inconsistencies. The Commonwealth's EIS process was undertaken in conjunction with the Victorian Government Environment Effects Statement (EES) process under the *Environmental Effects Act 1978 (Vic) (EE Act)* which provides a comprehensive assessment of the environmental impacts along the entire alignment from Heybridge, Tasmania to Hazelwood, Victoria.
- 20) On 19 October 2022, following a period of public consultation where 2 submissions were received, the department provided the proponent with final guidelines for the preparation of the Commonwealth EIS.
- 21) In June 2023, the Tasmanian Government requested that the proponent prepare two separate EIS documents to meet Tasmania's specific assessment requirements. These documents were intended to provide additional detail on avoidance, mitigation, and management measures that could not be fully addressed in the combined Commonwealth and Victorian EES. The Tasmanian process is an independent assessment undertaken solely for the purposes of the Tasmanian Government and involves separate evaluations of the Tasmanian shore crossing and the Heybridge Converter Station components.
- 22) A draft combined EIS/EES was published for public comment for a period of 30 business days between 31 May 2024 and 12 July 2024. There were 27 public submissions received on the draft EIS/EES.
- 23) On 17 July 2024, an Inquiry and Advisory Committee (IAC) was appointed to review the submissions made to the Victorian Government on the assessment material provided under the Commonwealth EIS process. There was a 13-day public hearing to consider those submissions and public evidence. The IAC provided a final report on 13 December 2024.
- 24) On 18 May 2025, the Victorian Planning Minister's Assessment Report under the EE Act was signed. The Assessment Report endorsed the findings from the IAC and the recommendations that the environmental effects of the proposed action could be acceptably managed with appropriate conditions. I noted that the Victorian Government will now consider whether to approve the project under other relevant statutory frameworks including the *Planning and Environment Act 1987 (Vic)*, *Marine and Coastal Act 2018 (Vic)* and *Aboriginal Heritage Act 2006 (Vic)* together with any conditions that will be required to acceptably manage the environmental effects of the project.
- 25) I noted that, at the time of my decision, the Tasmanian Government Environment Protection Authority (EPA) was assessing the Tasmanian components of the Marinus Link project under the *Environmental Management and Pollution Control Act 1994 (Tas)* via two EISs. Public consultation on both draft EIS closed in February 2025. Whilst the EPA's decision was still pending at the time of my decision, I noted that the department has considered those matters

being addressed under the Tasmanian EIS process that are relevant under the EPBC Act in preparing its recommendations.

Proposed approval and consultation

- 26) On 27 June 2025, a delegate of the Minister proposed to approve the proposed action subject to proposed conditions of approval.
- 27) On 27 June 2025, a delegate of the Minister wrote to the following Commonwealth and State Ministers who may have administrative responsibilities relating to the proposed action pursuant to s 131 of the EPBC Act:
 - a) Senator the Honourable Katy Gallagher, Minister for Finance (by her delegated contact Ms Suzanne Hinchcliffe);
 - b) The Honourable Madeline King MP, Minister for Resources and Minister for Northern Australia;
 - c) Senator the Honourable Malarndirri McCarthy, Minister for Indigenous Australians;
 - d) The Honourable Richard Marles MP, Minister of Defence (by his delegated contact Ms Berlinda Bowler);
 - e) The Honourable Madeleine Ruth Ogilvie MP, Minister for the Environment (TAS) (by her delegated contact Ms Catherine Murdoch); and
 - f) The Honourable Sonya Kilkenny MP, Minister for Planning (VIC) (by her delegated contact Dr Bruce Abernethy).
- 28) Each of the abovementioned Ministers were invited to comment on the proposed decision, including on any matters of economic or social concern that should be considered consistent with the principles of ecologically sustainable development.
- 29) On 27 June 2025, a delegate of the Minister also wrote to the proponent in accordance with section 131AA of the EPBC Act and invited it to comment on the proposed decision of approval and conditions.
- 30) On 1 July 2025, the Department of Finance responded on behalf of Senator the Hon Katy Gallagher, Minister for Finance stating that they had no comments on the proposed decision.
- 31) On 2 July 2025, the department sought informal comment from the Offshore Infrastructure Regulator (**OIR**) on the proposed decision. The OIR has responsibilities regarding offshore electricity generation and transmission projects in the Commonwealth Marine Area under the OEI Act. Under the OEI Act, proponents are required to prepare a Management Plan that incorporates all relevant obligations under the EPBC Act. In its response provided on 14 July 2025, the OIR advised that it did not have any concerns and that it considered the proposed conditions could be readily operationalised and built into a management plan for the OEI Act licence activities.
- 32) On 2 July 2025, the department consulted with the Environmental Permitting and Compliance Branch regarding proposed changes to condition 6, in particular, the timing to submit the pre-clearance surveys prior to clearing. They advised that timing of submitting the pre-clearance survey was not a concern for enforcing the condition. However, as written, the condition did

not support enforcement of pre-clearance prior to clearing, since there is no requirement to report the date when clearing has commenced at each site.

- 33) On the basis of that advice from the Environmental Permitting and Compliance Branch, the department recommended amending condition 9 to include a sub-condition requiring the approval holder to report, in the post-clearance survey for each site, the dates on which clearing commenced and cable installation was completed. The department assessed that the provision of this information sooner was not necessary or convenient for the protection of listed threatened species and communities. I agreed with the proposed amendment to the condition.
- 34) On 4 July 2025, the proponent responded and proposed amendments to the conditions on the proposed decision including that:
- a) Condition 6 be amended to reduce the amount of business days that the pre-clearance survey results required under conditions 4, 5 and 6 must be uploaded onto the proponent’s website ahead of clearing at a previously unsurveyed site; and
 - b) Condition 2 be amended to allow certain clearing limits for listed threatened species to be increased as summarised in the following table:

Species habitat	EPBC species listing	Proposed decision clearing limit	Clearing limit proposed by the proponent
River Swamp Wallaby Grass	Vulnerable	0.40 ha	0.82 ha
Eastern Spider Orchid	Endangered	0.30 ha	1.27 ha
Thick-lipped Spider Orchid	Vulnerable	0.30 ha	1.27 ha
Dense Leek Orchid	Vulnerable	0.30 ha	1.27 ha
Green-striped Greenhood	Vulnerable	0.30 ha	1.27 ha
Leafy Greenhood	Endangered	0.30 ha	1.27 ha
Strzelecki Gum	Vulnerable	0 individual	1 individual

- 35) After providing the comments on 4 July 2025, the proponent advised that the higher clearing limit had always been the basis for maximum clearing limits from which it intends to improve outcomes towards what was listed as the minimum. The proponent also reaffirmed its belief that the maximum clearing limits proposed in its comments would not constitute a significant impact once avoidance and mitigation measures proposed in the Victorian Planning Minister’s Assessment are implemented. I agreed with the proposed amendments to condition 2, noting that in its response on 4 July 2025, the proponent explained that the higher clearing limits provided necessary flexibility for a ‘worst case’ scenario in which proposed mitigation measures could not be fully implemented.
- 36) On 4 July 2025, Geoscience Australia responded on behalf of the Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia. Geoscience Australia

recommended including a dedicated section on marine geology and geomorphology in the EIS to support assessment of potential project impacts. The department assessed that information regarding marine geology and geomorphology is already presented in the Marine Ecology chapter of the EIS/EES. The department also assessed, and I agreed, that the information provided was sufficient to ascertain the likely impacts of subsea cable laying operations on protected matters.

- 37) On 7 July 2025, the department consulted with the Post Approvals Section in relation to condition 6. The Post Approvals Section advised that timing is not expected to be an issue because the conditions only require the approval holder to notify the department once the surveys are published and provide a link to the documents. On that basis, the department recommended reducing the requirement for submitting the pre-clearance surveys in condition 6 to 10 business days. The department assessed that the new timeframe would be sufficient for providing transparency to the public without impacting regulatory processes. I agreed with the department's assessment, and the proposed change to condition 6 (which aligned with the proponent's comment to reduce the number of business days set in that condition).
- 38) On 8 July 2025, the Tasmania EPA responded on behalf of the Hon Madeleine Ruth Ogilvie, Minister for the Environment (Tas) suggesting that the *National Recovery Plan for threatened Albatrosses and Giant Petrels* identified in Appendix C of the conditions be updated to the current version. The department updated Appendix C (Appendix B in the final conditions) to include the *Recovery Plan for threatened Albatrosses and Giant Petrels* (DCCEEW 2022) which is consistent with the version listed in the Species Profile and Threats database. I agreed with the proposed change, and noted that the advice provided in the Recovery Plan for threatened Albatrosses and Giant Petrels was taken into account during the assessment of the proposed action and in the preparation of the department's recommendations.
- 39) On 10 July 2025, the Victorian Department of Transport and Planning (**DTP**) requested consent to submit their comments on 15 July 2025, outside the formal comment period set by subparagraph 131(1)(b) of the EPBC Act. The department confirmed that the DTP could provide its comments by 15 July 2024 as it considered that it would be prudent to consider the comments from the Victorian Government given that the majority of terrestrial impacts from the proposed action would occur in the Victorian jurisdiction.
- 40) On 11 July 2025, the National Indigenous Australians Agency (**NIAA**) responded on behalf of Senator the Hon Malarndirri McCarthy, Minister for Indigenous Australians, recommending that the proponent seek advice on its legal engagement obligations, in particular, with Tasmanian Aboriginal organisations to discuss any potential environmental, cultural, social and economic interests and concerns they may have in relation to a project. The NIAA correspondence identified 4 key groups and provided their contact emails, recommending that they be approached for further engagement. The department incorporated the NIAA's recommendations in the revised conditions that were provided to the proponent, and I agreed with those proposed changes.
- 41) On 13 July 2025, the Department of Defence responded on behalf of the Hon Richard Marles MP, Minister for Defence stating they had no comments on the proposed decision.

- 42) On 15 July 2025, the Victorian DTP responded on behalf of the Hon Sonya Kilkenny MP, Minister for Planning (Vic). The response from DTP included comments from the Department of Energy, Environment and Climate Action. The comments raised concerns about, amongst other things:
- a) Clearing limits for the listed vulnerable Grey-headed flying fox (*Pteropus poliocephalus*), several migratory species and several species that were not listed at the time of the referral decision
 - b) Noise mitigations for the vulnerable Eastern Hooded Plover (*Thinornis cucullatus cucullatus*)
 - c) Pre-clearance survey requirements
 - d) Avoidance and mitigation measures for whales
 - e) Management plan requirements.
- 43) The DTP's comments on the proposed decision also recommended adding conditions to allow translocation of orchids and to develop an environmental management plan to manage avoidance and mitigation measures.
- 44) In response to the comments from DTP, the department updated details about the Underwater Cultural Heritage Management Plan (**UCHMP**) in Appendix B to ensure that the approval holder complies with its obligations under the *Underwater Cultural Heritage Act 2018* (Cth) (**UCH Act**). I agreed with the proposed changes.
- 45) No other responses were received in response to the Ministerial invitations to comment.
- 46) On 17 July 2025, the department provided the proponent a copy of the proposed decision seeking its agreement to the conditions that had been revised in light of the above consultation processes.
- 47) On 21 July 2025, the proponent confirmed that it did not have any issue with the proposed conditions.

Approval decision

- 48) On 28 July 2025, I decided to approve the proposed action subject to conditions.

Evidence or other material on which my findings were based

- 49) My decision under section 133 of the EPBC Act to approve the taking of the proposed action was based on consideration of the approval decision brief prepared by the department, which I signed on 28 July 2025, and all of its attachments.
- 50) A full list of the attachments to the decision brief that I considered is set out at [Annexure B](#).

Findings on material questions of fact

- 51) In deciding whether to approve the proposed action, I considered all impacts that the proposed action would have or would likely have on each matter protected by the controlling provisions for the action as required by subparagraph 136(1)(a) of the EPBC Act. The

controlling provisions for the proposed action are sections 18, 18A, 20, 20A, 23 and 24A of the EPBC Act.

- 52) In deciding whether or not to approve the taking of the proposed action, I took into account (among other matters) the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.
- 53) I took into account the assessment of the proposed action in the finalised EIS/EES.
- 54) I also considered and agreed with the department's recommendation prepared in accordance with section 105 of the EPBC Act which concluded that the proposed action should be approved under section 133 of the EPBC Act subject to conditions (noting that some of the conditions I have imposed on the approval have been revised in light of the comments discussed above).
- 55) I was satisfied that the department's recommendations were reached having regard to the matters required under section 136 of the EPBC Act and other relevant provisions of the legislation. I agreed with the department's assessment that the potential impacts on matters protected under the relevant controlling provisions are temporary and reversible and are unlikely to impact upon biological diversity or compromise ecological integrity of key habitat for listed species or communities. Any residual impacts were considered unlikely to be significant.

Listed threatened species and ecological communities (sections 18 and 18A) and listed migratory species (sections 20 and 20A)

Gippsland Red Gum (Eucalyptus tereticornis subsp. mediana) Grassy Woodland and Associated Native Grassland – Critically Endangered

- 56) The Gippsland Red Gum, Grassy Woodland and Associated Native Grassland Threatened Ecological Community (TEC) is a eucalypt woodland ecological community dominated by Gippsland Red Gum (*Eucalyptus tereticornis* subsp. *mediana*) and ground layer dominated by grasses or grass-like plants. I noted that this ecological community is endemic to Victoria and restricted to the eastern Gippsland Plain between the Strzelecki Ranges and the Tambo River valley. Threats includes vegetation clearance, fragmentation of remnants, management regimes (fire, grazing, mowing) that are inappropriate to specific grassland or grassy woodland requirements, weed invasion, pest animals, infrastructure and maintenance works and rural tree dieback.
- 57) I noted that desktop surveys and detailed vegetation quality assessments conducted between June 2021 and December 2022 identified 0.11 ha of the Gippsland Red Gum TEC within the proposed action area at a single location along McFarlane Road, Hazelwood. The 0.11 ha patch within the proposed action area is part of a larger patch.
- 58) Vegetation quality assessments were undertaken in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017). I had regard to the EIS/EES which noted that access constraints prevented on-ground surveys in some areas, particularly in the Latrobe Valley section. In these areas, vegetation was assessed using aerial imagery and observations from adjacent accessible land. The report states that the unsurveyed areas do

not coincide with land considered likely to support TEC. I considered that the survey effort is adequate to determine the extent and presence of TEC within the survey area and no further investigations were required.

Assessment of impacts

- 59) The department's *EPBC Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance* (2013) states that an action is likely to have a significant impact on a listed endangered or critically endangered ecological community if there is a real chance or possibility that it will reduce the extent of an ecological community or fragment or increase fragmentation of an ecological community (for example by clearing vegetation for roads or transmission lines).
- 60) I noted that the *Approved Conservation Advice for Gippsland Red Gum* (*Eucalyptus tereticornis* subsp. *mediana*) *Grassy Woodland and Associated Native Grassland* highlights the importance of full avoidance of impacts to any remnant of this community, and that this is reflected in the Marinus Link project's commitment to use trenchless construction to avoid the 0.11 ha patch identified at McFarlane Road.
- 61) I also considered that the IAC Report acknowledges that this ecological community is of "very high sensitivity" due to its critically endangered status under the EPBC Act and states that any potential impact is treated with caution. Moreover, the report noted that the residual significance of impact was assessed as "moderate" in the EIS/EES, but clarified that this rating reflects the community's high sensitivity rather than the actual scale of impact.
- 62) I considered and agreed with the department's assessment that any clearance of this critical endangered habitat should be avoided and that the proposed avoidance and mitigation measures are not completely without risk.

Avoidance, mitigation and management measures

- 63) In order to avoid impacts on the Gippsland Red Gum Grassy Woodland and Associated Native Grassland TEC, the proponent proposed avoidance through design refinement, including realigning the area of disturbance and using trenchless construction methods such as HDD. I noted that additional mitigation measures include weed and disease management protocols, sediment and pollution controls and incident response procedures to address any accidental disturbance. Given the early integration of these strategies into the project design and their alignment with best-practice ecological management, I considered that the likelihood of avoiding both direct and indirect impacts to this critically endangered community was high.
- 64) I noted that these avoidance and mitigation measures are supported by environmental performance requirements (EPR) that mandate the identification and flagging of the community, establishment of no-go zones and exclusion of construction activities from sensitive areas. I had regard to the IAC Report which states that trenchless construction is the preferred methodology for avoiding and minimising impacts on this community located along McFarlane Road, Hazelwood. Moreover, I had regard to the Victorian Planning Minister's Assessment which supports the recommendations in the IAC Report and reinforces that trenchless construction is the preferred and committed method for avoiding impacts at this site. The Minister's assessment recommends that the biodiversity management plan include

pre-construction assessments, no-go zones and tree protection measures to ensure the community is not disturbed. Overall, I considered and agreed with the recommendations in the IAC Report and the Victorian Planning Minister's Assessment.

Proposed outcomes and conditions

- 65) I noted that the avoidance and mitigation measures proposed to avoid clearing of the protected matter in the EIS/EES. In order to ensure that no further patches are found on land that wasn't surveyed, I considered that it was necessary or convenient to require pre-clearance and post-clearance surveys be undertaken to guide effective avoidance of habitat for listed species as a condition of the approval (conditions 3 to 11).
- 66) I also noted that the IAC Report recommends implementing a Biodiversity Management Plan (EPR ECO2) and Aquatic Habitat Protection Measures (EPR ECO3) which, if implemented, will include implementing trenchless construction methods, such as HDD, to avoid impacts to the Gippsland Red Gum TEC. I considered and gave weight to the department's assessment that it was highly likely that the Biodiversity Management Plan will be implemented by the Victorian Government and have not sought to duplicate that process in the conditions imposed on the approval.
- 67) I considered and agreed with the department's assessment in relation to the Gippsland Red Gum TEC that the proposed action is unlikely to:
- a) reduce the extent of an ecological community;
 - b) fragment or increase fragmentation of an ecological community, for example by clearing vegetation for roads or transmission lines;
 - c) adversely affect habitat critical to the survival of an ecological community;
 - d) cause a substantial change in the species composition of an occurrence of an ecological community, including causing a decline or loss of functionally important species, for example through regular burning or flora or fauna harvesting; and
 - e) interfere with the recovery of an ecological community.

Conclusion

- 68) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Gippsland Red Gum TEC are unlikely to lead to a significant impact on the Gippsland Red Gum TEC.
- 69) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Gippsland Red Gum TEC and noted that there is a low level of uncertainty around what the proposed environmental impacts are.

Strzelecki Gum (Eucalyptus strzeleckii) – Vulnerable

- 70) The Strzelecki Gum (*Eucalyptus strzeleckii*) is a forest swamp gum tree growing to 30 m tall (rarely to 40 m) with smooth white bark and red-brown mottling. The species is endemic to the Strzelecki Ranges in the South and West Gippsland region of Victoria, where there are

estimated to be between 5,000–15,000 individuals. I noted that the *Conservation Advice for Eucalyptus strzeleckii Strzelecki gum* (2008) states that distribution of the Strzelecki gum is severely fragmented, and that distribution is limited to approximately 50 populations. The Strzelecki gum flowers in spring and ripe fruit has been collected in November of each year.

- 71) I had regard to the EIS/EES which recorded that the survey effort for Strzelecki gum was part of a broader ecological assessment conducted between June 2021 and December 2022. I noted that surveys were conducted in accessible areas, and where access was restricted, vegetation and species presence were inferred using aerial imagery, adjacent land observations and modelled data. The surveys found that the Strzelecki gum has very limited occurrence in the proposed impacted area of the project action area. There were 104 individual Strzelecki gums recorded throughout the study area. However, there is one individual Strzelecki gum known to occur in the area of disturbance that may be impacted by the project.

Assessment of impacts

- 72) I had regard to the IAC Report which notes that the potential impacts on Strzelecki gum (as well as Yarra gum and the Strzelecki Ranges damp forest flora functional group) will be avoided by:
- a) Micro-siting the alignment to steer clear of known individuals or populations; and
 - b) Using trenchless construction methods, such as HDD, where feasible, to avoid direct impacts on native vegetation and priority habitats (EPR ECO1 and ECO1A).
- 73) I agreed with the IAC Report and the proponent's commitment to avoid impacts on the protected matter through design refinement and construction controls.

Avoidance, mitigation and management measures

- 74) I noted that the EIS/EES states that only one known Strzelecki gum is within the area of disturbance and it is proposed to avoid impact through HDD, micro-siting and construction controls. The EIS/EES also notes that additional individual trees may exist in unsurveyed areas, for which the same avoidance measures will be applied if new populations are identified.
- 75) I had regard to the IAC Report which considered the proposed avoidance and mitigation measures for Strzelecki gum to be appropriate and effective, provided they are implemented as committed and supported by further targeted surveys and adaptive design refinements. I also considered the Victorian Planning Minister's Assessment which recommended that the biodiversity management plan be prepared and include pre-construction assessments, no-go zones and tree protection measures to ensure the community is not disturbed (ECO1, ECO1A and ECO2). Overall, I considered and agreed with the recommendations in the IAC Report and the Victorian Planning Minister's Assessment.

Proposed outcomes and conditions

- 76) I considered that there are no identified important populations of Strzelecki gum intersecting the area of disturbance and impacts to the one individual tree of the species will be avoided. However, the conditions imposed on the approval include pre-clearance and post-clearance surveys to determine if more individuals of this species are within the area of disturbance

(conditions 3 to 11). If further individuals are found, I have a high level of confidence that the tree protection measures outlined in the IAC Report and Recommended in the Victorian Planning Minister's Assessment will be enforced and adhered to.

- 77) In light of the above, and taking into account the proponent's commitments to avoid and mitigate direct and indirect impacts to this species on previously unsurveyed land and those commitments being reflected in the Victorian Planning Minister's Assessment (EPR ECO1, ECO1A and ECO2), I considered that the project is unlikely to interfere with the recovery of this species or lead to a long-term decrease in the size of an important population of Strzelecki gum.
- 78) I considered and agreed with the department's assessment in relation to the Strzelecki gum that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species
 - b) reduce the area of occupancy of an important population
 - c) fragment an existing important population into two or more populations
 - d) adversely affect habitat critical to the survival of a species
 - e) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
 - f) interfere substantially with the recovery of the species.

Conclusion

- 79) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Strzelecki gum are unlikely to lead to a significant impact on the species.
- 80) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Strzelecki gum and noted that there is a low level of uncertainty around what the proposed environmental impacts are.

*Grey-headed Flying Fox (*Pteropus poliocephalus*) – Vulnerable*

- 81) The Grey-headed Flying Fox (**GHFF**) (*Pteropus poliocephalus*) has a range extending from South East Queensland to the east coast of NSW and Victoria, although only a small proportion of this range is used at any one time, as the species is a selective forager. I noted that the National Recovery Plan for the GHFF states that all GHFF are part of the same contiguous population and that on this basis, the department considers that population an important population for the purpose of determining the significance of an action.
- 82) GHFF roost in large colonies, also known as camps, which provide habitat during critical periods of their annual cycle. The species is highly mobile and forage over extensive areas and have been known to fly up to 50 km from their roost to different feeding areas as food resources change.
- 83) According to the *National Recovery Plan for the Grey-headed Flying-fox*, habitat critical to the survival of the GHFF includes:

- a) Native vegetation communities that provide seasonal foraging resources, particularly during winter and spring, when fewer diet plants flower, and forage is especially scarce e.g., *Eucalyptus* (multiple species), *Corymbia maculata*, *Banksia integrifolia*, *Grevillea robusta* and *Melaleuca quinquenervia*.
 - b) Native vegetation communities not containing the abovementioned species but are either used for foraging during the final weeks of gestation, and during the weeks of birth, lactation and conception or used for foraging within 20 km of a nationally important GHFF camp.
- 84) I had regard to the EIS/EES which identified that there is suitable habitat within the survey area in tall eucalypt-dominated sclerophyll forests in the Strzelecki Ranges. I noted that targeted surveys identified two individuals in this landscape region which indicates this section of the study area is used for foraging. However, there were no known breeding camps located within the survey area, with the survey area providing foraging habitat only.

Assessment of impacts

- 85) I noted that the proposed action's land cable alignment traverses areas of remnant native vegetation, including roadside corridors, riparian zones, and scattered trees, which may provide foraging or roosting habitat for GHFF. The clearance of habitat is likely to include selective clearing of trees that cannot be avoided or are required to be cleared to provide for road access for construction and maintenance of the underground cable or fire access. Trees that are within close proximity to the cable may also be removed to prevent root interference with the underground cable.
- 86) The EIS/EES states that the project will result in the clearance of approximately 4 ha of foraging habitat without mitigation, which may be reduced to 1 ha with implementation of avoidance and mitigation measures proposed in the EPRs. This cleared area represents less than 0.5% of the 218 ha of available habitat within the survey area and given the species' wide range and high mobility, this small-scale habitat loss the proponent does not expect that the proposed clearing of habitat will cause a long-term decline in the GHFF population.
- 87) The EIS/EES also states that the proposed action is unlikely to fragment the GHFF population into two or more populations. Suitable habitat will remain undisturbed outside of the area of disturbance.
- 88) The EIS/EES also notes the importance of winter and spring flowering tree species for foraging and confirms that the proposed area of disturbance intersects with native vegetation that includes these flowering species. However, the EIS/EES does not quantify how many individual winter and spring flowering tree of these species may be cleared.

Avoidance, mitigation and management measures

- 89) I noted that the mitigation measures proposed in the EIS/EES are to reduce the removal and disturbance of native vegetation, which provides habitat for this species. This includes utilising HDD methods or realignment of the area of disturbance, where feasible, to further reduce impacts to native vegetation.

Proposed outcomes and conditions

- 90) I noted that the EPR listed in the Victorian Planning Minister's Assessment include several provisions directly related to tree clearance including:
- a) Design must avoid tree removal where possible, especially large or ecologically significant trees.
 - b) Use HDD or similar to avoid clearing trees in sensitive areas.
 - c) Trees to be retained must be clearly marked and protected during construction.
 - d) Any unavoidable tree removal must be offset per Victorian native vegetation guidelines.
 - e) Ecologists must inspect areas before clearing; fauna must be relocated if needed.
 - f) Accidental tree clearance must be addressed with regeneration or additional offsets per Victorian native vegetation guidelines (EPR ECO1, ECO1A and ECO2).
- 91) In order to manage the potential impacts of the proposed action on the protected matter, I considered that it was necessary or convenient to impose conditions 1 and 2 which include clearance limits to ensure that clearing occurs only within the action area and the proposed action does not exceed the maximum clearing limits proposed in the EIS/EES. Moreover, conditions 7-11 also include provisions for pre-clearance and post-clearance surveys to ensure that any habitat in unsurveyed areas are identified and avoided where possible.
- 92) I considered and agreed with the department's assessment in relation to the GHFF that the proposed action is unlikely to:
- a) Lead to adverse impacts to habitat critical to the survival of the species;
 - b) lead to the long-term decrease in the size of an important population of the species;
 - c) reduce the area of occupancy of an important population;
 - d) disrupt the breeding cycle of an important population;
 - e) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline;
 - f) interfere substantially with the recovery of the species.

Conclusion

- 93) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the GHFF are unlikely to lead to a significant impact on the GHFF.
- 94) In forming my view, I considered the precautionary principle in relation to the potential impacts on the GHFF and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered and agreed with the department's recommendation that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and the conditions of approval are likely to be sufficient to minimise impacts on the species.

Swamp Antechinus (mainland) (Antechinus minimus maritimus) – Vulnerable

- 95) I noted that the *Conservation Advice for the Swamp Antechinus* states that the species is an insectivorous marsupial that occurs mainly in damp areas, particularly areas with dense vegetation 1-2 m above ground level. Its habitat includes dense wet heathlands, tussock grassland sedgeland, damp gullies swamps and shrubby woodlands.
- 96) The Swamp Antechinus is endemic to coastal Victoria, particularly in the south-east and far south-eastern South Australia. Its distribution is highly fragmented, and populations are often isolated due to habitat loss and land use changes. The species is considered to have a patchy and declining range, with many populations occurring in small, disconnected habitat remnants. The species occupies coastal and near-coastal habitats characterised by dense ground cover in wet heathlands, heathy woodlands, sedgeland, tussock grasslands, and damp gullies and swamps. These environments are essential for the species' survival as they provide critical resources for shelter, foraging, and breeding.
- 97) Threats to the Swamp Antechinus include cat and fox predation, habitat loss, habitat degradation and inappropriate fire regimes. Populations are highly fragmented, and population size is suspected to be in continuous decline.
- 98) Swamp Antechinus is a habitat specialist, typically found in dense wet heathlands, tussock grasslands, sedgeland, damp gullies and swamps and shrubby woodlands with thick ground cover and leaf litter.

Assessment of impacts

- 99) I noted that the key threats to the Swamp Antechinus relevant to the project include habitat loss and fragmentation, and small remnant habitat size.
- 100) I had regard to the EIS/EES which noted that there are currently no documented or known important populations of the Swamp Antechinus within the Marinus Link project survey area. Whilst it states that suitable habitat is present in the Waratah Bay landscape region and southern Tarwin Valley, I noted that these areas were not fully surveyed due to access constraints, but the species was assumed present based on habitat quality and known distribution patterns.
- 101) The habitat within the area of disturbance is located on the edge of larger, contiguous patches of suitable vegetation. The EIS/EES concluded that:
- a) The project is unlikely to lead to a long-term decrease in the size of any important population;
 - b) The removal of habitat would result in up to 1.27 ha without mitigation, or 0.28 ha with the implementation of the EPRs; and
 - c) The project is unlikely to fragment existing habitat or disrupt breeding cycles, as the core habitat areas remain intact and connected.
- 102) The EIS/EES also noted that construction activities may promote the prevalence of pest species but also states that invasive species like foxes and cats are already present in the landscape. However, it concluded that the project is unlikely to significantly increase their presence.
- 103) I had regard to the Victorian Planning Minister's Assessment which states that 0.28 ha is the maximum loss extent proposed for each ground dwelling fauna species (which includes

Swamp Antechinus). However, the I noted that the proponent's commitment to achieving clearing of 1.27 ha as the maximum loss extent in the EIS/ESS, which is the extent allowed in my proposed conditions (though I understand that the project will be working towards further reducing potential impacts).

Avoidance, mitigation and management measures

- 104) I noted that the EIS/EES outlines several measures to avoid and minimise impacts on the Swamp Antechinus, including:
- a) Use of trenchless construction methods (e.g. HDD) in sensitive areas to avoid direct habitat disturbance;
 - b) Micro-siting of the cable alignment to avoid high-quality habitat patches; and
 - c) Minimising the construction footprint in areas of known or likely habitat.
- 105) These measures are designed to reduce both direct and indirect impacts on the species and its habitat.
- 106) I also noted that the report recommends the development of a comprehensive Biodiversity Management Plan, including EPR (ECO1A, ECO1B and ECO2), to guide pre-construction ecological activities. In particular, the EPR include:
- a) Support targeted ecological surveys, ensuring alignment with relevant environmental legislation (EPR ECO1).
 - b) Include protocols for the salvage and relocation of fauna, where necessary, prior to construction. These actions must comply with the *Wildlife Act 1975* (Vic) and, where applicable, the EPBC Act (EPR ECO2).
 - c) Mandate daily inspections of open trenches and pits during construction to identify and safely remove any trapped fauna, particularly reptiles and small ground-dwelling mammals (EPR ECO2).
 - d) Timing restrictions to avoid disturbance during breeding season (EPR ECO2).
 - e) Installation of temporary wildlife barriers near priority habitats to prevent the movements of ground-dwelling fauna into high-risk areas, such as access track (EPR ECO2).
- 107) These EPR are in addition to pre-clearance and post-clearance surveys to further identify habitat and the area of disturbance and to inform micro-siting of the trench route, setbacks, access tracks and fire access.

Proposed outcomes and conditions

- 108) I considered the measures proposed by the IAC Report would be effective in minimising impacts on the Swamp Antechinus. I considered that it was necessary or convenient to impose, as a condition on the approval, a clearance limit of 1.27 ha noting that the actual clearance of habitat for the species could be as low as 0.28 ha. The clearance limit will ensure that habitat removal for the species remains within acceptable thresholds. I also considered it necessary or convenient to impose conditions for pre-clearance and post-clearance surveys for areas that were previously unsurveyed due to private land ownership or access constraints.

However, in order to minimise duplication of approvals and potential inconsistencies, I considered and agreed with the department's proposal that the Biodiversity Management Plan and relevant EPR be assessed under the Victorian environmental approval process.

- 109) I considered and agreed with the department's assessment in relation to the Swamp Antechinus that the proposed action is unlikely to:
- a) adverse impacts to habitat critical to the survival of the species;
 - b) lead to the long-term decrease in the size of an important population of the species;
 - c) reduce the area of occupancy of an important population;
 - d) disrupt the breeding cycle of an important population;
 - e) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - f) interfere substantially with the recovery of the species.

Conclusion

- 110) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Swamp Antechinus are unlikely to lead to a significant impact on the species.
- 111) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Swamp Antechinus and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment together with the conditions on the approval are likely to be sufficient to minimise impacts on the species.

Growling Grass Frog (Litoria raniformis) - Vulnerable

- 112) The Growling Grass Frog (*Litoria raniformis*) is a large, ground-dwelling amphibian associated with permanent and ephemeral freshwater habitats, including wetlands, dams and slow-flowing streams. It is listed as vulnerable under both the EPBC Act and the *Flora and Fauna Guarantee Act 1988* (Vic). The key threats to the species include habitat loss and fragmentation, predation by introduced species, disease (notably chytridiomycosis caused by the chytrid fungus) and water pollution. I noted that conservation advice under the EPBC Act highlights the importance of maintaining aquatic habitat connectivity and managing disease spread.
- 113) I noted that, according to the EIS/ESS, the Growling Grass Frog was identified as potentially occurring within the terrestrial ecology study area, particularly in association with waterways and wetlands intersected by the land cable alignment. Whilst no individuals were recorded during field surveys, the species was previously recorded near the Delburn Wind Farm site to the south of the Latrobe Valley. The EIS/EES adopted a precautionary approach, assuming presence in suitable habitats where surveys were not possible due to access constraints. Ephemeral streams and wetlands that may be affected by trenching or construction activities were considered as potential habitat for the species.

Assessment of impacts

- 114) I had regard to the draft *National Recovery Plan for the Southern Bell Frog (Litoria raniformis)*, also known as the Growling Grass Frog, which highlights trenching as a key threat due to habitat fragmentation, hydrological disruption, direct habitat loss, and disease spread (notably chytrid fungus). These impacts can impede frog movement, degrade breeding sites and facilitate pathogen transmission. In order to mitigate these risks, the draft National Recovery Plan recommends:
- a) Avoiding trenching in known or potential habitat;
 - b) Using trenchless methods (e.g. HDD) under sensitive areas;
 - c) Restoring habitat connectivity post-construction;
 - d) Conducting pre-construction habitat and population surveys; and
 - e) Implementing strict biosecurity protocols.
- 115) I noted that the EIS/EES assessed the residual significance of impact on the Growling Grass Frog as moderate, primarily due to uncertainty about its presence and the potential for habitat disturbance. The direct impacts may include temporary disturbance or degradation of aquatic habitats during trenching activities. Indirect impacts include the potential spread of chytrid fungus and habitat fragmentation.
- 116) I also had regard to the IAC Report which noted that while the affected area is small relative to the species' range, the presence of a known population at certain waterways elevates the importance of mitigation. The EIS/EES records that an important population of the Growling Grass Frog is considered to occur at a waterway near the Delburn Wind Farm, where a breeding population of approximately 20–30 individuals was recorded during previous ecological surveys.

Avoidance, mitigation and management measures

- 117) I noted that the EIS/EES commits to measures to avoid and mitigate impacts on the Growling Grass Frog, including:
- a) Targeted surveys and habitat assessments prior to construction to confirm presence and inform design;
 - b) Procedures to manage the spread of chytrid fungus; and
 - c) Trenchless construction at key waterways and pre-clearance surveys by qualified ecologists.
- 118) The EIS/EES concluded that Growling Grass Frog habitat would not be directly impacted as a result of the proposed action and indirect impacts can be reduced through the implementation of measures to comply with EPRs.
- 119) The IAC Report recommended that high-risk areas are assessed and protected, and that trenchless construction is prioritised where habitat suitability is confirmed. I noted that the Victorian Planning Minister's Report supports the findings of the IAC Report and recommended:
- a) Field surveys should be conducted where habitat suitability for the species is uncertain;

- b) Areas critical for maintaining habitat connectivity must be identified to inform crossing design, remediation of habitat and management measures for the Growling Grass Frog;
 - c) DCCEEW and the West Gippsland Catchment Management Authority should be consulted in developing these measures; and
 - d) The measures should be incorporated into the Biodiversity Management Plan (ECO2).
- 120) I noted the department's recommendation that EPRs ECO1 (avoidance and minimisation of habitat loss) and ECO3 (aquatic habitat protection) are also relevant to the avoidance and mitigation of impacts on the Growling Grass Frog.

Proposed outcomes and conditions

- 121) I agreed with the department's conclusion that the measures outlined in the Victorian Planning Minister's Assessment, specifically EPRs ECO1 (habitat avoidance), ECO2 (biodiversity management planning) and ECO3 (aquatic habitat protection), appropriately address potential impacts on the Growling Grass Frog. These EPRs include requirements for trenchless construction at sensitive waterways, targeted field surveys where habitat suitability is uncertain, and management of chytrid fungus.
- 122) I noted that the department supports the findings of the Victorian Planning Minister's Assessment. I was satisfied that it was necessary or convenient to impose conditions 3 to 11 of the approval which require the proponent to undertake pre-clearance and post-clearance surveys of previously unsurveyed areas to ensure that any additional habitat for the species is identified and avoidance and mitigations measures are implemented. I also considered that it was necessary or convenient to impose, as a condition of the approval, a clearance limit of 0.00 ha of Growling Grass Frog habitat to ensure that habitat removal for the species is avoided if habitat for the species is identified in pre-clearance surveys.
- 123) I considered and agreed with the department's assessment that it was highly likely that the management plans proposed by the Victorian Planning Minister will be incorporated into the final conditions of approval for the project, assuming that it is approved, and implemented by the proponent. Accordingly, I have not duplicated these management plans in the proposed conditions under the EPBC Act.
- 124) I considered and agreed with the department's assessment in relation to the Growling Grass Frog that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of an important population;
 - f) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline;
 - g) result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat;

- h) introduce disease that may cause the species to decline, or
- i) interfere substantially with the recovery of the species.

Conclusion

- 125) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Growling Grass Frog are unlikely to lead to a significant impact on the species.
- 126) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Growling Grass Frog and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment together with the conditions on the approval are likely to be sufficient to minimise impacts on the species.

Eastern Spider Orchid (Caladenia orientalis) – Endangered

Thick-lipped Spider Orchid (Caladenia tessellata) – Vulnerable

Dense Leek Orchid (Prasophyllum spicatum) – Vulnerable

Green-striped Greenhood (Pterostylis chlorogramma) – Vulnerable

Leafy Greenhood (Pterostylis cucullata) – Vulnerable

- 127) I considered these plant species together, noting that the plant species are terrestrial orchids associated with coastal woodland and heathland environments, particularly in the Waratah Bay region. The plant species are sensitive to disturbance and rely on intact native vegetation with minimal weed invasion and soil disruption. Common threats to these plant species include land clearing, trampling, invasive species and altered fire regimes.
- 128) According to the EIS/EES, suitable habitat for these species is located within the Waratah Bay woodland flora zone, which overlaps with the proposed shore crossing and adjacent coastal reserve. I noted that, due to access limitations, not all areas have been surveyed, but the EIS/EES assumes presence where habitat is suitable. The mapped Area of Disturbance intersects with these habitats, although trenchless construction methods such as HDD are proposed to avoid direct impacts in sensitive zones.

Assessment of impacts

- 129) I noted that the EES states that no known populations of the Eastern Spider Orchid, Thick-lipped Spider Orchid, Dense Leek Orchid, Green-striped Greenhood or Leafy Greenhood were confirmed within the survey area. However, it did identify that suitable habitat for these species may exist in woodland areas around Waratah Bay, particularly in locations that were not accessible for on-ground surveys. As a precautionary measure, the EIS/EES assumed these species could be present in any suitable but unsurveyed habitat, ensuring that potential impacts were assessed conservatively.
- 130) The EIS/EES states that with the successful implementation of avoidance and mitigation measures, the impact on these species may be reduced to less than 0.30 ha.

Avoidance, mitigation and management measures

- 131) The EIS/EES proposes several measures to avoid and mitigate impacts, including targeted surveys, micro-siting and trenchless construction. I noted that the EPRs require further field assessments and the development of a Biodiversity Management Plan to protect priority habitats.
- 132) I had regard to the IAC Report which supports these measures and recommends updated mapping and construction controls. The IAC Report's recommendations include:
- a) Onsite surveys for all five orchid species prior to construction (EPR ECO1A);
 - b) That detailed design avoids and minimises impacts on priority habitat (EPR ECO1B);
 - c) Offsets for any residual loss (EPR ECO1C); and
 - d) A Biodiversity Management Plan that includes updated mapping, no-go zones, and construction controls (EPR ECO2).
- 133) I noted that the Victorian Planning Minister's Assessment endorses the recommendations of the IAC Report and confirms that trenchless construction at Waratah Bay is essential. It also requires that any loss of habitat be minimised to the extent necessary to avoid significant impact on the listed orchid species.
- 134) I agreed with the avoidance and mitigation measures provided in the Victorian Planning Minister's Assessment and noted that offsets may be required under Victorian environmental law.

Proposed outcomes and conditions

- 135) I noted that the department supports the findings of the Victorian Planning Minister's Assessment. I was satisfied that it was necessary or convenient to impose conditions 3 to 11 on the approval which requires the proponent to undertake pre-clearance and post-clearance surveys of previously unsurveyed areas to ensure that any additional habitat for the species is identified and avoidance and mitigations measures are implemented. I also considered that it was necessary or convenient to impose, as a condition of approval, a maximum clearance limit. In light of the proponent's comments on the draft proposed conditions, I was satisfied that a maximum clearance limit of 1.27 ha of habitat for each species will ensure that impacts to these species are minimised noting that this represents a 'worst case' scenario.
- 136) I considered and agreed with the department's assessment that it was highly likely that the management plans proposed by the Victorian Planning Minister will be incorporated into the final conditions of approval for the project, assuming that it is approved, and implemented by the proponent. Accordingly, I have not duplicated these management plans in the proposed conditions under the EPBC Act.
- 137) I considered and agreed with the department's assessment in relation to the Eastern Spider Orchid that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of a population;
 - b) reduce the area of occupancy of the species;
 - c) fragment an existing population into two or more populations;

- d) adversely affect habitat critical to the survival of a species;
 - e) modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - f) interfere with the recovery of the species.
- 138) I also considered and agreed with the department's assessment in relation to the Thick-lipped Spider Orchid, Dense Leek Orchid, Green-striped Greenhood and Leafy Greenhood that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of an important population;
 - f) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - g) interfere substantially with the recovery of the species.

Conclusion

- 139) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on these plant species are unlikely to lead to a significant impact on the species.
- 140) In forming my view, I considered the precautionary principle in relation to the potential impacts on each of these plant species and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment together with the conditions on the approval are likely to be sufficient to minimise impacts on these species.

River Swamp Wallaby-grass (Amphibromus fluitans) - Vulnerable

- 141) I had regard to the *Approved Conservation Advice for Amphibromus fluitans* (River Swamp Wallaby-grass) which states that the species is a vulnerable aquatic plant that typically inhabits seasonally inundated wetlands, drainage lines and slow-flowing water bodies. The key threats include grazing and trampling by livestock, hydrological changes, and invasion by exotic grasses and weeds.
- 142) I noted that the EIS/EES states that the River Swamp Wallaby-grass is considered likely to occur in several locations across the project area, particularly in the Latrobe Valley and Strzelecki Ranges. A large population of over 100 individuals was identified in a small wetland adjacent to the Morwell River. Ten locations were assessed as having a high likelihood of presence, though only 4 were surveyed due to access constraints. However, the species was assumed as present in unsurveyed areas with suitable habitat. Whilst important populations of river

swamp wallaby grass have not been identified, a large population was recorded within the survey area in a small wetland adjacent to the Morwell River.

Assessment of impacts

- 143) I noted that the EIS/EES states that the impact on the project on the species, after mitigation, is less than 0.40 hectares of habitat. Following implementation of mitigation measures, the impact is expected to be reduced, but due to uncertainty in unsurveyed areas, the residual impact significance remains uncertain. The EIS/EES concludes that this project is unlikely to lead to a long-term decrease in the size of an important population of these species.

Avoidance, mitigation and management measures

- 144) I had regard to the EIS/EES, IAC Report, and Victorian Planning Minister's Assessment which recommend a precautionary approach, including further targeted surveys prior to construction. Key measures include micro-siting, trenchless construction at sensitive waterways and aquatic habitat protection protocols. I noted that EPR EC03 specifically addresses aquatic ecosystem protection, whilst EC01 and EC02 require avoidance and minimisation of habitat loss and the development of a biodiversity management plan.

Proposed outcomes and conditions

- 145) I noted that the department supports the findings of the Victorian Planning Minister's Assessment. I was satisfied that it was necessary or convenient to impose conditions 3 to 11 on the approval which requires the proponent to undertake pre-clearance and post-clearance surveys of previously unsurveyed areas to ensure that any additional habitat for the species is identified and avoidance and mitigations measures are implemented. I also considered that it was necessary or convenient to impose, as a condition of approval, a maximum clearance limit. In light of the proponent's comments on the draft proposed conditions, I was satisfied that a maximum clearance limit of 0.82 ha of habitat for each species will ensure that impacts to these species are minimised and noting that this is a 'worst case' scenario.
- 146) I considered and agreed with the department's assessment that it was highly likely that the management plans proposed by the Victorian Planning Minister will be incorporated into the final conditions of approval for the project, assuming that it is approved, and implemented by the proponent. Accordingly, I have not duplicated these management plans in the proposed conditions under the EPBC Act.
- 147) I considered and agreed with the department's assessment in relation to the River Swamp Wallaby-grass that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of an important population;
 - f) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or

g) interfere substantially with the recovery of the species.

Conclusion

- 148) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on these plant species are unlikely to lead to a significant impact on the species.
- 149) In forming my view, I considered the precautionary principle in relation to the potential impacts on the River Swamp Wallaby-grass and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment together with the conditions on the approval are likely to be sufficient to minimise impacts on the species.

Great White Shark (Carcharodon carcharias) – Vulnerable; Migratory

- 150) The Great White Shark (*Carcharodon carcharias*) is a large, long-lived apex predator growing to at least 6m and living upwards of 30 years. It is found in Australia from central Queensland around the southern coast of Australia, and up the west coast to Northwest Cape, Western Australia. Great white sharks primarily inhabit continental shelf waters and can often be found closer inshore near the surf line, shallow bays and waters around islands. This includes Wilsons Promontory, Victoria, where juveniles aggregate seasonally.
- 151) I had regard to the *Recovery Plan for the White Shark (Carcharodon carcharias)*. I noted that the Recovery Plan lists the main threats to the species as mortality from being caught by commercial and recreational fisheries (bycatch and illegally) and mortality related to shark control activities such as beach meshing or drumlining. Some other potential threats include ecotourism and ecosystem effects of a result of habitat modification and climate change.
- 152) The EIS/EES contains information on biologically important areas for great white sharks on the Victoria and northern Tasmania coast that act as nursery ground and foraging areas. I noted that the EIS/EES identifies that the great white shark is considered very likely to occur in the Victorian nearshore and offshore environment, with numbers being highest from November to December, and likely to occur in the Tasmanian offshore.

Assessment of impacts

- 153) Sharks use electromagnetic fields (**EMFs**) for navigation and prey detections. Changes in EMFs can disrupt natural electromagnetic cues and affect shark behaviour and physiology. Bass Strait (including Victorian coastal waters) has naturally variable electrical and magnetic fields and the EMFs effects of the Project will be overlaid on this.
- 154) The EIS/EES contains modelling of EMF and electromagnetic interference impacts which demonstrates that the magnetic fields and electric fields resulting from the subsea HVDC cables will be spatially restricted. I noted that the EIS/EES assessed the residual significance of impacts on magnetosensitive and electrosensitive marine fauna, including sharks, as 'low' to 'very low'.

Avoidance, mitigation and management measures

- 155) I noted that the EIS/EES proposes several measures to reduce the EMFs emitted from the subsea cables and mitigate their effects on sensitive marine animals. These measures include using HVDC cable technology, burying the cable up to 1.5 m, bundling the HVDC cables in each subsea circuit and separating each subsea circuit to reduce interactions of EMFs (EPR MERU12).

Proposed outcomes and conditions

- 156) I noted that the IAC found potential effects from EMFs would be very minor and localised and can be appropriately minimised by cable design and installation measures in EPR MERU12. I also had regard to the Victorian Planning Minister's Assessment which supports the mitigation methods with addition of a minimum burial depth of one metre, where practicable.
- 157) I noted that the department agrees with avoidance and mitigation measures provided in the Victorian Planning Minister's Assessment. I was satisfied that it is necessary or convenient to impose, as a condition of the approval, a requirement for a Marine Fauna Management Plan (conditions 20 to 23) which will ensure a continuous approach to managing impacts on marine fauna in both state and Commonwealth Marine Areas.
- 158) I considered and agreed with the department's assessment in relation to the Great White Shark that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) disrupt the breeding cycle of an important population; and
 - d) interfere substantially with the recovery of the species.

Conclusion

- 159) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Great White Shark are unlikely to lead to a significant impact on the species.
- 160) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Great White Shark and noted that there is a low level of uncertainty around what the proposed environmental impacts are.

Southern Right Whale (Eubalaena australis) – Endangered; Cetacean; Migratory

Blue Whale (Balaenoptera musculus) – Endangered; Cetacean; Migratory

Sei Whale (Balaenoptera borealis) – Vulnerable; Migratory

Fin Whale (Balaenoptera physalus) - Vulnerable; Migratory

- 161) The endangered Southern Right Whale (*Eubalaena australis*) is a large, slow-moving baleen whale that migrates seasonally between sub-Antarctic feeding grounds and temperate coastal waters of southern Australia for calving and socializing, with key habitats including sheltered bays and inshore waters.

- 162) I had regard to the *National Recovery Plan for the Southern Right Whale* (Eubalaena australis) (2024) which identifies all reproductive Biologically Important Areas (BIAs) across the species' range as critical habitat for survival. I noted that the key threats to the species include vessel strikes, underwater noise, habitat degradation, and climate change impacts on prey availability. Electromagnetic pulse is also identified as a threat and may interfere with whale navigation and behaviour.
- 163) The endangered Blue Whale (*Balaenoptera musculus*) is also a baleen whale and is the largest animal on Earth. The species relies on productive upwelling zones such as the Bonney Upwelling for feeding on krill, with known and potential foraging areas extending across southern Australian waters including Bass Strait.
- 164) I had regard to the *Conservation Management Plan for the Blue Whale* (2015) which stated that habitat critical to the survival of the species has not yet been defined. However, BIAs are important for the conservation of this species, as they represent regions where groups of individuals consistently engage in essential behaviours such as calving, foraging, resting or migrating. I noted that the project transects a possible foraging BIA in central and eastern Bass Strait. The key habitats for these species include the Bonney Upwelling region to the west of the proposed action for foraging. Moreover, the key foraging behaviours occur between November and May. I accepted that threats to Blue Whales include underwater noise affecting communication and navigation, vessel collisions and climate change affecting krill abundance.
- 165) I noted that the *Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans* (2018) identifies both entanglement and ingestion of marine debris as significant threats to whales and other marine vertebrates.
- 166) I had regard to the *Conservation Advice for the Sei Whale* (2015) which identifies underwater noise as a potential threat that may disrupt normal behaviour and drive whales away from critical habitats. The *Conservation Advice for the Fin Whale* (2015) similarly notes vessel noise as a threat, particularly due to the species' surface-feeding behaviour and migratory patterns that intersect with major shipping routes.
- 167) The EIS/EES states that the proposed action area for the proposed action involves a subsea cable route from Heybridge (Tasmania) to Waratah Bay (Victoria), crossing Bass Strait (~255 km). The terrain in the nearshore area consists of sandy seabed with some rocky outcrops and seagrass beds, such as Tasman grass-wrack. Offshore, the terrain is predominantly soft sediments (sands, silts, clays) with some mesophotic sponge beds. Environmental features include stable coastal processes, low productivity waters with seasonal phytoplankton blooms, and background underwater noise levels ranging from 90–145 dB re 1 μ Pa.
- 168) I noted that the National Recovery Plan for the Southern Right Whale states that a BIA is located along the Victorian coastline, within Victorian coastal waters, and is important for resting, breeding, and calving between June and September. I further noted that important habitats include nearshore areas around Wilsons Promontory and Phillip Island, as well as parts of Tasmania.
- 169) I accepted, having regard to the information in the recovery plan, that threats to the Southern Right Whale include anthropogenic climate change, entanglement in fishing gear, habitat degradation, underwater noise pollution, vessel strikes, whaling (if resumed), prey depletion,

pollution (including chemical and electromagnetic) and cumulative effects from multiple stressors

Assessment of impacts

- 170) I noted that the EIS/EES states that the survey effort undertaken by the proponent includes a desktop review using PMST, Atlas of Living Australia, Victorian Biodiversity Atlas and Tasmanian Natural Values Atlas. No targeted marine fauna surveys were conducted. Data sources include passive acoustic monitoring (e.g., blue whale calls), literature on whale migration and foraging behaviour and fisheries and vessel traffic data.
- 171) I further noted that the EIS/EES identified the greatest risk to whale species as underwater noise during construction. The modelling showed potential for permanent hearing damage within 67m of active equipment if they remained within 67m of the noise source for at least one hour. However, this was considered a conservative scenario, as these species are likely to avoid such noise. For most other whales, I noted that impacts were assessed as low, with behavioural disturbance expected to be temporary and localised.
- 172) I had regard to the IAC Report which concurred with the EIS/EES that the maximum impact to whale species would be moderate for high-frequency cetaceans due to the potential for auditory damage. For all other cetaceans, including Southern Right, Blue, Humpback, and Fin Whales, the IAC Report found the residual impacts to be low. The IAC Report also emphasised that the risk of vessel strikes was also low, particularly due to the slow speed of construction vessels and the implementation of mitigation measures. I noted that the IAC Report supported the conclusion of the EIS/EES that no mortality impacts were expected and that behavioural impacts would be temporary and localised.
- 173) I considered that the Victorian Planning Minister's Assessment supported the IAC Report's conclusions but made a key distinction regarding the definition of precaution zones. I noted that while the IAC Report recommended that underwater noise levels be considered when defining these zones, the Minister did not support this addition. Instead, the Minister endorsed defining precaution zones specifically for high-frequency cetaceans, such as the Pygmy Sperm Whale and Pygmy Right Whale, based on their sensitivity to noise thresholds. The Minister also supported the implementation of vessel power-down protocols and visual monitoring to minimize the risk of auditory injury and behavioural disturbance during construction.

Avoidance, mitigation and management measures

- 174) I noted that the EIS/EES proposed species-specific management plans, including a Marine Fauna Management Plan and a Cetacean Interaction Management Plan that includes visual monitoring, vessel speed limits and noise thresholds to avoid impacts from underwater noise and vessel strike. The EIS/EES also proposed bundling and burying cables to reduce EMF.
- 175) I further noted that the IAC Report supports the EIS/EES measures and recommended additions to the proponent's management plan commitments emphasising the need for Marine Mammal Observers to detect and respond to cetacean presence in real time. The IAC Report also highlighted the need for adaptive management, including the suspension of noisy

activities when whales enter defined precaution zones and the use of vessel strike avoidance protocols to further reduce risks to migrating and foraging whales.

- 176) I had regard to the Victorian Planning Minister's Assessment. The Minister adopted the IAC Report's recommended EPRs including MERU07 and MERU08 (Marine Fauna Management Plan and Cetacean Interaction Management Plan) and MERU10 (to address lighting on cetaceans), with clarifications to ensure they apply during both construction and operation. I noted that the Minister added EPR MERU14 to address impacts during operation of the project (inspection and maintenance activities). All cetacean management measures must be incorporated into the Construction and Operation Environmental Management Plans and align with relevant EPBC Act recovery plans.
- 177) The Minister's Assessment also contained modelling of underwater noise from cable-laying vessels, and this was found to pose a moderate risk to high-frequency hearing cetaceans (such as pygmy sperm whales), but not to baleen whales like the Southern Right, Blue, Sei and Fin whales, which are low-frequency hearing species and less sensitive to the frequencies generated by the project. I noted that EMFs from the subsea HVDC cables were also modelled and found to be well below thresholds known to affect marine mammals.
- 178) I noted that the Victorian Planning Minister's Assessment agreed with the conclusions in the IAC Report that impacts on whales, including Southern Right, Blue, Sei and Fin whales are acceptable.

Proposed outcomes and conditions

- 179) In considering whether to approve the proposed action, I had regard to proposed conditions 12-19 which requires:
- a) Marine Mammal Observers (**MMOs**) to be on board the cable lay vessel and the trenching vessel during cable laying operations;
 - b) Observation zone (3 km) and precaution zone (1 km) around the cable lay vessel and the trenching vessel during cable laying operations must be observed;
 - c) Low power requirements if a whale enters the precaution zone; and
 - d) Speed limits for all other vessels if a whale is in the precaution zone or in State waters.
- 180) On 15 May 2025, the Migratory Species Section provided advice that conditions are required to mitigate the risk on the endangered Southern Right whales and Blue whales in BIA when undertaking critical life functions. The advice also noted that there are logistical constraints around the operation of dynamic positioning thrusters so shutdowns cannot be incorporated into the conditions. Further verbal clarification was sought from the Migratory Species Section which indicated that it would be preferable that conditions of approval were consistent with previous decisions regarding timing of actions in the Southern Right Whale BIA.
- 181) I noted that the department considered the concerns of the Migratory Species Section in preparing the Recommendation Report and has taken a risk-based approach to determining whether timing restrictions in Victorian Coastal Waters is required to prevent impacts to the Southern Right Whale. There are two key impacts to Southern Right Whales that are proposed to be addressed with the inclusion of timing restrictions for vessel operations during June and

September. These include impacts from vessel strike and behavioural change and injury as a result of underwater noise.

- 182) The department considered, and I agreed, that impacts from vessel strike during cable laying operations are highly unlikely because of the slow speed that cable laying operation will be taken at 1-1.5 knots per hour. The speed of the cable laying operations is also confined by safe handling and precision of laying a heavy cable on the seafloor. All other vessels will be restricted to 10 knots at all times while in the proposed action area.
- 183) According to the Recovery Planning for the Southern Right Whale, the cable laying vessel and trenching vessels have a similar noise signature to cargo vessels which range up to 195 dB re 1 μ Pa m. These cargo vessels are known to regularly traverse the Victorian Coastal Waters visiting the Port of Melbourne, Port of Geelong, Port of Hastings and Port of Portland. The underwater noise from cargo vessels is up to 195 dB re 1 μ Pa at 1 m.
- 184) I had regard to the EIS/EES and noted that cable laying operations are likely to occur in Victorian Coastal Waters over 3 days. Given the short duration of operations in Victorian Coastal, I considered that, given the chance of whale encounter is unlikely, the risk of noise disturbance and vessel strike on listed whale species is low. I therefore found that the proposed action is unlikely to interfere with the objectives of a recovery plan or conservation advice for these species.
- 185) Based on this information, the department considered, and I agreed, that the conditions on the approval are necessary and convenient and any residual impact on the Southern Right Whale is acceptable.
- 186) I considered and agreed with the department's assessment in relation to the Southern Right Whale and Blue Whale that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of a population;
 - b) reduce the area of occupancy of the species;
 - c) disrupt the breeding cycle of a population;
 - d) modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - e) interfere with the recovery of the species.
- 187) I further considered and agreed with the department's assessment in relation to the Sei Whale and Fin Whale that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) disrupt the breeding cycle of an important population;
 - e) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - f) interfere substantially with the recovery of the species.

Conclusion

- 188) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Southern Right Whale, Blue Whale, Sei Whale and Fin Whale are unlikely to lead to a significant impact on these species.
- 189) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Southern Right Whale, Blue Whale, Sei Whale and Fin Whale and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, I considered that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and in the conditions of approval are likely to be sufficient to minimise impacts on these species.

Sub-Antarctic Fur Seal (Arctocephalus tropicalis) – Endangered; Marine

Australian Sea Lion (Neophoca cinerea) – Endangered; Marine

Southern Elephant Seal (Mirounga leonine) – Vulnerable; Marine

- 190) The Sub-Antarctic Fur Seal, Australian Sea Lion and Southern Elephant Seal face shared threats including entanglement in fishing gear, disturbance from vessels and coastal activity, underwater noise, habitat degradation and pollution. Climate change and invasive species further impact their food sources and breeding habitats, making conservation and mitigation efforts essential for their protection.
- 191) I noted that the project alignment traverses Bass Strait from Heybridge, Tasmania to Waratah Bay, Victoria. The Sub-Antarctic Fur Seal has a remote likelihood of occurrence in the area, while the Australian Sea Lion is considered rare, and the Southern Elephant Seal has a possible likelihood of occurrence. These species are not associated with any known breeding or BIAs within the project footprint. However, the area may be used for foraging or transit, particularly by the Southern Elephant Seal.

Assessment of impacts

- 192) I noted that the EIS/EES assessed the residual significance of impact on all three species as low due to their limited presence and the transient nature of their use of the area. Underwater noise from construction, particularly from dynamic positioning vessels, was identified as a potential source of behavioural disturbance. However, modelling indicated that significant impacts such as permanent hearing loss are unlikely. The maximum underwater noise level modelled was 185 dB re 1 μ Pa at 1 m, with behavioural effects expected only at close range. Vessel strike risk was also considered low due to the limited overlap with known habitats.

Avoidance, mitigation and management measures

- 193) I had regard to the EIS/ESS, IAC Report and the Victorian Planning Minister's Assessment which recommend a suite of mitigation measures. EPR MERU07 requires a marine fauna management plan to be developed in accordance with relevant EPBC Act recovery plans, including those for the Australian Sea Lion and Sub-Antarctic Fur Seal. The measures include vessel speed restrictions, marine fauna observers and exclusion zones during construction.

The IAC recommended, and the Minister supported, a cap on underwater noise emissions at 185 dB re 1 μ Pa at 1 m to further minimise impacts.

Proposed outcomes and conditions

- 194) I noted that the Victorian Planning Minister's Assessment recommended conditions requiring the preparation of a Marine Fauna Management Plan (MERU07) which requires adherence to national guidelines and recovery plans, implementation of vessel strike avoidance protocols and monitoring of underwater noise. The Victorian Planning Minister concluded that, with these measures in place, the impacts on the Sub-Antarctic Fur Seal, Australian Sea Lion and Southern Elephant Seal are acceptable and consistent with the objectives of the EPBC Act. I agree with the Minister's conclusion that the impacts on these species are acceptable having regard to avoidance and mitigation measures.
- 195) I considered that it was also necessary and convenient to require, as a condition of approval, that a Marine Fauna Management Plan be required (conditions 20-21) to ensure the protection of the EPBC Act listed threatened and migratory species across the three marine jurisdictions.
- 196) I noted that the outcomes of the Tasmanian process were not completed at the time of my decision. I had regard to the fact that the department has been in communication with the Tasmanian Environment Protection Agency during the assessment process and has considered the potential impacts of the proposed action within the Tasmanian jurisdiction in preparing the Recommendation Report. Based on the information provided in the EIS/EES regarding impacts to protected matters in the Tasmanian jurisdiction, the department considered, and I agreed, that the avoidance and mitigation measures required in the conditions are necessary and convenient to protect marine fauna in Tasmanian coastal waters.
- 197) I considered and agreed with the department's assessment in relation to the Sub-Antarctic Fur Seal that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of a population;
 - b) reduce the area of occupancy of the species;
 - c) disrupt the breeding cycle of a population;
 - d) modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or
 - e) interfere with the recovery of the species.
- 198) I further considered and agreed with the department's assessment in relation to the Australian Sea Lion and Southern Elephant Seal that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) disrupt the breeding cycle of an important population;
 - e) modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline; or

f) interfere substantially with the recovery of the species.

Conclusion

- 199) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Sub-Antarctic Fur Seal, Australian Sea Lion and the Southern Elephant Seal are unlikely to lead to a significant impact on these species.
- 200) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Sub-Antarctic Fur Seal, Australian Sea Lion and Southern Elephant Seal and noted that there is a low level of uncertainty around what the proposed environmental impacts are.

Loggerhead Turtle (Caretta caretta) – Endangered; Marine; Migratory

Olive Ridley Turtle (Lepidochelys olivacea) – Endangered; Marine; Migratory

Leatherback Turtle (Dermochelys coriacea) – Endangered; Marine; Migratory

Green Turtle (Chelonia mydas) – Vulnerable; Marine; Migratory

- 201) I considered these marine turtle species together, noting that they are pelagic and rely on oceanic habitats for migration and foraging. I had regard to the *Recovery Plan for Marine Turtles in Australia* (2017) which outlines objectives to maintain and improve protection, minimise anthropogenic threats and monitor population trends. The key threats include climate change, entanglement in marine debris, vessel strikes, predation, habitat degradation, fisheries bycatch and impacts from underwater noise. The Recovery Plan also identifies the Southern Ocean, including the waters off Tasmania, as biologically significant due to their high productivity and abundance of jellyfish, an essential food source for leatherback turtles.
- 202) I noted that the EIS/EES states that sea turtles, including the Leatherback, use the Earth's geomagnetic fields to navigate during long-distance migrations. These species also rely on other senses such as sight, sound and smell for short-range orientation.
- 203) The EIS/EES states that the Leatherback Turtle is the most frequently recorded sea turtle species in Bass Strait and is considered likely to occur in both nearshore and offshore waters along the Victorian coast. This region, along with the broader southern Australian marine environment, serves as an important foraging area for the species, where individuals primarily feed on megaloplankton such as jellyfish. I had regard to the most recent ERT Report which states that the Loggerhead Turtle and Leatherback Turtle are known to be present in the area, and the Green Turtle may be present. However, I noted that the EIS/EES notes that the occurrence of the Leatherback Turtle, Green Turtle and Olive Ridley Turtle in Bass Strait is rare.

Assessment of impacts

- 204) I had regard to the EIS/EES which assessed the residual significance of impact on marine turtles as low, with the Leatherback Turtle having the highest likelihood of occurrence.

- 205) I accepted that underwater noise from construction vessels and cable laying activities poses a moderate risk to high-frequency hearing cetaceans but is not expected to cause mortality or significant behavioural disruption to turtles.
- 206) I noted that EMFs from the operating subsea cables are predicted to be localised and comparable to natural geomagnetic fields, with negligible impact on turtle navigation. I considered that the magnetic fields generated by the Marinus Link subsea cables are expected to be very low at the sea surface where adult and sub-adult turtles typically swim. I also noted that no significant impacts have been anticipated by the proponent from cable operation or maintenance in the EIS/ESS.

Avoidance, mitigation and management measures

- 207) According to the EES, the HVDC cables will be buried at depths of 1 to 1.5 m and spaced up to 2 km apart, resulting in EMFs that are comparable in strength to natural geomagnetic fields. On that basis, the project is expected to have negligible impact on sea turtle navigation.
- 208) I had regard to the IAC Report which recommend a suite of measures to mitigate potential impacts on marine turtles. I noted that these include implementation of a Marine Fauna Management Plan (EPR MERU07) which also applies to turtles. The measures include vessel speed restrictions, visual monitoring, avoidance of construction during peak migration periods and minimisation of underwater noise. I noted that the plans must align with the objectives of the Marine Turtle Recovery Plan and relevant EPBC Act policies.
- 209) I noted that the Victorian Planning Minister's Assessment supports the adoption of EPRs MERU07 and MERU08, which are to be implemented during construction and operation.

Proposed outcomes and conditions

- 210) The department recommended, and I agreed that, as a condition of the approval, a Marine Fauna Management Plan be prepared (conditions 20-23). Whilst I noted that doing so duplicates a proposed requirement of the Victorian Government and it is also possible that the Tasmanian Government will have a similar outcome, I considered this was a necessary and convenient requirement to ensure that the protection of the environment in the Commonwealth Marine Area and for EPBC Act listed threatened and migratory species across the three jurisdictions.
- 211) The department further recommended, and I agreed that it was necessary and convenient to impose a condition that no marine vessel can be used that is capable of exceeding underwater noise of 185 dB re 1 $\mu\text{P}_{\text{arms}}$ at 1 m from source (condition 12). I noted that this is the maximum extent of noise from any vessel assessed in the EIS/EES process and will come from the cable laying vessel.
- 212) I noted that neither of the relevant authorities in Victoria or Tasmania raised concerns with these conditions when provided with the opportunity to comment on the proposed conditions.
- 213) I considered and agreed with the department's assessment in relation to the Leatherback Turtle, Olive Ridley Turtle and Loggerhead Turtle that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of a population;

- b) reduce the area of occupancy of the species;
 - c) fragment an existing population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of a population; or
 - f) interfere with the recovery of the species.
- 214) I further considered and agreed with the department's assessment in relation to the Green Turtle that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of an important population of a species;
 - b) reduce the area of occupancy of an important population;
 - c) fragment an existing important population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of an important population; or
 - f) interfere substantially with the recovery of the species.

Conclusion

- 215) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Leatherback Turtle, Loggerhead Turtle, Green Turtle and Olive Ridley Turtle are unlikely to lead to a significant impact on these species.
- 216) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Leatherback Turtle, Loggerhead Turtle, Green Turtle and Olive Ridley Turtle and noted that there is a low level of uncertainty around what the proposed environmental impacts are. However, the department considered, and I agreed, that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and in the conditions of approval are likely to further minimise impacts on the species.

Australasian Bittern (Botaurus poiciloptilus) – Endangered

- 217) The Australasian Bittern (*Botaurus poiciloptilus*) relies on freshwater wetlands with dense vegetation for breeding and foraging. Key habitats in Victoria include the Kerang Wetlands and Barmah Forest, where shallow water and tall reeds provide essential cover.
- 218) I had regard to the *Approved Conservation Advice for Botaurus poiciloptilus* (Australasian Bittern) which states that the major threats in Victoria include wetland drainage, altered water regimes, grazing by feral and domestic animals and predation by introduced species. The conservation priorities focus on protecting and restoring wetlands, managing water flows to support breeding and reducing habitat disturbance.
- 219) I noted that, within the Marinus Link project corridor, potential habitat for the Australasian Bittern is primarily associated with wetland areas in the Latrobe Valley, particularly near Hazelwood North. These areas include seasonally inundated wetlands and drainage lines that may support suitable vegetation structure for the species.

- 220) I further had regard to the EIS/EES which states that no habitat for the species exists within the extent of the surveyed area therefore no habitat for the species is likely to be impacted.

Assessment of impacts

- 221) I considered that the potential impacts from the proposed action include the disturbance or loss of wetland habitat during construction, particularly from trenching and machinery operation. Noise and vibration may disrupt the species' breeding or foraging behaviour, while changes to local hydrology could degrade habitat quality. I considered that there is also a risk of increased predation or disturbance due to edge effects and human activity near construction zones.

- 222) Whilst no direct removal of wetland habitat is proposed, I noted that not all the potential Australian Bittern habitat areas have been surveyed. In particular, those areas on private land or with restricted access. However, the EIS/EES proposes a precautionary approach be taken to conduct pre-clearance surveys and to use trenchless construction methods near potential habitat for the Australasian Bittern.

Avoidance, mitigation and management measures

- 223) I noted that, in order to mitigate the potential impacts to the Australasian Bittern, the proponent proposes several avoidance and management strategies. These include:

- a) micro-siting the alignment to avoid key wetland habitats;
- b) using trenchless construction methods such as HDD near sensitive areas;
- c) establishing no-go zones and buffer areas around identified bittern habitat;
- d) construction timing managed to avoid the breeding season;
- e) pre-construction surveys will be conducted to confirm habitat use; and
- f) post-construction monitoring and adaptive management will also be implemented to ensure habitat conditions are maintained or restored.

- 224) I had regard to the IAC Report which notes that the residual significance of impact on the Australasian Bittern is considered low due to the avoidance of priority habitats and the implementation of construction controls. The report notes that pre-construction surveys, micro-siting of infrastructure, and the development of a Biodiversity Management Plan (EPR ECO2) to guide mitigation. The IAC Report also recommends the application of the Biodiversity Management Plan to ensure that impacts on the Australasian Bittern are minimised throughout the project lifecycle.

Proposed outcomes and conditions

- 225) I considered the avoidance and mitigation measures proposed in the EIS/EES and noted the department's recommendation to require pre-clearance and post-clearance surveys to be undertaken to guide effective avoidance of habitat for listed species. I also noted that the IAC Report recommends implementing a Biodiversity Management Plan (EPR ECO2) and Aquatic Habitat Protection Plan (EPR ECO3) which, if implemented, will govern mitigation measures for threatened species and habitat protection and identify HDD as the preferred option for waterway and wetland crossing.

- 226) I agreed with the department's recommendation that there should be conditions on the approval requiring pre-clearance and post-clearance surveys to effectively identify and avoid habitat for the Australasian Bittern (conditions 2 to 11). These surveys aim to ensure that any potential habitat for the species on previously unsurveyed land is detected. Moreover, under the conditions, no habitat for the Australasian Bittern habitat is permitted to be cleared if habitat is identified during the pre-clearance surveys.
- 227) I considered and agreed with the department's assessment in relation to the Australasian Bittern that the proposed action is unlikely to:
- a) lead to a long-term decrease in the size of a population;
 - b) reduce the area of occupancy of the species;
 - c) fragment an existing population into two or more populations;
 - d) adversely affect habitat critical to the survival of a species;
 - e) disrupt the breeding cycle of a population; or
 - f) interfere with the recovery of the species.

Conclusion

- 228) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Australasian Bittern are unlikely to lead to a significant impact on the species.
- 229) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Australasian Bittern and noted that there is a low level of uncertainty around what the proposed environmental impacts are. However, the department considered, and I agreed, that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and in the conditions of approval are likely to further minimise impacts on the species.

Eastern Hooded Plover (Thinornis cucullatus cucullatus) – Vulnerable; Marine

Curlew Sandpiper (Calidris ferruginea) – Critically Endangered; Marine; Migratory

Eastern Curlew (Numenius madagascariensis) – Critically Endangered; Marine; Migratory

Great Knot (Calidris tenuirostris) – Vulnerable; Marine; Migratory

Shy Albatross (Thalassarche cauta) – Endangered; Marine; Migratory

- 230) The Eastern Hooded Plover typically nests on sandy beaches and dunes, facing threats from human disturbance and habitat degradation. The Curlew Sandpiper, Eastern Curlew and Great Knot are migratory shorebirds with key threats including habitat loss, pollution and human disturbance. The Shy Albatross is also migratory, and is threatened by climate change, fisheries bycatch and habitat degradation.
- 231) I have had regard to the relevant conservation advice and recovery plans for these species which emphasise the importance of protecting foraging and nesting habitats, minimising human disturbance and managing marine noise and vessel interactions.

- 232) I noted that the EIS/EES states that the Waratah Bay landscape region contains priority habitat for shorebirds. The Eastern Hooded Plover has been recorded at Sandy Point Beach, and the area is considered suitable for nesting and foraging. The dunes and foreshore are identified as movement corridors for migratory species including the Eastern Curlew and Great Knot.
- 233) I considered the IAC Report which confirms that the Waratah Bay shore crossing affects approximately 2% of the beach's nesting and foraging habitat for shorebirds. It also notes that the tall dunes act as a barrier to noise and light disturbance. The Shy Albatross is expected to be present in offshore waters, and the project's marine footprint overlaps with its foraging areas.
- 234) I noted that the Victorian Planning Minister's Assessment also identifies the Waratah Bay shore crossing and adjacent marine corridor as intersecting with biologically important areas for marine fauna. The Shy Albatross may occur in offshore waters near Wilsons Promontory, which are within the project's marine survey area. The report notes that the cable-laying pace and trenching methods will result in temporary overlap with these habitats.

Assessment of impacts

- 235) I had regard to the EIS/EES which contains information on marine ecology and states that construction-phase activities such as cable laying, trenching, and vessel movement are to most likely source of impacts on these species. These impacts include artificial lighting which can attract and disorient birds, especially during migration, potentially leading to collisions, altered flight paths or disruption of resting and foraging behaviour, and underwater noise, for surface foraging birds like the Shy Albatross, which may cause them to forage elsewhere.

Avoidance, mitigation and management measures

- 236) The EIS/EES includes proposed measure to reduce impact on shorebirds and dune habitats by HDD under Waratah Bay dunes instead of trenching, construction timing to avoid nesting and breeding seasons, and use of natural dune barriers to limit noise. HDD shore crossings will also help preserve intertidal habitats. The EES also recommends biosecurity and sediment controls to protect sensitive habitats.
- 237) I noted that further mitigation strategies focus on marine fauna and light pollution. These include minimizing artificial lighting (as per EPR MERU10), enforcing marine fauna management plans (EPR MERU07) and maintaining precautionary zones around vessels to prevent interactions with marine wildlife. The EIS/EES states that the proposed measures will align with the *EPBC Policy Statement 3.21* for migratory shorebirds and Australia's National Light Pollution Guidelines for Wildlife.
- 238) I further noted that the following EPRs have been incorporated into the Victorian Planning Minister's Assessment and include measures that are expected to ensure that residual impacts on the listed species remain within acceptable thresholds.
- a) MERU07: Implements a Marine Fauna Management Plan to manage interactions with sensitive species, including incident response and alignment with recovery plans.
 - b) MERU10: Minimises artificial lighting by reducing light intensity, directing it downward, and inspecting vessels for bird attraction—critical for migratory and nocturnal species.

- c) MERU03: Requires pre-lay surveys to avoid sensitive habitats, reducing disturbance to shorebird foraging and roosting areas.
- d) MERU08 & MERU09: Focuses on cetaceans and turtles but contribute to broader marine fauna protection through vessel speed, noise and interaction protocols.

Proposed outcomes and conditions

- 239) The department recommended, and I agreed that, it should be a condition of the approval that a Fauna Management Plan be prepared (conditions 20-23). I noted that doing so duplicates a proposed requirement of the Victorian Government and it is also possible that the Tasmanian Government will have a similar outcome. However, I considered this was a necessary and convenient requirement to ensure that the protection of the environment in the Commonwealth Marine Area and for EPBC Act listed threatened and migratory species across the three jurisdictions.
- 240) The department further recommended, and I agreed that, as a condition of the approval, no marine vessel can be used that is capable of exceeding underwater noise of 185 dB re 1 μ Parms at 1 m from source (condition 12). This is the maximum extent of noise from any vessel assessed in the EES process and will come from the cable laying vessel.
- 241) I noted that neither of the relevant authorities in Victoria or Tasmania raised concerns with these conditions when provided with the opportunity to comment on the proposed conditions.

Conclusion

- 242) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Eastern Hooded Plover, Curlew Sandpiper, Eastern Curlew, Great Knot and Shy Albatross are unlikely to lead to a significant impact on these species.
- 243) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Eastern Hooded Plover, Curlew Sandpiper, Eastern Curlew, Great Knot and Shy Albatross and noted that there is a low level of uncertainty around what the proposed environmental impacts are. However, the department considered, and I agreed, that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and in the conditions of approval are likely to further minimise impacts on the species.

Tasmanian Forests and Woodlands dominated by black gum or Brookers gum (Eucalyptus ovata / E. brookeriana) – Critically Endangered

Tasmanian white gum (Eucalyptus viminalis) wet forest – Critically Endangered

Tasmanian devil (Sarcophilus harrisii) – Endangered

Spotted-tail quoll (Dasyurus maculatus subsp. maculatus) – Vulnerable

Tasmanian wedge-tailed eagle (Aquila audax subsp. fleayi) – Endangered

White-throated needletail (Hirundapus caudacutus) – Vulnerable

- 244) I noted that the proposed action in Tasmania will occur primarily within the Heybridge converter station site and the shore crossing survey area, both located near the township of Heybridge in northern Tasmania. The converter station survey area encompasses approximately 10.8 hectares, predominantly consisting of modified land (cleared land, tree plantings, and weeds), with a small patch (1.5 ha) of native vegetation—*Eucalyptus amygdalina* coastal forest and woodland—in the southeastern corner. The shore crossing survey area spans 6.5 hectares, comprising native forest (2 ha), native scrub (3 ha), and sandy beach (1.5 ha). These areas are situated within a broader 5 km study radius, which was used to assess potential ecological values and species presence.

Assessment of impacts

- 245) I had regard to the EIS/EES which states that no EPBC Act listed threatened species or communities were recorded within the immediate survey area. However, they are considered potentially present based on habitat suitability and nearby records.
- 246) I noted that Neither the Tasmanian Forests and Woodlands dominated by black gum or Brookers gum (*Eucalyptus ovata* / *E. brookeriana*) nor the Tasmanian white gum (*Eucalyptus viminalis*) wet forest were recorded within the proposed survey area of disturbance during field surveys.
- 247) The Tasmanian devil and the Spotted-tailed quoll have previously been recorded adjacent to the study area, as incidences of roadkill on Bass Highway and Minna Road. The entry point to the converter station site is located within 200 m of the Bass Highway intersection. Construction vehicles will need to travel along Minna Road to construct the Heybridge converters, to lay HDVC cable from the converters and to use HDD to cross the shoreline.
- 248) Two nests were recorded within 2 km of the site, that may be suitable for the Tasmanian Wedge-tailed Eagle. Neither of those nests are within 1 km.
- 249) The White-throated needletail visits the north Tasmanian region from its breeding grounds in Asia during the Australian summer. However, it is almost exclusively aerial within its distribution and is not expected to land in the proposal survey area.

Avoidance, mitigation and management measures

- 250) I considered the EIS/EES which proposes the following EPRs to avoid and mitigate potential impacts to land-based listed threatened species and communities:
- a) EPR EC02 – Fauna Management Plan (Tasmania) – includes protection measures to focus on construction traffic and roadkill awareness, minimising night lighting, removing roadkill quickly to prevent attracting carnivores, pre-clearance surveys and procedures to prevent fauna entering or being trapped in trenches.
 - b) EPR EC03 - Implement measures to protect raptors - protects the Tasmanian wedge-tailed eagle during construction by requiring nest surveys within one year of works to confirm no nests exist within 500 m or 1 km line-of-sight. If nests are found, construction must be avoided during the breeding season and deferred until outside that period. All nests are treated as active unless confirmed inactive by a qualified expert, ensuring sensitive breeding habitats are not disturbed.

- c) EPR EC05 Tas – Operational implementation of measures to protect raptors – operationalises nest management if a nest is found within 500 m or 1 km line-of-sight. This includes avoidance of major works near active nests during breeding season.

Proposed outcomes and conditions

- 251) I noted that the Tasmanian Government had not yet made a decision on the acceptability of the proposed action on listed threatened species and communities. However, information was provided on impacts in Tasmania in Volume 2, Chapter 2 of the EIS/EES. I also noted that the department has held regular meetings with Tasmania EPA and it is understood that they were consulted in the development of the EPRs related to Tasmanian jurisdictional matters during assessment process under the Victorian process.

Conclusion

- 252) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the potential impacts of the proposed action on the Tasmanian Forests and Woodlands dominated by black gum or Brookers gum (*Eucalyptus ovata* / *E. brookeriana*), Tasmanian white gum (*Eucalyptus viminalis*) wet forest, Tasmanian devil, Spotted-tail quoll, Tasmanian wedge-tailed eagle and White-throated needletail are acceptable and are unlikely to lead to a significant impact on these protected matters.
- 253) In forming my view, I considered the precautionary principle in relation to the potential impacts on the Tasmanian Forests and Woodlands dominated by black gum or Brookers gum (*Eucalyptus ovata* / *E. brookeriana*), Tasmanian white gum (*Eucalyptus viminalis*) wet forest, Tasmanian devil, Spotted-tail quoll, Tasmanian wedge-tailed eagle and White-throated needletail and noted that there is a low level of uncertainty around what the proposed environmental impacts are. However, the department considered, and I agreed, that the avoidance and mitigation measures proposed in the Victorian Planning Minister's Assessment and in the conditions of approval are likely to further minimise impacts on these species.

Other Threatened Species and Communities, and Migratory Species

- 254) I noted that the listed endangered Giant Kelp Marine Forests of South East Australia, the vulnerable Subtropical and critically endangered Temperate Coastal Saltmarsh and Natural Damp Grassland of the Victorian Coastal Plains listed threatened communities were not identified as present in the EIS/EES.
- 255) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the likelihood of potential impacts of the proposed action on the Giant Kelp Marine Forests of South East Australia and Natural Damp Grassland of the Victorian Coastal Plains and Subtropical and Temperate Coastal Saltmarsh listed threatened communities is low. I considered it unlikely that the proposed action will result in a significant impact on these protected matters.
- 256) I noted that the most recent ERT report also identified listed threatened species not previously discussed above.

257) I considered the listed threatened bird species that have similar habitat requirements to the Eastern Hooded Plover, Curlew Sandpiper, Eastern Curlew, Great Knot and Shy Albatross already described in this document as set out in the table immediately below.

Common Name	Scientific Name	EPBC Listing	Act Findings
Antipodean Albatross	<i>Diomedea antipodensis</i>	Endangered	May be attracted to vessel lights
Gibson's Albatross	<i>Diomedea antipodensis gibsoni</i>	Endangered	May be attracted to vessel lights
Southern Royal Albatross	<i>Diomedea epomophora</i>	Endangered	May be attracted to vessel lights
Grey-headed Albatross	<i>Thalassarche chrysostoma</i>	Endangered	May be attracted to vessel lights
Black-browed Albatross	<i>Thalassarche melanophris</i>	Endangered	May be attracted to vessel lights
Sooty Albatross	<i>Phoebastria fusca</i>	Endangered	May be attracted to vessel lights
Campbell Albatross	<i>Thalassarche impavida</i>	Endangered	May be attracted to vessel lights
Salvin's Albatross	<i>Thalassarche salvini</i>	Endangered	May be attracted to vessel lights
Indian Yellow-nosed Albatross	<i>Thalassarche carteri</i>	Endangered	May be attracted to vessel lights
Wandering Albatross	<i>Diomedea exulans</i>	Endangered	May be attracted to vessel lights

258) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, management measures and the proposed conditions of approval, that the likelihood of potential impacts of the proposed action on the species identified in the table immediately above is low. On that basis, I considered it unlikely that the proposed action will result in a significant impact on these species.

259) I further considered the listed species listed in the table below. I accepted the department's assessment that the likelihood of impacts on these species is low and therefore that it is unlikely that the proposed action will result in a significant impact on these species.

Common Name	Scientific Name	EPBC Listing	Act Findings
Southern Brown Bandicoot	<i>Isodon obesulus obesulus</i>	Endangered	Not present
Masked Owl (Tasmanian)	<i>Tyto novaehollandiae castanops</i>	Vulnerable	Not present
Grey Falcon	<i>Falco hypoleucos</i>	Vulnerable	No records in the study area
Eastern Barred Bandicoot (Tasmania)	<i>Perameles gunnii gunnii</i>	Endangered	No suitable habitat present
Wandering Albatross	<i>Diomedea exulans</i>	Vulnerable	Oceanic species – no habitat present
Austral Toadflax	<i>Thesium australe</i>	Vulnerable	Not present
Swamp Fireweed	<i>Senecio psilocarpus</i>	Vulnerable	No records in the study area
Swamp Everlasting, Swamp Paper Daisy	<i>Xerochrysum palustre</i>	Vulnerable	No suitable habitat
Tailed Spider Orchid	<i>Caladenia caudata</i>	Vulnerable	No habitat present
Giant Freshwater Crayfish	<i>Astacopsis gouldi</i>	Vulnerable	No suitable habitat present
New Holland Mouse	<i>Pseudomys novaehollandiae</i>	Vulnerable	Unlikely to present based on desktop research
Matted-flax Lily	<i>Dianella amoena</i>	Endangered	Not present
Painted Honeyeater	<i>Grantiella picta</i>	Vulnerable	Unlikely to be present based on desktop research

260) In deciding whether or not to approve the taking of the proposed action, section 158A of the EPBC Act provides that I must disregard certain matters including any newly listed threatened species or ecological communities, existing listed threatened species or ecological

communities becoming listed in another category representing a higher degree of endangerment, and any newly listed migratory species (collectively, **listing events**), which occurred after the controlled action decision under section 75 on 4 November 2021. Accordingly, I have disregarded 25 listing events which occurred after the controlled action decision on 4 November 2021:

- a) Gang-gang Cockatoo (*Callocephalon fimbriatum*) – listed as Endangered effective 2 March 2022
- b) Blue-winged Parrot (*Neophema chrysostoma*) – listed as Vulnerable effective 31 March 2023
- c) Yellow-bellied Glider (*Petaurus australis australis*) – listed as Vulnerable effective 2 March 2022
- d) Swamp Skink (*Lissolepis coventryi*) - listed as Endangered effective 25 March 2023
- e) Sooty Shearwater (*Ardenna grisea*) – listed as Vulnerable effective 21 December 2023
- f) Ruddy Turnstone (*Arenaria interpres*) – listed as Vulnerable effective 5 January 2024
- g) Sharp-tailed Sandpiper (*Calidris acuminata*) – listed as Vulnerable effective 5 January 2024
- h) South-eastern Glossy Black-Cockatoo (*Calyptorhynchus lathami lathami*) – listed as Vulnerable effective 10 August 2022
- i) Brown Treecreeper (south-eastern) (*Climacteris picumnus victoriae*) – listed as Vulnerable effective 31 March 2023
- j) Latham’s Snipe (*Gallinago hardwickii*) – listed as Vulnerable effective 5 January 2024
- k) Black-tailed Godwit (*Limosa limosa*) – listed as Endangered effective 5 January 2024
- l) South-eastern Hooded Robin (*Melanodryas cucullata cucullata*) – listed as Endangered effective 31 March 2023
- m) Grey Plover (*Pluvialis squatarola*) – listed as Vulnerable effective 5 January 2024
- n) Pilotbird (*Pycnoptilus floccosus*) – listed as Vulnerable effective 2 March 2022
- o) Diamond Firetail (*Stagonopleura guttata*) – listed as Vulnerable effective 31 March 2023
- p) Common Greenshank (*Tringa nebularia*) – listed as Endangered effective 5 January 2024
- q) Terek Sandpiper (*Xenus cinereus*) – listed as Vulnerable effective 5 January 2024
- r) Martin’s Toadlet (*Uperoleia martini*) – listed as Endangered effective 15 November 2023
- s) Hoary Sun-orchid (*Thelymitra orientalis*) – listed as Critically Endangered effective 7 September 2023
- t) Dwarf galaxias (*Galaxiella pusilla*) – listed as Endangered effective 15 November 2023
- u) Little tern (*Sternula albifrons*) – listed as Vulnerable effective 05-Mar-2025
- v) Brown Treecreeper – (*Climacteris picumnus victoriae*) – listed as Vulnerable effective 31 March 2023

- w) Long-nosed Potoroo – (*Potorous tridactylus trisulcatus*) - listed as Vulnerable effective 2 March 2022
- x) Greater Glider – (*Petauroides volans*) - listed as Endangered effective 5 June 2022
- y) Red Knot – (*Calidris canutus*) – listed as Vulnerable effective 5 June 2024.

Commonwealth Marine Areas (Sections 23 and 24A of the EPBC Act)

- 261) The Commonwealth Marine Area is defined in section 24 of the EPBC Act and comprises any part of the sea, including the waters, seabed, and airspace within Australia’s exclusive economic zone and/or over the continental shelf of Australia, that is not state or Northern Territory waters.
- 262) A significant impact on the environment in a Commonwealth Marine Area is likely if there is a real chance or possibility that a proposed action will:
- a) result in a known or potential pest species becoming established in the Commonwealth Marine Area;
 - b) modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity in a Commonwealth Marine Area;
 - c) have a substantial adverse effect on a population of a marine species or cetacean including its life cycle (for example, breeding, feeding, migration behaviour, life expectancy) and spatial distribution;
 - d) result in a substantial change in air quality or water quality (including temperature) which may adversely impact on biodiversity, ecological integrity; social amenity or human health;
 - e) result in persistent organic chemicals, heavy metals, or other potentially harmful chemicals accumulating in the marine environment such that biodiversity, ecological integrity, social amenity or human health may be adversely affected; or
 - f) have a substantial adverse impact on heritage values of the Commonwealth Marine Area, including damage or destruction of an historic shipwreck.
- 263) I noted that the Commonwealth Marine Area traversed by the Marinus Link project lies in Bass Strait and features predominantly soft-sediment seabeds (sands, silts, and clays), with occasional rocky outcrops. The marine environment supports diverse benthic communities, including sparse seagrass beds, invertebrates, and mesophotic sponge coral communities. The area is influenced by strong ocean currents, variable bathymetry (average depth ~75 m), and seasonal water quality changes. It is home to a range of marine fauna including cetaceans (e.g., Humpback and Southern Right whales), pinnipeds, sea turtles, seabirds and various fish species, some of which are listed under the EPBC Act.
- 264) I noted that the key activities in the Commonwealth Marine Area as a result of the proposed action will include:
- a) Cable laying and burial using jet trenching to install HVDC subsea cables;
 - b) Crossing existing infrastructure (e.g., telecommunications cables) using rock mattresses;

- c) Operation of the interconnector, transmitting electricity via buried cables;
- d) Routine inspection and maintenance, including remotely operated vehicle (ROV) surveys; and
- e) Decommissioning, involving cable removal or abandonment in situ.

Assessment of impacts

- 265) I noted that the EIS/EES contains information and analysis of potential impacts of the proposed action including in Volume 3, Chapters 2 and 4 and Volume 1, Chapter 10. The potential impacts identified in that documentation include the following:
- a) Physical seabed disturbance during cable installation and infrastructure crossings;
 - b) Underwater noise from vessels and trenching equipment;
 - c) EMF generated by operating HVDC cables;
 - d) Thermal emissions from cable heating;
 - e) Artificial lighting from vessels during night operations;
 - f) Introduction of invasive marine species (**IMS**) via ballast water and hull fouling;
 - g) Vessel collisions with marine fauna;
 - h) Result in a pest species becoming established in the Commonwealth Marine Area; and
 - i) Disturbance or impact to underwater cultural heritage during cable installation.
- 266) Seabed disturbance will occur during cable installation and marine trenching activities. Jet trenching and rock mattress placement will temporarily disrupt benthic habitats. I noted that the trenching process, which uses a jet trencher to fluidise sediments, will affect approximately 0.7 km² of seabed in offshore Bass Strait.
- 267) Construction activities will generate non-impulsive underwater noise, primarily from dynamic positioning of cable lay vessels (up to 185 dB re 1 µPa rms at 1 m) and jet trenchers (up to 175 dB re 1 µPa rms). I noted that these sounds can cause: (i) Permanent Threshold Shift in high-frequency cetaceans within 67 m of the source; (ii) Temporary Threshold Shift and behavioural disturbance in cetaceans, pinnipeds, turtles, fish and seabirds over broader ranges; and (iii) Auditory masking, particularly for low-frequency cetaceans. However, the impacts are expected to be short-term and localised, with residual impacts ranging from very low to moderate.
- 268) During operation, the HVDC cables will generate magnetic and EMFs. Whilst the cables are designed to minimise EMF through bundling, burial and circuit separation, residual magnetic fields at the seabed may reach up to 35.2 µT above background (approximately 60 µT in Bass Strait). I note that these fields could potentially affect magneto-sensitive species such as cetaceans, sea turtles, sharks and eels. However, the impacts are expected to be negligible to low, as the fields are highly localised and diminish rapidly with distance. I noted that studies of migratory effects on cetaceans as a result of magnetic fields from subsea cables, including Basslink and other HVDC cables overseas, show that cetacean migration is not affected by the magnetic fields.

- 269) Heat generated by the cables during operation will create thermal fields in the surrounding sediment. Modelling shows that temperature increases are confined to within 0.5 m of the cable, with maximum sediment temperatures reaching 48°C. I noted that this may affect deep-burrowing infauna but is unlikely to impact surface-dwelling benthic species.
- 270) Night-time operations in offshore Bass Strait will involve vessel lighting, which may attract seabirds, marine invertebrates and fish, potentially disrupting natural behaviours such as foraging and migration. I noted that the impact is short-term and localised, with residual effects rated as low to very low.
- 271) I noted that IMS may be introduced via ballast water and hull fouling on project vessels.
- 272) Construction vessels pose a collision risk to large cetaceans and sea turtles, particularly during migration. I noted that the risk is very low for slow-moving vessels and low for faster transiting vessels, given the low density of project traffic relative to existing maritime activity.
- 273) Australia's UCH Act provides automatic protection for shipwrecks and aircraft submerged for 75 years or more and allows for ministerial declarations to protect other heritage, including Aboriginal sites. I noted that the UCH Act applies in both Commonwealth and State waters, with overlapping jurisdiction in the first three nautical miles from shore.
- 274) I noted that the proposed action may impact underwater cultural heritage through seabed disturbance from cable installation and anchoring. Whilst no confirmed heritage sites have been identified in the EIS/EES, anomalies and predictive modelling indicate potential risks to shipwrecks and submerged Aboriginal landscapes. The EIS/EES states that the Underwater Cultural Heritage Studies completed to date follows the UCH Act, the Burra Charter and UNESCO guidelines, which emphasise in situ preservation and impact minimisation.

Avoidance and mitigation

- 275) In order to avoid physical disturbance to sensitive marine habitats, the subsea cable route was selected to traverse predominantly soft-sediment seabeds, avoiding biologically diverse reef areas and high-profile benthic habitats. I noted the proposed management plans include pre-lay surveys and micro-alignment adjustments further reduce seabed disturbance by identifying and avoiding obstacles and ecologically sensitive areas.
- 276) I also noted that underwater noise impacts from construction vessels and equipment are proposed to be mitigated through species-specific marine fauna management which include visual monitoring, precaution zones and vessel speed restrictions. I considered that these measures are aligned with EPBC Act recovery plans for species such as the Southern Right Whale and Blue Whale, among others.
- 277) I considered that EMF generated during cable operation are minimised by bundling and burying the HVDC cables, which significantly reduces magnetic and electric field emissions. I also considered that thermal emissions are mitigated through cable design and burial depth, ensuring heat dissipation does not affect benthic communities.
- 278) I noted that artificial lighting from vessels will be managed to reduce attraction and disorientation of seabirds and marine fauna, and that the avoidance and mitigation measures proposed in the management plans include minimising light intensity and duration, directing lights downward and avoiding floodlighting in accordance with national guidelines.

- 279) I noted that in order to prevent the introduction of IMS, all vessels must comply with Australian ballast water and biofouling management standards, including the *Biosecurity Act 2015* (Cth) and international conventions.
- 280) I noted that the EIS/EES considers that the risk of vessel collision is very low due to the slow speed that cable laying operations will be undertaken (i.e. at 1 to 1.5 knots). The EIS/EES includes further commitments to further reduce vessel collision risks with marine fauna through managed through a Marine Fauna Management Plan, with sub-plans for cetaceans and sea turtles, as well as incorporating monitoring using Marine Mammal Observers, exclusion zones and vessel strike protocols.
- 281) I noted that during construction of the Marinus Link project, underwater noise will be generated primarily by the cable lay vessel and jet trenching operations. The cable lay vessel, operating under dynamic positioning, is expected to produce the highest underwater noise levels at approximately 185 dB re 1 μ Pa rms at 1 metre, while the jet trencher emits up to 175 dB re 1 μ Pa rms during burial activities. These noise-generating activities are non-impulsive and will occur intermittently over a period of approximately two to three months per circuit, with trenching across the 255 km offshore alignment. I considered that temporary hearing loss in high-frequency cetaceans has been addressed in the EIS/SEES and is considered unlikely due to avoidance behaviour.
- 282) Australia manages marine pests introduced through international shipping by enforcing strict biosecurity measures, particularly targeting ballast water discharge and biofouling on vessel hulls. These measures align with international standards set by the International Maritime Organization (**IMO**), including the Ballast Water Management Convention and the Biofouling Guidelines. The Department of Agriculture, Fisheries and Forestry (**DAFF**) leads national efforts to prevent the introduction and spread of invasive marine species, working closely with state and territory governments and industry stakeholders. DAFF oversees biosecurity policy and enforcement and the Australian Maritime Safety Authority (**AMSA**), which represents Australia at the IMO, ensures compliance with international maritime regulations. I noted that together, these agencies implement the *Biosecurity Act 2015* (Cth) and related marine pest management strategies, ensuring vessels arriving from overseas meet mandatory standards for ballast water treatment and biofouling control.
- 283) To reduce potential impacts on underwater cultural heritage, the EIS/EES proposes a suite of avoidance and mitigation measures aligned with EPRs. I noted that key measures include refining the cable alignment to avoid unverified seabed anomalies with appropriate buffer zones, conducting high-resolution geophysical surveys and ROV inspections to assess anomalies, and developing a 3D model of submerged beach ridge formations to inform design and mitigation.
- 284) I noted that a comprehensive UCHMP will be implemented, detailing protocols for unexpected finds, site recognition and engagement with First Peoples. These measures aim to ensure that residual impacts are reduced to low or very low levels, consistent with national heritage protection standards.

Conditions

- 285) In respect of the environment in the Commonwealth Marine Area, I considered that the proposed action will not have a significant impact subject to the implementation of the proposed avoidance and mitigation measures and the conditions for the following reasons:
- a) The project includes strong biosecurity measures to prevent the introduction of IMS, such as ballast water exchange at the equator and hull fouling management. These are formalised under EPR MERU11 and aligned with national and international standards. Given the limited number of international vessels and low IMS presence in the area, I considered that the risk of pest species becoming established is low.
 - b) The project avoids sensitive habitats through route selection and pre-lay surveys (EPRs MERU02 and MERU03). Disturbance from construction is minimal, localised, and short-term, with benthic habitats expected to recover quickly. No fragmentation or isolation of substantial habitat areas is anticipated, and ecosystem functioning is not expected to be adversely affected.
 - c) The project alignment intersects the BIA for Southern Right whales, which use the coastal waters of Victoria and Tasmania for resting, breeding and calving, particularly between June and September. These areas include waters near Wilsons Promontory and the central east coast of Tasmania. The department considered, and I agreed, that conditions should be imposed to address impacts on marine species including cetaceans, including:
 - i) Condition 1 which limits the impact to the sea floor to areas designated as the action area;
 - ii) Condition 12 that limits the use of vessels capable of underwater noise above 185 dB re 1 μ Parms at 1 m from source;
 - iii) Conditions 13 to 19 that require the use of MMOs to observe whale interactions within an observation zone (3 km from a vessel with a dynamic positioning system in operation) and measures to reduce vessel strike should a whale enter the precaution zone (1 km from a vessel with a dynamic positioning system in operation).
 - d) Water quality impacts from construction activities are short-lived and localised. Sediment contamination is minimal and managed near the disused Tioxide pipeline (EPR MERU04). Thermal fields from cable operation are highly localised and not expected to affect benthic fauna. I noted that no significant changes in air or water quality are expected that would impact biodiversity or human health.
 - e) The project does not involve discharges of persistent organic pollutants or heavy metals. The only potential source disturbance of sediments near the Tioxide pipeline which is in Tasmania coastal waters.
 - f) Conditions 20 to 23 require the development of a Marine Fauna Management Plan that incorporates an Interaction with Cetaceans Plan and Turtle Interaction Plan requirements, and a UCHMP to manage impacts to heritage matters in accordance with Australia's *Guidelines to Assessing and Managing Impacts to Underwater Cultural Heritage in Australian Waters* (2024).

Conclusion

- 286) I was satisfied, based on all of the available information and taking into account the potential impacts, proposed avoidance and mitigation measures, and the proposed conditions of approval, that the proposed action would not have an unacceptable impact and are unlikely to have a significant impact on the environment in the Commonwealth Marine Area.
- 287) In forming my view, I considered the precautionary principle in relation to the potential impacts on the environment in the Commonwealth Marine Area and noted that there is a moderate level of uncertainty around what the proposed environmental impacts are. However, the department considered, and I agreed, that the proposed avoidance and mitigation measures proposed in the EIS/EES and in the conditions of approval are likely to be sufficient to minimise impacts.

Economic and social matters

- 288) Subparagraph 136(1)(b) of the EPBC Act required me, in deciding whether or not to approve the proposed action, and what conditions to attach to the approval, to consider economic and social matters.
- 289) I have considered the information on economic and social matters in the EIS/ESS, which recognises that these are interrelated and inform an assessment of each other. I have also considered the information on economic and social considerations in the department's recommendation report.
- 290) I considered the information and economic impact assessment (**EIA**) provided in the EIS/ESS, including the information at Volume 1, Chapter 7 and in Technical Appendix B. The EIA concluded that the proposed action would significantly benefit the economies of Victoria and Tasmania, with positive economic impacts including:
- a) the addition of approximately \$2.1 billion of gross economic product to Victoria and Tasmania during construction, and approximately \$1.7 billion of gross economic product during operation;
 - b) the generation of approximately \$762 million in public taxation revenue; and
 - c) the induction of regional renewable project investments, which are modelled to provide \$4.4 billion in the Tasmanian economy between 2028 and 2050.
- 291) The economic modelling shows minor negative impacts on employment in several sectors (such as agriculture, forestry and mining) during the construction phase as other sectors are likely to compete with the proponent for workers, though it is expected workers would likely return to those sectors following the construction phase. The influx of workers in the construction phase is also likely to temporarily increase demand for services like accommodation, food, retail, healthcare, and social assistance. However, there would be some negative impacts on employment in those sectors once demand reverses as the workforce returns to their hometowns during the operation phase. The construction phase is expected to add approximately 2661 full-time equivalent (**FTE**) job-years to the Tasmanian economy, and approximately 5247 FTE job-years to the Victorian economy. The ongoing expenditure for the operation phase is expected to add approximately 494 FTE job-years to the Tasmanian economy, and 592 FTW job-years to the Victorian economy. The EIA concluded that the positive impact of increased FTE job-years during construction outweighs the negative

- impact of reduced FTE job-years during operation, resulting in a net gain across the project's life.
- 292) I noted that the proponent acknowledges that implementing EPR compliance measures in a coordinated, sequenced approach throughout construction is crucial. EPR developed for the social impact assessment are expected to assist in mitigating negative socio-economic impacts while maximising positive opportunities from the proposed action.
- 293) I considered the information and social impact assessment (**SIA**) provided in the EIS/ESS, including the information at Volume 4, Chapter 16 and in Technical Appendix U. The SIA, which was undertaken through consultation and engagement with First Nations people, the local community and landholders, concluded that the proposed action would benefit local communities through employment and training opportunities, and that it may generate prosperity, lower energy costs and support local businesses.
- 294) The SIA found that during construction, nearby communities may experience temporary impacts to private property, changes in visual amenity, reduced access to recreational areas, changes to the road network, general disturbances from noise and dust, and damage to cultural heritage values and natural assets (i.e. within the agriculture and forestry sectors). However, I noted that the proponent commits to the mitigation and management of these potential impacts through the preparation of Social Impact Management Plans as referenced in EPR S01-S05 and EM08 of Technical Appendix U to the EIS/ESS.
- 295) The cumulative impact assessment within the SIA underscores the necessity for coordinated efforts between government and industry to address the sustained high demand for construction workers and rental housing in the region. Such collaboration is essential to mitigate the impacts on regional healthcare, emergency services, and the availability of accommodation arising from this increased demand.
- 296) I noted that the proponent has facilitated engagement with several First Peoples groups in Victoria to support the formation and management of the First Peoples Advisory Group (who formally met between 2022 and mid-2023) and the development of the First Peoples Engagement Plan for the project. The proponent is continuing to undertake consultation with the First Peoples groups and the broader community, with ongoing engagement activities including cultural education sessions for company personnel, progression of cultural values assessments, and general project updates.
- 297) I also noted that the proponent has engaged with Aboriginal Heritage Tasmania and members of the Tasmanian Aboriginal Centre, and is intending to commence a collaborative First Peoples engagement approach with other major project organisations (i.e. North West Transmission Development projects, Hydro Tasmania, among others) to coordinate engagement that is culturally appropriate and addresses the needs of the Tasmanian community.
- 298) I considered the Victorian Planning Ministers Assessment which identified both positive and negative social impacts, and positive economic impacts (at both the state and regional level). I agree with the conclusions of the Minister's Assessment that the positive benefits to social and economic matters, including job creation, economic stimulation, and infrastructure investment, are expected to outweigh the temporary construction related negative impacts

of the project. I consider that the impacts are manageable. I also agree with the recommendation for the development and implementation of several management plans to be conditioned if the project is approved under Victorian legislation.

Factors to be taken into account

Principles of ecologically sustainable development

- 299) In deciding whether or not to approve the taking of the proposed action, I was required to take into account the principles of ecologically sustainable development (**ESD**) pursuant to subparagraph 136(2)(a) of the EPBC Act. The principles of ESD, as defined in section 3A of the EPBC Act, are:
- a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
 - b) if there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as reason for postponing measures to prevent environmental degradation;
 - c) the principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
 - e) improved valuation, pricing and incentive mechanisms should be promoted.
- 300) I took into account the principles of ecologically sustainable development in making my decision. In particular:
- a) The assessment documentation including the EIS/EES (together with its supporting attachment and appendices) and the department's recommendation report provided information on the short-term and long-term economic, environmental, social, and equitable considerations that are relevant to proposed action.
 - b) Any lack of certainty related to the potential impacts of the proposed action will be addressed by conditions that restrict environmental impacts, impose strict monitoring, and adopt environmental standards which, if not achieved, require the application of response mechanisms in a timely manner to avoid adverse impacts. This includes not only the conditions that I have imposed but also the numerous management plans that will be required under state legislation.
 - c) The proposed conditions that I have imposed will ensure protection of EPBC listed species and communities, listed migratory species and the environment of the Commonwealth Marine Area. I found that those conditions would allow for the project to be delivered and operated in a sustainable way to protect the environment for future generations and to preserve EPBC listed species and communities, listed migratory species and the environment of the Commonwealth Marine Area.
 - d) I considered the importance of conserving biological diversity and ecological integrity in relation to all the controlling provisions for this project. In doing so, I noted that the advice provided by the department in the recommendation report was informed by, and reflected consideration of this matter.

- e) I considered the department's advice which included consideration of and references to a range of information on the economic costs, benefits and impacts of the proposed action. Based on that advice, and the detailed findings made in the EIA of the EIS/ESS, I was satisfied that the proposed action has been subjected to consideration of evaluation, pricing and incentive mechanisms that are relevant to the project.

Precautionary principle

- 301) I was also required to take into account the precautionary principle in deciding whether or not to approve the taking of the proposed action. The precautionary principle, set out in subsection 391(2) of the EPBC Act, requires that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- 302) I took account of the precautionary principle by considering whether there are threats of serious or irreversible environmental damage with respect to the matters protected by the EPBC Act and whether they will, or are likely to be, significantly impacted by the proposed action, and considering whether there is a lack of scientific certainty.
- 303) I noted that the department's recommendation report considered the precautionary principle in evaluating potential impacts on protected matters during the preparation of this decision package. I further noted that the department identified that where a threat of a serious or irreversible environmental damage and uncertainty of scientific data was identified in the EIS, the proponent has responded by taking a precautionary approach. For example, assuming the presence of listed threatened species or communities on land that could not be directly surveyed due to land access limitations and making commitments to avoid and mitigate impacts to those matters. In the marine environment, by committing to undertaking underwater cultural heritage surveys along the subsea alignment of the project prior to laying the cable in accordance with the relevant National guidance. I have applied conditions requiring adherence to those commitments.
- 304) I considered that despite reasonable efforts on the part of the proponent and the efforts undertaken in preparing the EIS/EES, in some cases there is a lack of scientific certainty about impacts on the above listed protected matters. I considered that my decision was consistent with the application of the precautionary principle. Where the proposed action has the potential to contribute to threats of serious or irreversible damage to matters of national environmental significance, I applied conditions to avoid or mitigate those impacts.

Assessment reports

- 305) In accordance with subparagraph 136(2)(ca)(i) of the EPBC Act, I reviewed and took into account the finalised EIS/EES relating to the proposed action provided to the Minister under section 104 of the EPBC Act.
- 306) Further, in accordance with subparagraph 136(2)(ca)(ii), I reviewed and took into account the department's recommendation report relating to the proposed action that was given to the Minister under section 105 of the EPBC Act.

Relevant comments

- 307) I noted that public comments were invited on the referral of the proposed action and the draft assessment documentation. The department considered, and I agreed, that adequate public consultation had been undertaken for the proposed action. Accordingly, the department recommended, and I agreed, that inviting public comment on the proposed decision and recommended conditions under section 131A of the EPBC Act was unlikely to elicit views or information that had not already been considered in relation to the proposed action.
- 308) I have identified and summarised the relevant comments received from the proponent and the relevant Ministers at paragraphs [27]-[47] above. I had regard to those comments in making my decision to approve the proposed action subject to conditions.

Proponent's environmental history

- 309) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, subsection 136(4) of the EPBC Act provides that I may consider whether the person is a suitable person to be granted an approval, having regard to:
- a) the person's history in relation to environmental matters; and
 - b) if the person is a body corporate – the history of its executive officers in relation to environmental matters; and
 - c) if the person is a body corporate that is a subsidiary of another body or company (the parent body) – the history in relation to environmental matters of the parent body and its executive officers.
- 310) I noted that at the time of the referral that the proponent was a newly formed and wholly owned subsidiary of Tasmanian Networks Pty Ltd (TasNetworks) and had no development history prior to the Marinus Link proposal. I also noted that on 24 March 2024, it was announced that the proponent had separated from TasNetworks and that the Commonwealth's equity share in the joint venture entity is 49%, with Tasmania's share 17.7% and Victoria remaining at 33.3%. The separation took place on 22 March 2024.
- 311) The EIS/EES stated that the proponent was formed in 2018 for the purpose of undertaking the proposed action. I noted that the proponent has no past or present proceedings against it under a Commonwealth, State or Territory law, and it is committed to good industry practice to deliver long term benefits to stakeholders with a focus on compliance with relevant legislative and regulatory requirements. However, as a newly formed company established for a particular project, the proponent has no record of responsible environmental management.
- 312) On 2 June 2025, the department's Office of Compliance was issued a request to undertake a search of known matters relevant to the proponent's environmental history. I noted that no adverse history was identified as a result of that search.
- 313) I considered and agreed with the department's recommendation that there is no evidence that would suggest that the proponent is either unable or unwilling to implement the proposed condition.

- 314) In light of these matters, I found that there was no reason why the proponent would not be suitable to be granted an approval in consideration of the factors set out in subsection 136(4) of the EPBC Act.

Matters not considered

- 315) In deciding whether or not to approve the taking of the action, and what conditions to attach to the approval, I did not consider any matters that I was not required or otherwise permitted to consider by Division 1 of Part 9 of the EPBC Act.

Threatened species and endangered communities

- 316) In accordance with subsection 139(1) of the EPBC Act, in deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, I must not act inconsistently with:

- a) Australia's obligations under:
 - i) the Biodiversity Convention; or
 - ii) the Apia Convention; or
 - iii) CITES; or
- b) a recovery plan or threat abatement plan.

Biodiversity convention

- 317) I noted that the objectives of the Biodiversity Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies and by appropriate funding.
- 318) I noted that the department did not consider that the recommendations in the recommendation report were inconsistent with the Biodiversity Convention, which promoted environmental impact assessment (such as was undertaken in this case) to avoid and minimise adverse impacts on biological diversity. I also gave particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.
- 319) I was satisfied that my approval of the proposed action subject to conditions which require avoidance, mitigation and management measures for listed threatened species and communities would not be inconsistent with the Biodiversity Convention. The conditions imposed on the approval require information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Apia convention

- 320) I noted the *Convention on the Conservation of Nature in the South Pacific (Apia Convention)* encourages the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystems occurring therein (particular

attention being given to endangered species), as well as superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value.

- 321) I noted the Apia Convention was suspended with effect from 13 September 2006. Whilst the Apia Convention has been suspended, I took Australia's obligations under the Convention into consideration and was satisfied that my approval would not be inconsistent with the Convention which has the general aims of conservation of biodiversity.

CITES

- 322) The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.
- 323) I considered and agreed with the department's recommendations and advice that approved the proposed action would not be inconsistent with CITES and the proposed action does not involve international trade of endangered species.

Recovery plan and threat abatement plan

- 324) I noted that the department's recommendations and conclusions in the recommendation report regarding the likely environmental impacts, the effectiveness of avoidance and mitigation measures and the acceptability of any residual impacts were based on a thorough review of relevant recovery plans, threat abatement plans, conservation advice (discussed further below) and the current scientific understanding of each impact.
- 325) I noted that the recovery plans relevant to the proposed action and assessment are:
- a) *National Recovery Plan for the Grey-headed Flying-fox* (*Pteropus poliocephalus*), Department of Agriculture, Water and the Environment (2021).
 - b) *Threatened Tasmanian Eagles Recovery Plan 2006-2010*, Threatened Species Section (2006), Department of Primary Industries and Water, Hobart.
 - c) *National Recovery Plan for the Spotted-tailed Quoll* (*Dasyurus maculatus*), Department of Environment, Land, Water and Planning (2016).
 - d) *National Recovery Plan for the Southern Right Whale* (*Eubalaena australis*), Department of Climate Change, Energy, the Environment and Water (2024).
 - e) *Conservation Management Plan for the Blue Whale - A Recovery Plan under the Environment Protection and Biodiversity Conservation Act 1999*, Department of the Environment (2015).
 - f) *Recovery Plan for the White Shark* (*Carcharodon carcharias*). Department of Sustainability, Environment, Water, Population and Communities (2013).
 - g) *Recovery Plan for Marine Turtles in Australia*, Department of the Environment and Energy (2017).
 - h) *National Recovery Plan for the Australasian Bittern* (*Botaurus poiciloptilus*), Department of Climate Change, Energy, the Environment and Water (2022).

- i) Carter, O. (2006), *National Recovery Plan for the Strzelecki Gum (Eucalyptus strzeleckii)*, Department of Sustainability and Environment, Melbourne.
 - j) *National Recovery Plan for albatrosses and petrels*, Department of Climate Change, Energy, the Environment and Water (2022).
 - k) Backhouse, G., J. Jackson & J. O'Connor (2008), *National Recovery Plan for Australian Grayling Prototroctes maraena*, Department of Sustainability and Environment, Melbourne.
- 326) I have considered the relevant aspects of the recovery plans in forming my conclusions and deciding whether to approve the proposed action. I have identified and summarised the relevant aspects of the recovery plans above in the context of my findings on each listed threatened species and community. I agreed with the department's recommendation that the approval of the proposed action subject to conditions would not be inconsistent with a relevant recovery plan.
- 327) The threat abatement plans relevant to the proposed action are:
- a) *Threat abatement plan for disease in natural ecosystems caused by Phytophthora cinnamomic*, Department of the Environment and Energy (2018).
 - b) *Threat abatement plan for predation by feral cats 2024*, Department of Climate Change, Energy, the Environment and Water (2024).
 - c) *Threat abatement plan for competition and land degradation by rabbits*, Department of the Environment and Energy (2016).
 - d) *Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs (Sus scrofa)*, Department of the Environment and Energy (2017).
 - e) *Threat abatement plan for competition and land degradation by unmanaged goats*, Department of the Environment, Water, Heritage and the Arts (2008).
 - f) *Threat abatement plan for predation by the European red fox*, Department of the Environment, Water, Heritage and the Arts (2008).
 - g) *Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans*, Department of the Environment and Energy (2018).
- 328) I have considered the relevant aspects of the threat abatement plans in forming my conclusions and deciding whether to approve the proposed action. I have identified and summarised the relevant aspects of the threat abatement plans above in the context of my findings on each listed threatened species and community. I agreed with the department's recommendation that the approval of the proposed action subject to conditions would not be inconsistent with a relevant threat abatement plan.

Approved conservation advice

- 329) Under subsection 139(2) of the EPBC Act, if:
- a) I am considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and

- b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

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

330) The approved conservation advices relevant to the proposed action are:

- a) *Approved Conservation Advice for Gippsland Red Gum* (*Eucalyptus tereticornis* subsp. *mediana*) *Grassy Woodland and Associated Native Grassland*, Department of the Environment, Water, Heritage and the Arts (2008).
- b) *Conservation Advice Antechinus minimus maritimus swamp antechinus* (coastal Victoria and far south-eastern South Australia), Threatened Species Scientific Committee (2016).
- c) *Approved Conservation Advice for Amphibromus fluitans* (River Swamp Wallaby-grass), Threatened Species Scientific Committee (2016).
- d) *Conservation Advice Caladenia orientalis eastern spider orchid*, Threatened Species Scientific Committee (2016).
- e) *Conservation Advice for Caladenia tessellata* (thick-lipped spider orchid), Department of Climate Change, Energy, the Environment and Water (2023).
- f) *Conservation Advice for Prasophyllum spicatum* (dense leek orchid), Department of Climate Change, Energy, the Environment and Water (2024).
- g) *Conservation Advice for Pterostylis chlorogramma* (green-striped greenhood), Department of Climate Change, Energy, the Environment and Water (2024).
- h) *Conservation Advice Pterostylis cucullata leafy greenhood*, Threatened Species Scientific Committee (2016).
- i) *Conservation Advice Eucalyptus strzeleckii Strzelecki gum*, Threatened Species Scientific Committee (2016).
- j) *Conservation Advice for the Tasmanian white gum* (*Eucalyptus viminalis*) *wet forest*, Department of Agriculture, Water and the Environment (2021).
- k) *Approved Conservation Advice for Sarcophilus harrisii* (Tasmanian Devil), Department of the Environment, Water, Heritage and the Arts (2009).
- l) *Commonwealth Listing Advice on Dasyurus maculatus maculatus* (Spot-tailed Quoll, Spotted-tailed Quoll, Tiger Quoll), Threatened Species Scientific Committee (2004).
- m) *Conservation Advice Balaenoptera borealis* (sei whale), Threatened Species Scientific Committee (2015).
- n) *Conservation Advice Balaenoptera physalus* (fin whale), Threatened Species Scientific Committee (2015).
- o) *Conservation Advice Neophoca cinerea* (Australian Sea Lion), Threatened Species Scientific Committee (2020).
- p) *Conservation Advice Mirounga leonina* (southern elephant seal), Threatened Species Scientific Committee (2020).

- q) Approved Conservation Advice for *Dermochelys coriacea* (Leatherback Turtle), Department of the Environment, Water, Heritage and the Arts (2008).
- r) *Conservation Advice Thinornis rubricollis rubricollis* (hooded plover (eastern)), Department of the Environment (2014).
- s) *Conservation Advice for Calidris ferruginea* (curlew sandpiper), Department of Climate Change, Energy, the Environment and Water (2023).
- t) *Conservation Advice for Numenius madagascariensis* (far eastern curlew), Department of Climate Change, Energy, the Environment and Water (2023).
- u) *Conservation Advice for Calidris tenuirostris* (great knot), Department of Climate Change, Energy, the Environment and Water (2024).
- v) *Conservation Advice for Gallinago hardwickii* (Latham's snipe), Department of Climate Change, Energy, the Environment and Water (2024).
- w) *Conservation Advice Hirundapus caudacutus* (White-throated Needletail), Threatened Species Scientific Committee (2019).
- x) *Approved Conservation Advice for Thesium australe* (austral toadflax), Department of the Environment (2013).
- y) *Conservation Advice for Prototroctes maraena* (Australian Grayling), Threatened Species Scientific Committee (2021).

331) I have had regard to the approved conservation advices that are relevant to the proposed action and the likely impacts of the proposed action on listed threatened species and endangered ecological communities. I considered and agreed with the department's recommendation that the approval of the proposed action would not be inconsistent with the conservation advices.

Migratory species

332) Under section 140 of the EPBC Act, in deciding whether or not to approve the taking of an action for the purposes of sections 20 or 20A relating to a listed migratory species, and what conditions to attach to such an approval, I must not act inconsistently with Australia's obligations under the following conventions and agreements as they apply to the relevant listed migratory species:

- a) the *Convention on the Conservation of Migratory Species of Wild Animals* (**Bonn Convention**);
- b) the *China-Australia Migratory Bird Agreement* (**CAMBA**);
- c) the *Japan-Australia Migratory Bird Agreement* (**JAMBA**);
- d) an international agreement approved under subsection 209(4) of the EPBC Act.

The Bonn Convention

333) The Bonn Convention aims to conserve terrestrial, aquatic, and avian migratory species throughout their range.

- 334) I noted the department's advice that the recommendations are not considered to be inconsistent with the Bonn Convention. I also noted that the department had given particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.
- 335) I had regard to the Bonn Convention in making by decision to approve the proposed action. I considered that my approval, which has assessed impacts to listed migratory species, is not inconsistent with the Bonn Convention. The approval requires avoidance, mitigation and management measures for listed migratory species and that information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

China-Australia Migratory Bird Agreement

- 336) The CAMBA lists terrestrial, water and shorebird species which migrate between Australia and the respective countries. In both cases, the majority of listed species are shorebirds.
- 337) The CAMBA requires the parties to protect migratory birds by:
- a) limiting the circumstances under which migratory birds are taken or traded;
 - b) protecting and conserving important habitats;
 - c) exchanging information; and
 - d) building cooperative relationships.
- 338) I had regard to the CAMBA in making by decision to approve the proposed action. I considered that my approval, which has assessed impacts to listed migratory species, is not inconsistent with the CAMBA. The approval requires avoidance, mitigation and management measures for listed migratory species and that information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Japan-Australia Migratory Bird Agreement

- 339) The JAMBA lists terrestrial, water and shorebird species which migrate between Australia and the respective countries. In both cases, the majority of listed species are shorebirds.
- 340) The JAMBA requires the parties to protect migratory birds by:
- a) limiting the circumstances under which migratory birds are taken or traded;
 - b) protecting and conserving important habitats;
 - c) exchanging information; and
 - d) building cooperative relationships.
- 341) I had regard to the JAMBA in making by decision to approve the proposed action. I considered that my approval, which has assessed impacts to listed migratory species, is not inconsistent with the JAMBA. The approval requires avoidance, mitigation and management measures for listed migratory species and that information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Other international agreements – Republic of Korea-Australia Migratory Bird Agreement

- 342) The *Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA)* lists terrestrial, water and shorebird species which migrate between Australia and the respective countries. In both cases, the majority of listed species are shorebirds.
- 343) The ROKAMBA requires the parties to protect migratory birds by:
- a) limiting the circumstances under which migratory birds are taken or traded;
 - b) protecting and conserving important habitats;
 - c) exchanging information; and
 - d) building cooperative relationships.
- 344) I had regard to the ROKAMBA in making my decision to approve the proposed action. I considered that my approval, which has assessed impacts to listed migratory species, is not inconsistent with the ROKAMBA. The approval requires avoidance, mitigation and management measures for listed migratory species and that information related to the proposed action to be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Bioregional plans

- 345) Under subsection 176(5) of the EPBC Act, I must have regard to a bioregional plan in making any decision under the EPBC Act to which the plan is relevant.
- 346) I noted that the proposed action is located within the South-east Marine Region and that there is currently no marine bioregional plan for the South-east Marine Region. Accordingly, I found that the proposed action is not located within or near an area designated by a bioregional plan and that there were no bioregional plans relevant to the proposed action.

Conditions of approval

- 347) Pursuant to subsection 134(1) of the EPBC Act, I may attach a condition to the approval of the proposed action if I am satisfied that the condition is necessary or convenient for:
- a) protecting a matter protected by a provision of Part 3 of the EPBC Act for which the approval has effect (whether or not the protection is protection from the action); or
 - b) repairing or mitigating damage to a matter protected by a provision of Part 3 of the EPBC Act for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
- 348) I considered the likely scope and severity of the impacts to matters of national environmental significance, and the proposed avoidance and mitigation measures. I determined that it is likely that the proposed action will not result in residual significant impact to listed threatened species and communities, listed migratory species and the environment within a Commonwealth Marine Area.
- 349) I considered the conditions imposed or likely to be imposed by the Victorian and Tasmanian Governments. The department considered, and I agreed, that the conditions described are

generally suitable and sufficient to manage the significant impacts to matters of national environmental significance resulting from the proposed action. Specifically, I found that:

- a) instead of duplicating state conditions, that it is appropriate to impose conditions in the Victorian terrestrial jurisdiction that support outcomes that the state plans to implement in management plans;
- b) providing clearing limits for listed threatened species in Victoria, knowing that the Victorian Government intends to further limit clearing of protected matters under both Victorian environmental law and the EPBC Act is appropriate because the impacts are considered to be acceptable and do not preclude the Victorian Government from implementing for better outcomes; and
- c) given that cable laying will occur across both the Victorian and Tasmanian coastal waters as well as a Commonwealth Marine Area that it is appropriate to duplicate management plan requirements in the interest of developing a single management plan that covers all three jurisdictions.

350) I decided that it was necessary or convenient to apply approval conditions to the proposed action, as detailed in the notice of decision. Several conditions overlap EPRs proposed in the Victorian Planning Minister's Assessment. The key conditions relating to each protected matter are discussed under each controlling provision above in this statement of reasons.

Additional considerations for conditions

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

- a) Any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a state or self-governing territory or another law of the Commonwealth on the taking of the action.
- b) Information provided by the person proposing to take the action or by the designated proponent of the action.
- c) The desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition.

352) I considered the conditions recommended by the Victorian Planning Minister under the *Environment Effects Act 1978* (Vic), as specified in the Victorian Planning Minister's Assessment. I considered that the conditions recommended are generally suitable to manage the significant potential impacts, but that additional conditions are required to manage impacts to protected matters.

353) I had regard to the final EIS/EES documentation provided by the proponent in making my decision on whether or not to approve the proposed action, including in respect of conditions imposed on the approval.

354) I considered and agreed with the department's recommendation that the proposed conditions are cost-effective, reasonable and appropriate having regard to the nature and scale of potential impacts from the proposed action, and will ensure that matters of national environmental significance are protected over time. I was satisfied that the conditions are, as

far as is practicable, a cost-effective means of achieving their intended purpose. The proposed conditions are cost-effective because, amongst other things, they streamline processes and eliminate duplicity when reviewing management plans that are required under state legislation, as well as regulatory bodies administering the OEI Act.

- 355) I also considered that it was necessary or convenient for the purposes of section 134(1) of the EPBC Act to include standard administrative conditions that align with the department policy on condition setting for approval decisions.

Reasons for decision

- 356) Having considered all of the matters required to be considered under the EPBC Act and in light of the findings above, I decided to approve the taking of the proposed action, subject to conditions, for the purposes of section 18, 18A, 20, 20A, 23 and 24A of the EPBC Act.
- 357) The approval will be in effect until 25 July 2085 to allow sufficient time for the completion of construction, operation and decommissioning of the action and the implementation of measures to protect matters of national environmental significance.

Name and position Brendan Linton-Smith, Acting Branch Head
 Environment Assessments (Vic and Tas) and Post Approvals Branch

Signature



Date of decision 29 September 2025

Annexure A

Section 3 – Objects of Act

- (1) The objects of this Act are:
- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
 - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
 - (c) to promote the conservation of biodiversity; and
 - (ca) to provide for the protection and conservation of heritage; and
 - (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
 - (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
 - (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
 - (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.
- (2) In order to achieve its objects, the Act:
- (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and
 - (b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and
 - (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and
 - (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and
 - (e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:
 - (i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and
 - (ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and
 - (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and
 - (iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and
 - (f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and
 - (fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and
 - (g) promotes a partnership approach to environmental protection and biodiversity conservation through:
 - (i) bilateral agreements with States and Territories; and

- (ii) conservation agreements with land-holders; and
- (iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and
- (iv) the involvement of the community in management planning.

Section 3A – Principles of ecologically sustainable development

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

Section 18 – Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

- (1) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Critically endangered species

- (2) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Endangered species

- (3) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the endangered category; or

- (b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Vulnerable species

- (4) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Critically endangered communities

- (5) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Endangered communities

- (6) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Section 18A – Offences relating to threatened species etc.

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
 - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
 - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

- (4) Subsections (1) and (2) do not apply to an action if:
- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
 - (i) a species included in the extinct category of the list under section 178; or
 - (ii) a conservation dependent species; or
 - (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant impact) is an ecological community included in the vulnerable category of the list under section 181.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

Section 20 – Requirements for approval of activities with a significant impact on a listed migratory species

- (1) A person must not take an action that:
- (a) has or will have a significant impact on a listed migratory species; or
 - (b) is likely to have a significant impact on a listed migratory species.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or

- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Section 20A – Offences relating to listed migratory species

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on a species; and
 - (c) the species is a listed migratory species.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on a species; and
 - (c) the species is a listed migratory species.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

- (4) Subsections (1) and (2) do not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Section 23 – Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

- (1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Actions outside Commonwealth marine areas affecting those areas

- (2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:
- (a) has or will have a significant impact on the environment in a Commonwealth marine area; or
 - (b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Fishing in State or Territory waters managed by Commonwealth

- (3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
- (a) that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) that:
 - (i) has or will have a significant impact on the environment in those coastal waters; or
 - (ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Exceptions to prohibitions

- (4) Subsection (1), (2) or (3) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
 - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Exception—fishing in Commonwealth waters managed by State

- (5) Subsection (1) does not apply to an action if the action:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (c) is permitted under a law of the State or Territory.

Exception—fishing outside Commonwealth marine areas

- (6) Subsection (2) does not apply to an action that:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is permitted under a law of a State or self-governing Territory.

Section 24 – What is a *Commonwealth marine area*?

Each of the following is a ***Commonwealth marine area***:

- (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
 - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (ii) waters within the limits of a State or the Northern Territory;
- (b) the seabed under waters covered by paragraph (a);
- (c) airspace over waters covered by paragraph (a);
- (d) any waters over the continental shelf, except:
 - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (ii) waters within the limits of a State or the Northern Territory; and
 - (iii) waters covered by paragraph (a);
- (e) any seabed under waters covered by paragraph (d);
- (f) any airspace over waters covered by paragraph (d);
- (g) any other area of sea or seabed that is included in a Commonwealth reserve.

Section 24A – Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth marine area; and
 - (c) the action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (1A) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions in Commonwealth marine areas likely to affect the environment

- (2) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth marine area; and
 - (c) the action is likely to have a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2A) Strict liability applies to paragraph (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions outside Commonwealth marine areas affecting those areas

- (3) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
 - (c) the action results or will result in a significant impact on the environment in an area; and
 - (d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Actions likely to affect environment in Commonwealth marine areas

- (4) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the environment in an area; and
 - (d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4A) Strict liability applies to paragraphs (4)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Fishing with impact in State or Territory waters managed by Commonwealth

- (5) A person commits an offence if:
- (a) the person takes an action that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
 - (c) the action results or will result in a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5A) Strict liability applies to paragraph (5)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Fishing with likely impact in State or Territory waters managed by Commonwealth

- (6) A person commits an offence if:
- (a) the person takes an action that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
 - (c) the action is likely to have a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (6A) Strict liability applies to paragraph (6)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Penalties

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

Defences—general

- (8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Defence—fishing in Commonwealth waters managed by State

- (9) Subsections (1) and (2) do not apply to an action if the action:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (c) is permitted under a law of the State or Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Defence—fishing outside Commonwealth marine areas

- (10) Subsections (3) and (4) do not apply to an action that:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is permitted under a law of a State or self-governing Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Section 130 – Timing of decision on approval

Basic rule

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.
- (1B) The **relevant period**, in relation to a controlled action, is as follows:
- (a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;
 - (b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
 - (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
 - (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public environment report or the finalised environmental impact statement, as the case requires;
 - (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

What is an assessment report?

- (2) An **assessment report** is a report given to the Minister as described in:
- (a) subsection 47(4) (about assessments under a bilateral agreement); or
 - (b) subsection 84(3) (about assessments in a manner specified in a declaration); or
 - (c) subsection 87(4) (about assessments by accredited assessment processes).

Notice of extension of time

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

Time does not run while awaiting advice from Independent Expert Scientific Committee

- (4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
- (a) on or after the day the Minister requested the advice; and
 - (b) on or before the day on which the Minister obtains the advice.

Time does not run while further information is sought

- (5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

Section 131 – Inviting comments from other Ministers before decision

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

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

Section 131AA – Inviting comments before decision from person proposing to take action and designated proponent

- (1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
- (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
 - (i) the decision the Minister proposes to make; and
 - (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
 - (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- (2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
- (a) a copy of whichever of the following documents applies to the action:
 - (i) an assessment report;
 - (ii) a finalised recommendation report given to the Minister under subsection 93(5);

- (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
 - (b) any information relating to economic and social matters that the Minister has considered; and
 - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
 - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- (3) The Minister is not required to provide under subsection (2):
- (a) information that is in the public domain; or
 - (b) a copy of so much of a document as is in the public domain; or
 - (c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (4) The Minister must not provide under subsection (2):
- (a) a copy of so much of a document as:
 - (i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (ii) the Minister is satisfied contains information that is commercial-in-confidence; or
 - (b) information that:
 - (i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or
 - (ii) the Minister is satisfied is commercial-in-confidence.
- (5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.
- (6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).
- (7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:
- (a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and
 - (b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

Section 133 – Grant of approval*Approval*

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

Content of approval

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

Note: The period for which the approval has effect may be extended. See Division 5.

Persons who may take action covered by approval

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

Notice of approval

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

Limit on publication of approval

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

Notice of refusal of approval

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

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

Definition

- (8) In this section:

assessment documentation, in relation to a controlled action, means:

- (a) if the action is the subject of an assessment report—that report; or
- (b) if Division 3A of Part 8 (assessment on referral information) applies to the action:
 - (i) the referral of the proposal to take the action; and
 - (ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or
- (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; or
- (d) if Division 5 of Part 8 (public environment reports) applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; or
- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105.

Section 134 – Conditions of approval*Condition to inform persons taking action of conditions attached to approval*

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

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

Generally

- (1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
- (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

- (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

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

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

- (3) The conditions that may be attached to an approval include:
 - (aa) conditions requiring specified activities to be undertaken for:
 - (i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and
 - (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
 - (a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and
 - (iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
 - (b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
 - (c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
 - (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and
 - (e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:
 - (i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and
 - (ii) implementation of the plan so approved; and
 - (f) conditions requiring specified environmental monitoring or testing to be carried out; and
 - (g) conditions requiring compliance with a specified industry standard or code of practice; and
 - (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

This subsection does not limit the kinds of conditions that may be attached to an approval.

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Certain conditions require consent of holder of approval

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
- (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
 - (b) a condition referred to in paragraph (3)(ab).
- (3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:
- (a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
 - (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

- (3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
- (a) as in force at a particular time; or
 - (b) as is in force or existing from time to time;
- even if the instrument does not yet exist at the time the approval takes effect.

Conditions attached under paragraph (3)(e)

- (3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Considerations in deciding on condition

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:
- (a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and
 - (aa) information provided by the person proposing to take the action or by the designated proponent of the action; and
 - (b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

Effect of conditions requiring compliance with conditions specified in another instrument

- (4A) If:
- (a) a condition (the **principal condition**) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the **other conditions**) specified in an instrument of a kind referred to in that paragraph; and
 - (b) the other conditions are in excess of the power conferred by subsection (1);
- the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

Validity of decision

- (5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

Section 136 – General considerations*Mandatory considerations*

- (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
- (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
 - (b) economic and social matters.

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
- (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (if any) relating to the action; and
 - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
 - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; and
 - (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; and
 - (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105; and
 - (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and
 - (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and

- (fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in accordance with section 131AB; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:
 - (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the **parent body**)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

- (5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

Section 139 – Requirements for decisions about threatened species and endangered communities

- (1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
 - (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan or threat abatement plan.
- (2) If:
 - (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;
 the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

Section 140 – Requirements for decisions about migratory species

In deciding whether or not to approve for the purposes of section 20 or 20A the taking of an action relating to a listed migratory species, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:

- (a) the Bonn Convention;

- (b) CAMBA;
- (c) JAMBA;
- (d) an international agreement approved under subsection 209(4).

Section 158A – Approval process decisions not affected by listing events that happen after section 75 decision made

(1) In this section:

approval process decision means any of the following decisions:

- (a) a decision under section 75 whether an action is a controlled action;
- (b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;
- (c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;
- (d) a decision under section 87 on the approach for the assessment of the impacts of an action;
- (e) a decision under section 133 whether to approve an action;
- (f) a decision under section 134 to attach conditions to an approval of an action;
- (g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
- (h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

- (a) a property becoming a declared World Heritage property;
- (b) a change in the world heritage values of a declared World Heritage property;
- (c) a place becoming a National Heritage place;
- (d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;
- (e) a place becoming a Commonwealth Heritage place;
- (f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
- (g) a wetland becoming a declared Ramsar wetland;
- (h) a change in the boundaries of any of the following:
 - (i) a World Heritage property;
 - (ii) a National Heritage place;
 - (iii) a Commonwealth Heritage place;
 - (iv) a declared Ramsar wetland;
 - (v) the Great Barrier Reef Marine Park;
- (i) a species becoming a listed threatened species;
- (j) an ecological community becoming a listed threatened ecological community;
- (k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
- (l) a species becoming a listed migratory species;
- (m) any other event of a kind specified in the regulations.

(2) This section applies if:

- (a) the Minister has, before or after the commencement of this section, decided under section 75 (the **primary decision**) whether an action (the **relevant action**) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and

- (b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.
- (3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
- (4) After the listing event occurs, the listing event is to be disregarded:
 - (a) in making any further approval process decision in relation to the relevant action; and
 - (b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).
- (5) This section has effect despite any other provision of this Act and despite any other law.

Annexure B

A: Recommendation Report

B: Responses to invitation for comment on proposed decision

B1: Marinus Link Pty Ltd

B2: Minister for Finance

B3: Minister for Resources

B4: Minister for Indigenous Australians

B5: Minister for Defence

B6: Minister for the Environment (Tas)

B7: Minister for Planning (Vic)

B8: Offshore Infrastructure Regulator

C: Notice of decision FOR SIGNATURE

D: Letters to relevant parties FOR SIGNATURE

D1: Letter to the proponent

D2: Letter to the Victorian Minister for Planning

D3: Letter to the Tasmanian Minister for the Environment

D4: Letter to the Minister for Resources

D5: Letter to the Minister for Climate Change and Energy

D6: Letter to the Minister for Indigenous Australians

D7: Letter to the Minister for Finance

D8: Letter to the Minister for Defence

E: Copy of Proposed Approval Decision Brief

E1: Recommendation Report

E2: Environmental Impact Statement (to align with the Victorian EES process)

Environment Effects Statement

Letter from the Minister for Planning

Minister's Assessment

Minister's Assessment – Appendix A - Environmental Performance Requirements

IAC Report

E3: Letters to relevant parties SIGNED

Letter to the proponent

Letter to the Victorian Minister for Planning

Letter to the Tasmanian Minister for the Environment

Letter to the Minister for Resources

Letter to the Minister for Climate Change and Energy

Letter to the Minister for Indigenous Australians

Letter to the Minister for Finance

Letter to the Minister for Defence

E4: Proposed approval decision

E5: Other materials used to prepare the proposed decision

Extension of timeframe notice of decision – dated 4 February 2025

Extension of timeframe notice of decision – dated 13 May 2025

Extension of timeframe notice of decision – dated 20 June 2025

ERT report dated 29 September 2021

ERT report dated 25 June 2025

Statutory documents (Recovery Plans, Conservation Advice and Threat Abatement Plans)

E6: Consultation

Advice from the Offshore Infrastructure Regulator

Advice from the Migratory Species Section – 15 May 2025

Advice from the Migratory Species Section – 20 May 2025

Advice from the Protected Species and Ecological Communities Branch

F: Draft notice of decision (with track changes)

G: Advice from the proponent on Draft notice of decision

H: Statutory documents used in the final decision (Recovery Plans, Conservation Advice and Threat Abatement Plans)

I: Consideration of the Minister for Planning (Vic) comments