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

1. I, Kate Gowland, Branch Head, Environment Assessments (NSW/ACT), delegate of the Minister for the Environment and Water (**Minister**), provide the following statement of reasons for my decision dated 24 September 2024 to approve, under subsection 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), MACH Energy Australia Pty Limited's (the **proponent**) 'Mount Pleasant Optimisation Project' (EPBC 2020/8735) (**proposed action**).

LEGISLATION

2. Relevant legislative extracts are at **Annexure A.**

BACKGROUND

3. On 29 February 2012, the Mount Pleasant Project (EPBC 2011/5795), was approved under the EPBC Act (**initial approval**). The initial approval related to the construction and operation of an open-cut coal mine located north-west of Muswellbrook in the Upper Hunter Valley (**Mount Pleasant mine**).

4. The Mount Pleasant mine is situated in a longstanding coal mining precinct in the Upper Hunter Valley. Several other existing coal mines are located in the precinct. Situated near the Mount Pleasant mine is the Bengalla Mine, which was the subject of an approval under the EPBC Act in 2015 (2012/6378).

5. The area surrounding the Mount Pleasant mine consists of mining, rural and rural-residential land uses. Agricultural land use in the region is predominantly grazing. The Mount Pleasant mine comprises of four open cut pits, three out-of-pit waste rock emplacements, fines emplacement areas, and three final voids. The initial approval has effect until 2035.

Referral and the proposed action

6. On 28 July 2020, the Department of Climate Change, Energy, Environment and Water (**department**)[1] received a valid referral from the proponent (**referral**).

7. The referral stated that the proposed action comprised of the following:

- *realignment of the approved Northern Link Road to a suitable design standard to compensate for the approved closure of part of Castlerock Road (the approved Western Link Road would no longer be constructed);*
- *increased open cut coal extraction within the approved Mount Pleasant Project (EPBC 2011/5795) development area, including accessing deeper coal reserves in North Pit;*
- *staged increase in the extraction, handling and processing of ROM coal up to 21 Mtpa (i.e. progressive increase in ROM coal mining rate from 10.5 Mtpa over the Project life); and*
- *continued use of the controlled release dam and associated infrastructure that was approved through Bengalla Mine State and Federal approvals.*

Under the proposed Action, mining operations at the higher production rate would extend to 22 December 2048…

[1] For the purposes of these reasons, the 'department' refers to the Department of Climate Change, Energy Environment and Water, and any of its predecessors.

8. The referral indicated that there were 2 alternative alignments available in relation to the first dot point:

   a. Option 1, the preferred option, which would have a disturbance area of approximately 29.3 ha; and

   b. Option 2, which would have a disturbance area of approximately 23.8 ha.

9. The proposed action would include some additional disturbance areas to those parts of the initial approval, however would also involve the relinquishment of disturbance areas that had been approved in the initial referral, such that those areas would no longer be disturbed. There would be no net change to the overall disturbance area (being approximately 500 ha) for the Mount Pleasant mine across the initial approval and the referral.

Controlled Action Decision

10. On 28 July 2020, the delegated contact for the then New South Wales Minister for Planning and Public Spaces, the Hon Rob Stokes MP, was invited to comment on the referral, and on 18 August 2020, the NSW Department of Planning, Industry and Environment (**DPIE**), confirmed that the proposed action would be assessed under the bilateral agreement between the Commonwealth and NSW Government.

11. On 26 August 2020, a delegate of the Minister determined under section 75 of the EPBC Act that the proposed action was a controlled action due to likely significant impacts on listed threatened species and communities (sections 18 & 18A) and a water resource in relation to coal seam gas or large coal mining developments (sections 24D & 24E). The department notified DPIE of the controlled action decision and provided DPIE with the EPBC Act assessment requirements for the proposed action.

Assessment

State Assessment Report

12. On or around 22 January 2021, the proponent provided DPIE with the Environment Impact Statement (**EIS**) for the proposed action.

13. On 27 January 2021, DPIE and the department requested that the Independent Expert Scientific Committee (**IESC**) provide advice on the proposed action, specifically in relation to:

   a. confidence in the predictions of potential impacts on surface water resources provided in the EIS, having regard to potential stream flow losses, water quality, controlled releases, uncontrolled discharges and flooding;

   b. confidence in the predictions of potential impacts on groundwater resources provided in the EIS, paying particular attention to the impacts on alluvia aquifers associated with the Hunter River and Sandy Creek and impacts on privately-owned groundwater bores;

   c. assessment adequacy of the EIS on cumulative impacts to surface and groundwater resources during the mining operations and during post-mining recovery phase, including changes in catchment areas, the rate of recovery of groundwater levels and saturation of alluvial aquifers;

   d. assessment adequacy of surface water and groundwater impacts on the local and regional aquatic ecological values and groundwater dependent ecosystems; and

   e. strategies provided by the EIS to effectively avoid, mitigate or minimise the likelihood, extent and significance of impacts to water-related resources.

14. DPIE publicly exhibited the EIS from 3 February 2021 until 17 March 2021. DPIE received 250 public submissions on the proposed action. By way of breakdown, 56% (140 submissions) opposed the proposed action, 42% (106 submissions) supported the proposed action and 2% (4 submissions) contained comments on the proposed action. Further, 27 of the 250 public submissions were received from special interest groups. The key issues raised in public submissions objecting to the proposed action related to air quality, climate change, health, water resources, and visual impacts.

15. DPIE also received advice on the proposed action from 18 government agencies and related entities. Most agencies made comments or expressed concerns with specific aspects of the proposed action, and/or provided recommendations relating to their administrative and regulatory responsibilities. One government agency objected to the proposed action.

16. On 5 July 2021, the proponent lodged its Submissions Report with DPIE. The Submissions Report addressed issues raised in the submissions, however made no material changes to the proposed action.

17. On 31 May 2022, the NSW Department of Planning & Environment (**DPE**) furnished a (State) Assessment Report (**SAR**). The SAR concluded that:

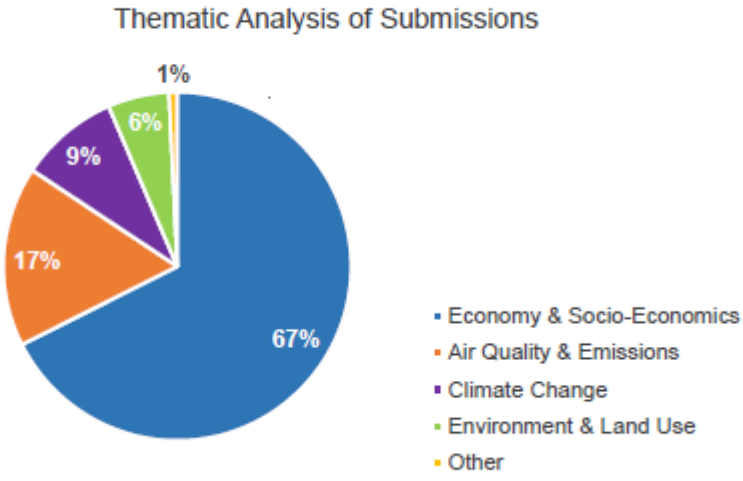
> *Subject to the recommended conditions, the Department considers that, on balance, the benefits of the project outweigh its costs, and that the project is approvable*

18. On 1 June 2022, DPE referred the proposed action to the Independent Planning Commission (**IPC**) for determination.

Independent Planning Commission

19. As part of the IPC's consideration of the proposed action, all persons were offered the opportunity to make written submissions to the IPC. The IPC received a total of 988 written submissions. By way of breakdown, the IPC recorded that 72% of submissions received were in support of the proposed action, 26% of submissions objected to the proposed action, and 2% provided comment on the proposed action. The IPC provided a helpful diagram breaking down the key themes of the submissions, as follows:

Figure 2 - Thematic analysis of submissions received by the Commission



20. The IPC noted the following key issues raised by submissions:

a. Greenhouse gas (**GHG**) emissions and climate change - Submissions raised GHG emissions and the impact that the increase in mining would have on climate change, noting the cumulative

impact that GHG emissions would have; and that, while Scope 3 emissions are not counted towards NSW's emissions under the Paris Agreement, the impact is still felt globally. Other submissions noted that, while they were concerned for environmental impacts and climate change, they were also concerned that, should the mine close, nearby towns, communities and families would suffer. Some submissions commented that the reliance on coal would continue to be important over the next 20 years until appropriate alternative energy supplies are available to Australia, noting a need for a transition period away from coal. Submissions also stated that high-quality and low emission coal from the mine results in overall lower GHG emissions;

b. Air Quality - Submissions expressed concern that the mine would increase dust and air pollution, noting that air quality within the locality is often quite poor; and noting health impacts for the local community and environment due to poor air quality, including impacts to the health and wellbeing of staff, families and horses residing at nearby horse studs. Submissions also indicated that air quality in the Hunter region is already poor and outlined concerns that the mine would exacerbate the poor air quality. Other submissions described dusty conditions in the locality prior to mining activities, due to farming and agriculture;

c. Noise impacts - Submissions highlighted ongoing noise impacts from mining impacting local residents' sleep due to 24-hour mine operations;

d. Socio-economic - A number of submissions commented on the importance of job creation and job security through direct and indirect employment; and that Mount Pleasant plays an important role in the Muswellbrook community as a major employer, as stability of local area employment supports local families and provides job opportunities that would otherwise be unavailable for local youth. Mount Pleasant supports the local community through sponsorship of social and sporting activities. Other submissions commented on the mental anguish of the young due to climate anxiety and climate change, and others that coal mining is important to the community until appropriate alternative energy supplies are available to Australia;

e. Aboriginal and Historic Heritage - Submissions raised concerns about the loss of Aboriginal heritage items and Aboriginal cultural heritage as a result of the proposed action. Objection to the proposed action was based on damage to Wonnarua cultural heritage;

f. Biodiversity and rehabilitation - Submissions raised concern with the clearing of land and the impact on biodiversity, displacement of wildlife and removal of natural habitats, noting cumulative loss from other mining projects. Other submissions commented on the positive benefits of the progressive nature of rehabilitation;

g. Water - Submissions noted concerns regarding pollution and contamination of local waterways by the mine, and the health of local waterways and impacts on future opportunities for agriculture and new industries;

h. Visual - Submissions commented on the visual impacts of the mine, particularly the eastern waste rock emplacement; and that there would be adverse visual impacts to the countryside over a prolonged period of time; and

i. Other - Some submissions commented on the potential for the height of the eastern waste rock emplacement to adversely impact telecommunications from the Rossgole Tower.

21. On 15 August 2022, the IPC received a letter from the proponent which indicated that the Legless Lizard recorded on site was not the Striped Legless Lizard (Delma impar) as previously reported. The species was, in fact, a new species – *Delma vescolineata*. In response, the IPC reopened public comments. A total of 52 submissions were received. Those submissions outlined concerns relating to habitat loss and the subsequent viability of *Delma vescolineata,* and stated that the approval of the

proposed action is inconsistent with ecologically sustainable development and the precautionary principle. Other submissions stated that surveys and research should be undertaken prior to disturbing areas of potential habitat in order to determine the extent of likely harm to the species should the proposed action proceed.

22. On 6 September 2022, the IPC approved the development application for the Mount Pleasant Optimisation Project (**development consent**), in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979* (Vic) (**EP&A Act**). In its Executive Summary, the IPC stated:

> *After consideration of the material and having taken into account the views of the community, the Commission has determined that development consent should be granted for the Application, subject to conditions. The Commission finds that the Application is consistent with the Objects of the Environmental Planning & Assessment Act 1979 and would achieve an appropriate balance between relevant environmental, economic and social considerations, with the likely benefits of the Project warranting the conclusion that an appropriately conditioned approval is in the public interest.*
>
> *The Commission has imposed strict conditions on its development consent which seek to prevent, minimise and/or offset adverse impacts and to ensure ongoing monitoring and appropriate site management.*

DPE Recommendation

23. On 13 September 2022, DPE notified the department that the NSW assessment had been completed and the IPC had approved the proposed action under Part 4 of the EP&A Act. DPE stated that:

> *The Department concludes that the likely impacts of the proposed action on MNES would not be unacceptable, provided the action is undertaken in a manner consistent with the avoidance, mitigation and offset measures proposed and outlined in the conditions of the development consent.*

24. DPE recommended that the Minister should approve the action, subject to conditions.

Reconsideration request

25. On 8 July 2022, Environmental Justice Australia (**EJA**) submitted a reconsideration request, on behalf of the Environment Council of Central Queensland Inc, on the basis of the availability of substantial new information. EJA stated that the information provided with the request demonstrated that the proposed action will or is likely to have significant physical effects on a number of Matters of National Environmental Significance (**MNES**) because of the GHG emissions associated with the proposed action. It contended that, if the proposed action goes ahead, there is a real (as opposed to remote) chance that GHG emissions from the proposed action will result in physical effects of climate change (fire, ocean heatwaves and acidification, drought, rainfall extremes and flooding) and the proposed action will have, or is likely to have, a significant impact on a number of MNES.

26. On 11 May 2023, the Minister determined that the information in the request was not about the impacts of the proposed action within the meaning of section 572E of the EPBC Act.

Proposed decision

27. On 5 September 2024, I made a proposed decision to approve the proposed action. That same day, I caused, consistent with section 131AA of the EPBC Act, letters to be sent to the proponent and the following Ministers inviting comment on my proposed decision:

a. the Minister for Indigenous Australians, Senator the Hon. Malarndirri McCarthy;

b. the delegated contact for the Minister for Defence, the Hon. Richard Marles MP;

c. the Minister for Climate Change and Energy, the Hon. Chris Bowen MP;

d. the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon. Catherine King MP;

e. Minister for Resources and Minister for Northern Australia, the Hon. Madeleine King MP; and

f. the Minister for Agriculture, Fisheries and Forestry, the Hon. Julie Collins MP.

28. I also notified the delegated contact for the NSW Minister for Planning and Public Spaces, the Hon. Paul Scully MP.

Proponent Comments

29. On 10 September 2024, the proponent made comments regarding clarifications of proposed conditions, and alignment with the development consent. In summary:

a. the proponent requested a change to proposed condition 4, to align the timing of when Biodiversity Credits under the NSW Biodiversity Offsets Scheme were due, which was a part of the conditions on the development consent;

b. a change to proposed condition 11 to indicate that corrective action by the proponent will not always be required when a trigger level is reached, but may be required in order to avoid a subsequent breach of a performance measure;

c. a change to proposed condition 30, stating that the condition drafted is unclear on the timing requirement for submission of monitoring data and that some monitoring data is continuous (e.g. in some groundwater monitoring bores), however, continuous submission of monitoring data is impractical; and that this condition should require the proponent to submit the monitoring data within 20 business days of the submission of a compliance report; and

d. a change to condition 42, stating that the reference to the development consent in terms of the approved time frame for carrying out mining should read 2048 (consistent with the State development consent), not 2058.

30. The department also consulted the proponent about an amendment to the definition of ‘sensitive ecological data’, in the proposed conditions. The proponent agreed with this amendment.

Ministerial Comments

31. No comments were received by, or on behalf of, the Minister for Defence, the Minister for Climate Change and Energy or the Minister for Infrastructure, Transport, Regional Development and Local Government.

32. On 18 September 2024, the Department of Agriculture, Fisheries and Forestry responded on behalf of the Minister for Agriculture, Fisheries and Forestry, and recommended:

a. the proponent actively engage with surrounding landholders regarding the proposed action’s impacts on agriculture, local air quality and local water resources;

b. the conditions of approval should include measures to protect the natural capital and resource base upon which agriculture depends; and Indigenous cultural heritage.

33. On 18 September 2024, the National Indigenous Australians Agency (**NIAA**) responded to the invitation to comment for the Minister for Indigenous Australians. The NIAA had no comments on the proposed approval conditions, though made general comments to assist the proponent in their ongoing engagement with Traditional Owners and other First Nations stakeholders.

34. On 19 September 2024, Geoscience Australia (**GA**) responded to the invitation to comment for the Minister for Resources and Minister for Northern Australia. GA considered the proposed approval

conditions generally to be outcomes-focused, well-conceived and clearly written. GA noted that the 'Project's Water Management Plan (rev 02, August 2024)', was approved by the NSW regulator, which GA inferred meant that the development consent conditions are sufficient to meet the requirements of the water trigger for the purposes of sections 24D and 24E of the EPBC Act.

Approval decision

35. On 24 September 2024, I made the decision to approve the proposed action, with conditions.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

36. My decision under subsection 130(1) and section 133 of the EPBC Act to approve the taking of the proposed action is based on consideration of the final approval decision brief prepared by the department dated 23 September 2024, and all of its attachments (**decision brief**). A full list of the attachments to the decision brief is set out at **Annexure B** to this statement.

37. I agreed with the department that the documents set out in Annexure B provide sufficient information for me to decide whether or not to approve the proposed action.

FINDINGS ON MATERIAL QUESTIONS OF FACT

38. In deciding whether to approve the proposed action, I considered all impacts that the proposed action would have or was likely to have on each matter protected by the controlling provisions for the proposed action (being sections 18 and 18A, and 24D and 24E of the EPBC Act). My findings on these controlling provisions are set out below.

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

39. The controlled action decision determined sections 18 and 18A to be controlling provisions for the proposed action on the basis that the proposed action was likely to result in a significant impact on the following EPBC Act listed species and communities:

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

    b. Swift Parrot (Lathamus discolor) - critically endangered;

    c. Regent Honeyeater (Anthochaera phrygia) - critically endangered; and

    d. Striped Legless Lizard (Delma impar) – vulnerable.

40. In addition, at the time of the referral, the delegate for the Minister considered that the following EPBC listed threatened species might be impacted by the proposed action:

    a. Austral Toadflax (Thesium australe) – vulnerable; and

    b. Slaty Red Gum (Eucalyptus glaucina) – vulnerable.

41. The department obtained updated records for any additional listed species within 5km of the proposed action area on 26 August 2024. I noted that:

    a. two ecological communities and 14 species were listed under the EPBC Act since the controlled action decision was made, however I disregarded these ecological communities and species, as I was required to do under section 158A of the EPBC Act; and

    b. two endangered ecological communities and six listed threatened species were identified as 'may be present' within proximity to the proposed action. This reflected that, since 2020 when the

controlled action decision was made, updated information had been obtained about species distributions.

42. The species and ecological communities referred to in [41.b] were:

a. Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions – endangered

b. Grey Box (Eucalyptus microcarpa) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia - endangered

c. Superb Parrot (*Polytelis swainsonii*) – vulnerable

d. Spiny Peppercress (*Lepidium aschersonii*) – vulnerable

e. *Ozothamnus tesselatus* – vulnerable

f. Hawkweed (*Picris evae*) – vulnerable

g. Rufous Pomaderris, Brown Pomaderris (*Pomaderris brunnea*) – vulnerable

h. Slender Darling-pea, Slender Swainson, Murray Swainson-pea (*Swainsona murrayana*) – vulnerable

*White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (**Box Woodland**) – critically endangered*

Species Information

43. The Box Woodland is characterised by a species-rich understorey of native tussock grasses, herbs and scattered shrubs, and the dominance or prior dominance of one or more of the following overstorey species: White Box (*Eucalyptus albens*), Yellow Box (*E. melliodora*), or Blakely's Red Gum (*E. blakelyi*). It occurs along the western slopes and tablelands of the Great Dividing Range from southern Queensland through NSW and the ACT to central Victoria.

44. According to the Commonwealth Listing Advice on Box Woodland, less than 5% of the original Box-Gum Grassy Woodland community remains in good enough condition and size to meet the minimum condition criteria to be included in the listed ecological community.

45. Box Woodland recovery plan states that, given the currently highly fragmented and degraded state of the ecological community, all remaining areas of Box Woodland which meet the 'minimum condition criteria' should be considered critical to the survival of the ecological community.

46. The *Conservation Advice for the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* identifies the primary conservation objectives for Box Woodland to include:

- maintaining and improving extent and condition of the ecological community throughout its geographic distribution;
- increasing protection of sites in good condition;
- increasing landscape function of the community through management and restoration of degraded sites;
- increasing transitional areas around remnants and linkages between remnants; and
- bringing about enduring changes in participating land manager attitudes and behaviours towards environmental protection and sustainable land management practices to increase extent, integrity and function of Box-Gum Grassy Woodland.

47. I noted that the *Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads*, *Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs* (Sus scrofa) and the *Threat abatement plan for disease in natural ecosystems caused by* Phytophthora cinnamomic were applicable to the Box Woodland. However, the department advised, and I accepted, that cane toads and *Phytophthora cinnamomi* are unlikely to occur in the region where the proposed action is located.

Impacts

48. Key threats to the Box Woodland are identified in the conservation advice to include soil nutrient increase, land clearance and fragmentation, inappropriate grazing regimes, fire, changed hydrology, dryland salinity, soil erosion and acidification and climate change.

49. The SAR noted as follows:

> *Northern Link Road Option 1 (Development Footprint 2) would clear approximately 20.8 ha of derived native grassland and 5.6 ha of woodland (total of 26.4 ha). Northern Link Road Option 2 (Development Footprint 3) would clear approximately 16.8 ha of derived native grassland and 5.7 ha of woodland (total of 22.5 ha)*

50. I accepted that the proposed action would have a direct impact on the ecological community as a result of the clearing of up to 26.4 ha of the habitat for the Box Woodland.

51. Indirect impacts from the proposed action would include edge effects, weed spread and an increased risk of fire. I note I have considered impacts in the context of GHG emissions further below (at [178]-[203] below.

Avoidance and Mitigation Measures

52. I noted that avoidance and mitigation measures proposed by the proponent included:

a. avoiding clearance, including by placing the greater part of the Northern Link Road in derived native grassland which is of poor quality as indicated by Vegetation Index scores of between 14.4 and 15;

b. implementing vegetation clearance protocol which involve the delineation of approved native vegetation clearing areas, a Ground Disturbance Permit process, pre-clearance surveys conducted by a qualified person(s), reuse of trees containing potential significant habitat features, management strategies for the minimisation of ground disturbance on fauna and the provision for seed collection during clearance activities;

c. using rehabilitation and revegetation methods to avoid and mitigate clearing. This included the Mount Pleasant Operation rehabilitation program designed to establish an appropriate ground strata, understorey, sub-canopy and canopy within areas of the final landform; and

d. weed, pest and bushfire management measures.

53. I noted that the development consent required (by way of conditions) the proponent to prepare and implement a Biodiversity Management Plan, comply with a number of rehabilitation objectives and prepare and implement a Rehabilitation Strategy and Rehabilitation Management Plan. Specifically:

a. the proponent must prepare and implement a Biodiversity Management Plan, to the satisfaction of the Planning Secretary. The plan will include measures for protecting flora and fauna outside disturbance areas and managing clearing within disturbance areas. The proponent cannot commence construction of the Northern Link Road, or extract more than 10.5 Mt of ROM coal until that plan has been approved, and is required to implement the plan as part of the development consent;

b. the proponent must prepare a Rehabilitation Strategy for all land disturbed by the proposed action to the satisfaction of the Planning Secretary, and operations north of a particular point cannot commence until that Rehabilitation Strategy is to the satisfaction of the Planning Secretary. The proponent must also implement the Rehabilitation Strategy; and

c. the proponent must prepare a Rehabilitation Management Plan in accordance with the provisions under the *Mining Act 1992* (NSW), rehabilitate the proposed action area in accordance with the conditions imposed on the mining lease(s) associated with the Mount Pleasant Mine (and in a way that is consistent with the Rehabilitation Strategy) and comply with certain rehabilitation and mine closure of objectives.

54. The department recommended, and I agreed, that any conditions of approval should include that the proponent must comply with the conditions of the development consent. I found these conditions were necessary to avoid, mitigate, and manage impacts of the proposed action on the Box Woodland.

55. Notwithstanding these avoidance, mitigation and management measures (and their required implementation by way of conditions), there would still be up to 26.4 ha of direct impact by way of clearing to the Box Woodland. I concluded, therefore, that the proposed action (despite the measures proposed) would still have a residual significant impact to the ecological community.

Offsets

56. Accepting that the proposed action would have a residual significant impact, I noted that the proponent had identified compensatory measures, by way of an offset, for the residual significant impact. The proponent proposed providing the required offsets by retiring applicable ecosystem and species credits in accordance with the NSW Biodiversity Assessment Method (which the department endorsed as a basis for providing offsets under the EPBC Act), using one or a combination of offsetting mechanisms available under the NSW Biodiversity Offset Scheme, including the establishment of a Biodiversity Stewardship Site(s) or payment into the NSW Biodiversity Conservation Fund.

57. The SAR concluded that the proponent's proposed offset accords with the NSW Biodiversity Assessment Method and is considered 'like-for-like' as required by the NSW Biodiversity Offset Policy for Major Projects, and the EPBC Act Environmental Offsets Policy (2012). The department agreed with the DPE and IPC and I accepted the proposed offset was appropriately assessed.

58. The SAR concluded (and the IPC agreed) the following credits that would be required for an offset:

Credit Type	Credits Required (Option1)	Credits Required (Option 2)
Ecosystem Credit		
483 – Grey Box x White Box – Spotted Gum Grassy Woodland	254	178
618 – Forest Red Gum Grassy Open Forest	5	5
1606 – Derived Native Grassland	48	46
Subtotal	**307**	**229**

59. The department considered that the retirement of up to 307 credits would adequately offset the residual significant impact to the Box Woodland. Having been accepted in the SAR as adequate,

endorsed by the IPC and agreed with by the department, I accepted that the proponent's proposed offset was adequate.

60. To ensure that the residual significant impact was compensated, I considered the following conditions necessary for protecting and mitigating damage to the Box Woodland:

    a. the proponent must not exceed the clearing limits of 26.4 hectares of Box Woodland, and must not clear outside of the proposed action area; and

    b. the proponent must retire 307 biodiversity credits for Northern Link Road option 1 or 229 biodiversity credits for Northern Link Road option 2.

61. Such conditions ensure that the proponent does exceed the proposed clearance, which also ensures that the required offset will mitigate the residual significant impact that would result from the proposed action.

Conclusion

62. I accepted that the proposed action would have a residual significant impact on the Box Woodland. However, I was satisfied that, with the proposed approval conditions and, in particular, the required offset, the proposed action would not have an unacceptable impact on the Box Woodland. I noted that the SAR, which was endorsed by the IPC, came to the same conclusion. I also considered that approval of the proposed action, with conditions, would not be inconsistent with the recovery plan (and its objectives), nor any of the threat abatement plans relevant to the species.

Striped Legless Lizard (Delma impar) - vulnerable

Species Information

63. The IPC was advised during its assessment of the proposal, that the legless lizard identified on, or near, the site is likely to be *Delma vescolineata,* and not the EPBC listed *Delma impar*. The department noted that advice from the Australian Biological Resources Study (ABRS) confirmed that it is appropriate to treat *Delma vescolineata* as part of the *Delma impar* listing, pending separate assessment and listing. On 16 July 2024, the *Delma vescolineata* was listed as an Endangered species under the EPBC Act. Noting that, at the time of the referral, the *Delma vescolineata* was considered part of *Delma impar*, I proceeded on the basis that the species was 'vulnerable'.

64. The striped legless lizard is a member of the family *Pygopodidae*. The species lacks forelimbs and has very reduced vestigial hind limbs. Delma impar is patchily distributed throughout south-eastern NSW, the ACT and parts of Victoria and South Australia. The species is found only in areas of native grassland and nearby grassy woodland and exotic pasture. The lizard's primary habitat includes four nationally threatened ecological communities, including Box Woodland.

65. The *Conservation Advice* Delma impar *striped legless lizard* (Delma conservation advice) states that all populations of the striped legless lizard are likely to be important for the species recovery, due to the major loss and degradation of its grassland habitat, ongoing pressures and the high levels of habitat and population fragmentation. The conservation objective for the Striped Legless Lizard is to protect and manage habitat to maintain the potential for its evolution. The Conservation Advice states that key threats impacting the species include:

- loss, modification, degradation and fragmentation of habitat;
- invasive species; and
- fire.

66. Further, the Delma conservation advice states that key conservation and management priorities to assist in the recovery of the species include actions to:

- protect and prevent impacts to habitat critical to the survival of the species in the planning, construction and post construction phases of developments. This includes undertaking robust field surveys, ensuring connectivity is maintained between and within populations, and promotion of stakeholder education in the approval process of their obligations under the EPBC Act;
- negotiate and implement conservation agreements or reserves for striped legless lizard under specific circumstances;
- improve the quality and condition of reserves set aside for the species;
- under specific circumstances implement translocation of animals to appropriate recipient locations;
- identify, control and reduce the spread of invasive grasses;
- control feral cat and foxes where relevant;
- work with fire authorities and private landholders regarding burns in areas of habitat critical to survival of the species; and
- educate, support and engage stakeholders.

67. I noted that the following threat abatement plans were relevant to the species:

a. *Threat abatement plan for predation by feral cats*;

b. *Threat abatement plan for competition and land degradation by rabbits*;

c. *Threat abatement plan for predation by the European red fox*

Impacts

68. The SAR reported as follows:

> *This species was not recorded within the Action Area during targeted surveys undertaken in 2018 and 2019 by Future Ecology (2020), however it was recorded approximately 3 km to the south-east and 6 km to the south-west. A single individual was recorded at each location, with one under a cow pat (dung) and the other under a lightly imbedded rock.*
>
> *MACH's revised BDAR conservatively considered that the Action is likely to have a significant impact on the vulnerable Striped Legless Lizard in the short to medium-term in consideration of the EPBC Act referral guidelines (DSEWPaC 2011) and Matters of National Environmental Significance: Significant impact guidelines 1.1 (DotE 2013). This conclusion is made considering that the local population of the Striped Legless Lizard in the Action Area represents a range extension for the species and therefore could be considered an important population (as defined by DotE 2013).*

69. I noted that the SAR indicated that potential habitat for the species occurred throughout all plant community types in the proposed action area. The direct disturbance of the potential habitat (by way of clearing) was:

a. 27.4 ha of potential habitat if Option 1 is chosen; or

b. 23.3 ha of potential habitat if Option 2 is selected.

70. The consequences of either disturbance included potentially limiting the movement of the species, and adversely affecting habitat which may form part of habitat critical to the survival of the species. I accepted the SAR's analysis of these impacts.

71. Indirect impacts from the proposed action identified by the department included include edge effects, weed spread, an increased risk of fire, vehicle strike and changes to fauna movements. The SAR also identified that the proposed action had the potential to exacerbate the spread and abundance of cats and foxes and increase habitat disturbance and modification, leading to increased rabbit populations.

72. I note I have also considered impacts in the context of GHG emissions further below (at [178]-[203] below).

Avoidance and mitigation

73. I noted that avoidance and mitigation measures proposed by the proponent included:

a. Vegetation Clearance Protocol, and Rehabilitation and Revegetation (as discussed above at [52.b.]);

b. Weed, pest (which I understood to include feral animals) and bushfire management;

c. Salvage and Re-use of material for habitat within mine site rehabilitation areas. For example, no rocky habitat would be removed (noting that the conservation advice indicates that the species shelters beneath rocks); and

d. Speed Limits - Low speed limits would continue to be imposed on all vehicles using the mine roads and tracks. Vehicle access would continue to be limited to haul roads, access roads and tracks wherever possible.

74. I noted that, in addition to the development consent conditions I have identified above at [53], the development consent also included the following conditions specific to this species:

a. the proponent must investigate and identify habitat that supports populations in the wild of *Delma vescolineata* as well as identifying and implementing measures to manage threats to the population as part of the Biodiversity Management Plan; and

b. the proponent is to demonstrate how the proposed action will be carried out in a manner that avoids or minimises to the greatest extent practicable any serious or irreversible damage to the survival of *Delma vescolineata*.

75. The department recommended, and I agreed, that any conditions of approval should include that the proponent must comply with the conditions of the development consent, which included conditions specific to the species. I found these conditions were necessary to avoid, mitigate, and manage impacts of the proposed action on the species, and in particular that they were designed to promote better understanding of Striped Legless Lizard, and protection of the species.

76. Despite the above measures, it remained that there would still be clearance of up to 27.4ha of habitat critical to survival of the species and therefore the proposed action would likely have a residual significant impact on the Striped Legless Lizard.

Offsets

77. I refer to my conclusions above (at [56]-[57]) regarding the appropriateness of the offset assessment process.

78. Similar to the Box Woodland, the proponent proposed an offset for the residual significant impact upon the species. The proposal (which was considered by the SAR and approved by the IPC) was an offset of:

a. 293 credits, if Option 1 is chosen; or

b. 225 credits if Option 2 is chosen.

79. The department considered that the retirement of up to 293 biodiversity credits for either *Delma impar* or *Delma vescolineata* will be sufficient to offset the impact to the species. The SAR recommended conditions requiring the proponent to provide an offset, and the IPC adopted that recommendation and imposed such a condition in the development consent. In light of these matters, I was satisfied that the offsets were adequate to compensate for the residual significant impact. I also agreed with the department that any offset under the conditions of this approval could be for the *Delma impar* or the *Delma vescolineata,* noting that the *Delma vescolineata* was not listed at the time of the controlled action decision, and the species was considered part of the *Delma impar*.

80. I agreed that conditions similar to those for the Box Woodland were necessary to ensure that the residual significant impact was acceptable. As such, I imposed the following conditions:

a. the proponent must not exceed the clearing limits of 27.4 hectares of species habitat, and must not clear outside of the proposed action area;

b. prior to 16 July 2026, the proponent must retire 293 biodiversity credits for Northern Link Road option 1 or 225 biodiversity credits for Northern Link Road option 2.

81. These conditions would ensure that the proponent does exceed the proposed clearance, which would also ensure that the offset that was required was equivalent to the impact that would result from the proposed action. I noted that 16 July 2026 was the date specified in the development consent and that consistency between the development consent conditions and the conditions of approval was desirable.

Conclusion

82. I accepted that the proposed action would have a residual significant impact on the species. However, I was satisfied that, with the proposed approval conditions and, in particular, the offset that was required, the proposed action would not have an unacceptable impact on the species. I noted that the SAR, which was endorsed by the IPC, came to the same conclusion. I also considered that approval of the proposed action, with conditions which would include feral animal control and management measures being required in the Biodiversity Management Plan, would not be inconsistent with the threat abatement plans relevant to the species.

Other listed species

83. I noted that the following other listed species were identified as in proximity to the proposed action:

- Swift Parrot (*Lathamus discolor*) - critically endangered;
- Regent Honeyeater (*Anthochaera phrygia*) - critically endangered;
- Austral Toadflax (*Thesium australe*) – vulnerable;
- Slaty Red Gum (*Eucalyptus glaucina*) – vulnerable;

84. The SAR assessed the potential impacts of the proposed action on the Swift Parrot, Regent Honeyeater, Austral Toadflax and Slaty Red Gum. The SAR assessed that the proposed action was not predicted to have a significant impact on these species.

85. In relation to the Swift Parrot and Regent Honeyeater, the SAR stated that neither species had been recorded in the proposed action area in a survey conducted in 2020, nor any surveys which had dated back to 1997. The SAR concluded that the proposed action would not have a ‘material adverse

impact' upon, and 'significant impacts … are unlikely to arise' to, the Swift Parrot and Regent Honeyeater because:

a. the species has not been recorded in the proposed action area;

b. no breeding habitat for this species is present; and

c. the area is not recognised (by DPIE) as important habitat for this species.

86. The department agreed with the SAR, and did not consider that the proposed action was likely to have a significant impact on the Swift Parrot and Regent Honeyeater.

87. Noting that the SAR and IPC did not consider it likely there would be a significant impact having had regard to the relevant recovery plans, that species were unlikely to be present, that the Biodiversity Management Plan the proponent would prepare would provide for re-establishment of habit and foraging resources for the Swift Parrot and Regent Honeyeater, and that, while not an offset, impacts on these species have been considered as part of the ecosystem credit requirements for the proposed action under the NSW Biodiversity Assessment Method, I agreed that the proposed action was not likely to have a significant impact on the species.

88. In relation to the Austral Toadflax and Slaty Red Gum, targeted surveys did not locate these species within the proposed action area and surrounds. Where the species was not present in the area, it was concluded in the assessment process that it was unlikely that the proposed action would result in a significant impact on these species. The department agreed that there would not be a significant impact on these species. I similarly agreed.

89. As noted at [41], 8 further MNES were identified by the department in an updated assessment of threatened species in the proximity of the area. The department advised that no recent records of these additional ecological communities or threatened species exist in BioNet (the repository for biodiversity data products managed by the NSW Government Department of Climate Change, Energy, the Environment and Water) within or surrounding the proposed action area and, in many cases, suitable habitat is not present in the proposed action area. The department did not consider that the proposed action was likely to have a significant impact on these species, and I agreed.

90. For these reasons, I was satisfied that the proposed action was not likely to have a significant impact on any other species, and that approval of the proposed action, with conditions, was appropriate and consistent with the relevant recovery plans and threat abatement plans for those species.

Conclusion on Listed Threatened Species and Communities

91. For the reasons set out at [39]-[90] above, and [178]-[203] below, and having regard to the information before me, I found that the proposed action, if approved subject to the conditions outlined above, would not have an unacceptable impact on listed threatened species and communities.

Unconventional gas or large coal mining development (s24D and s24E)

92. The controlled action decision considered that there were likely to be significant impacts to water resources, specifically, that there was potential for significant impacts to the hydrological characteristics of the site and the quality of a water resource, as a result of the proposed action.

IESC Advice

93. I noted that section 131AB of the EPBC Act required that advice be obtained, and considered, from IESC. The matters upon which the IESC's advice was sought are set out at [13] above. On 15 March 2021, the IESC provided its advice.

94. The IESC advice summary provided as follows:

Key potential impacts from this project are:

- *a long-term (decadal) incremental increase in the cumulative take of water from Dart Brook and the Hunter River and their associated alluvium; and*
- *further reduction in baseflow and a change in flow regime in Sandy Creek, to the west of the MPO, resulting in potential impacts to riparian vegetation and aquatic habitat.*

The IESC has identified key areas in which additional work is required to address the key potential impacts, as detailed in this advice. These are summarised below.

- *Field-based studies to assess the presence of groundwater-dependent ecosystems (GDEs) (e.g. stygofauna and groundwater-dependent vegetation) along Sandy Creek. If GDEs are present, their condition and reliance on groundwater should be measured to guide prediction of likely impacts of the project.*
- *Assessment of changes in flow regime of Sandy Creek to identify increases in no- or low-flow days and other ecologically relevant components of the flow regime.*
- *Extension of the groundwater monitoring program as recommended in AGE (2020, p.109), particularly in areas of the relinquished Forest Red Gum Grassy Open Woodland, a potential GDE and part of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland listed as a critically endangered ecological community (CEEC) under the* Environment Protection and Biodiversity Conservation *(EPBC) Act (1999).*
- *Field-based assessment of groundwater usage by native vegetation (especially CEECs) in the relinquished area to identify potential vulnerability to drawdown monitored by the bores suggested above.*

95. I noted that, on 22 April 2021, the proponent responded to the IESC advice.

96. Where the advice, and the proponent's response, are relevant to my reasons, I refer to them in more detail below.

Impacts

97. I noted that the department, the SAR and the IPC all considered the impacts on this MNES.

98. The department considered that proposed action:

a. has the potential to impact surface water and groundwater resources through groundwater drawdown and potential impacts to water supply levels, yield and quality of privately-owned bores; and discharges impacting water quality and Groundwater Dependent Ecosystems (**GDEs**);

b. will be increasing the depth of an existing open cut coal mine, which is likely to result in increased groundwater and surface water impacts; and

c. in addition to impacts on water quantity, through mining can result in decreased quality of surrounding groundwater and surface water resources through seepage of poor-quality water into the groundwater systems and/or uncontrolled releases to the local watercourses.

99. The SAR assessed impacts to the quality and availability of water resources, noting that the proposed action would deepen part of the open cut mining area, resulting in greater impacts to groundwater resources, and a loss of surface water from overland flow.

100. I also noted that there were a number of public comments received which raised impacts to surface water and groundwater resources. These included:

- potential surface water impacts on flow in the Hunter River, including potential cumulative impacts due to mining, potential long-term, post-mining baseflow impacts, potential impacts to other water users and industries and potential impacts to Ramsar listed wetlands;
- potential surface water impacts on Sandy Creek, including salinity, water quality and flow;
- potential surface water impacts on the availability of water for other users, particularly in consideration of a potential reduction in the availability of water due to climate change;
- potential flooding impacts of the proposed action;
- potential groundwater impacts on private water users and privately-owned bores not currently in use;
- potential groundwater impacts on water supply works that are potentially located within the "very unlikely" and "unlikely" zones of 2 m drawdown determined in the Groundwater Assessment uncertainty analysis, and on water supply works other than privately-owned bores;
- potential groundwater impacts on predicted drawdowns in the Hunter River alluvium;
- potential groundwater impacts on Kingdon Ponds, a tributary of Dart Brook;
- potential impacts on surface water and groundwater quality, including perceptions that potential impacts from mine water storages, the Fines Emplacement Area and out-of-pit waste rock emplacement have not been adequately considered;
- predicted extent of groundwater depressurisation in coal seams and potential associated impacts on shallow groundwater and surface water resources;
- potential impacts on groundwater dependent ecosystems (particularly the Forest Red Gum Grassy Open Forest); and
- potential impacts on the Belgrave bore and associated properties, including concerns that the Belgrave bore has not previously experienced the historical drawdowns discussed in the EIS, and that impacts may not have been considered at all of the bores on the property.

101. I note that consideration of GHG emissions on this MNES are addressed at [178]-[203] below.

Surface Water Impacts

102. The EIS contained a Surface Water Assessment which identified that the potential impacts of the proposed action on local and regional surface water resources comprise:

- Changes to flows in local creeks and the Hunter River due to the progressive extension and subsequent capture and re-use of drainage from active mine catchment areas and the post-mining final landform;
- Potential for export of contaminants (principally sediments and soluble salts) in mine catchment area runoff, controlled releases and overflow from containment storages (principally sediments, soluble salts, oils and greases); and
- Potential cumulative impacts to downstream water users associated with licensed extraction and release.

103. I adopt the department's summary of the relevant matters considered in the Surface Water Assessment, as follows:

- potential impacts on hydrological characteristics, concluding that water pumped from the Hunter River for water supply will be taken in accordance with the proponent's existing water access licences entitlements;
- potential impacts on water quality, concluding that controlled releases of water to the Hunter River will continue to be undertaken in accordance with the Hunter River Salinity Trading Scheme (**HRST**) and relevant Environmental Protection Licence conditions;
- consideration of cumulative impacts, concluding that the Dry Creek catchment has been heavily modified by the Bengalla Mine Dry Creek Project and is no longer a natural surface water system. While a moderate reduction in the catchment yield of Dry Creek is predicted based on the reduction in catchment area associated with the proposed action (maximum 22% reduction), the reduction in total flow volume is not considered material given the heavily modified nature of Dry Creek downstream of the proposed action;
- consideration of potential for impacts to the quantity or quality of water available to third party users or the environment. The Surface Water Assessment concluded that the proposed action will increase the catchment area excised from the Hunter River during mining from 20.1 km2 to 24.1 km2, which equates to 0.55% of the total catchment area. This will result in a reduction in mean annual flows in the catchment of approximately 1,570 ML (0.55%), which is unlikely to be discernible. Local catchments will have a greater area of catchment excised (i.e. Sandy Creek 5.3%, Rosebrook Creek 63%, and Dry Creek 20%), however the excised areas are similar to the area of the proposed action, and the catchments within the site are highly ephemeral and/or modified;
- catchment areas will largely be restored post mining, although there will be a small reduction in the Hunter River catchment associated with losses to the final void catchment (525 ML, representing 0.18% of the mean annual flow at Muswellbrook). This is less than that predicted for the approved proposed action (due to lower flows towards the final void). Baseflow losses are also predicted to be small, with a loss of 0.01% to the Hunter River during mining, and 0.02% after closure;
- the proponent will continue undertaking controlled releases from the mine during heavy rainfall periods in accordance with the HRSTS, which is managed by the NSW Environment Protection Authority (EPA) to manage salinity discharges and meet water quality objectives for the Hunter River;
- due to the highly regulated system in which the Mount Pleasant Mine and adjacent mines (Dartbrook Mine, Bengalla Mine, Muswellbrook Coal Mine, Mt Arthur Coal Mine and Mangoola Coal) operate, the cumulative impacts on the Hunter River due to the proposed action are expected to be negligible; and
- once constructed, the approved rail spur will cross the Hunter River floodplain, within the 1% Annual Exceedance Probability flood extent. The rail infrastructure has been designed to meet a range of flood risk management performance criteria, as defined in the proponent's Water Management Plan.

104. The IESC advice noted that:

- the proponent had developed an appropriate 3D numerical model to assess impacts by the proposed action on surface water resources;
- the proponent had undertaken an appropriate climate sensitivity analysis based on the adopted extremes from global climate model;

- the EIS is lacking strategies to minimise or avoid impacts to Sandy Creek; and
- overall, the Surface Water Assessment reasonably predicts potential impacts on surface water resources although several areas required further data and clarification.

105. In response to the IESC advice, further data and clarification was provided by the proponent.

106. The SAR outlined assessment of the potential impacts by the proposed action on flow regimes, quantity of available surface water resources, water quality both during and after mining operations and aquatic, and riparian biota. The SAR stated as follows:

> *Although the EPA states that MACH could have conducted assessment of additional measures to minimise the need for discharges to further reduce downstream water pollution risk, the EPA accepts the findings of the assessment, and acknowledges MACH's commitments to on-site water recycling.*
>
> *As such, the EPA recommended conditions requiring MACH to revise the site water balance with the aim of minimising licenced extraction from the Hunter River and reducing discharges under the HRSTS. It also recommended conditions requiring MACH to prepare a water pollution impact assessment for discharges. The Department concurs and has recommended conditions in this regard.*

107. In relation to the second paragraph of the SAR quoted immediately above, I noted that the public comments also raised concerns with a lack of water balance model calibration, and there were concerns about pollution, contamination and health of waterways.

108. The SAR concluded that the proposed action could be managed such that it would not result in a significant impact to surface water resources, subject to implementation of best practice mitigation measures, which formed part of recommended conditions on the development consent. The IPC accepted that recommendation, and in particular:

a. the IPC agreed with the SAR that the proponent would be able to readily obtain the relatively small additional required water licences in the Dart Brook water source for water take. The IPC imposed a condition requiring that the proponent have sufficient water for all stages of the proposed action and, if necessary, adjust the scale of the proposed action to match its available water supply; and

b. in relation to water discharges, the IPC agreed that discharges from the proposed action could be appropriately managed through conditions, including specific water management performance measures be imposed and that the proponent must ensure that all surface discharges from the proposed action comply with discharge limits set for the development in any EPL and the relevant regulatory provisions. A part of this latter condition is a requirement to design, install and maintain mine water storage infrastructure to avoid unlicensed or uncontrolled discharge of mine water, and to design, install, operate and maintain water management systems in a proper and efficient manner.

109. I accepted that the proposed action could impact upon on flow regimes, the quantity of available surface water resources, water quality both during and after mining operations, and aquatic and riparian biota. I noted that the department agreed with the conclusions in the SAR, and considered that approval of the proposed action, with conditions, would not have an unacceptable impact on surface water resources.

110. The department recommended that I impose conditions requiring the proponent to comply with the following conditions of the development consent:

a. those I have summarised at [108] above;

b. a requirement to comply with specified performance measures;

c. the proponent having to prepare a Water Management Plan for the proposed action, to the satisfaction of the Planning Secretary, and implement that Water Management Plan, and that the proponent cannot commence construction or extract more than 10.5 Mt of ROM coal in a calendar year until the Water Management Plan is approved; and

d. specific conditions relating to rehabilitation.

111. Having regard to the fact that the conclusions in the SAR (as adopted in the IPC) had been informed by expert advice from the IESC, the EPA and the Water Group within DPE, and the department's endorsement of those conclusions, I was satisfied that, with conditions, the proposed action would not result in unacceptable impacts to surface water. In relation to the specific conditions, I agreed with the department's recommended conditions and considered that they were was necessary to impose in order to:

a. avoid and mitigate potential impacts on surface water resources and aquatic ecosystems;

b. avoid and mitigate potential impacts to the quality of surface water resources, aquatic and riparian biota and flow regimes during and after mining operations due to changes in the landform and resultant changes in catchment areas; and

c. to minimise the likelihood of impacts (and thereby protect) surface water resources by ensuring the proponent has sufficient water for all stages of the development and that appropriate water extraction monitoring and reporting arrangements are in place and requiring the proponent to ensure that all surface discharges comply with specified discharge limits.

Groundwater Impacts

112. The Groundwater Assessment considered the following matters in assessing impacts:

- Incidental take of water from the alluvium and stream flow effects;
- Water licensing requirements;
- Water supply bores;
- Groundwater dependent ecosystems; and
- Groundwater quality.

113. Regarding the potential incidental take of water from the alluvium and stream flow effects, the SAR states:

> *There would be no direct water take from the alluvium, although indirect water take would occur as a result of induced drawdown. Indirect take from the alluvium would peak at 27 ML/yr in the Hunter River by the end of mining, 2 ML/yr in the Sandy Creek alluvium, and 6 ML/yr in the Dart Brook alluvium. This indirect water take would continue to increase for some time after the end of mining.*

114. The SAR also confirmed that:

> *Additional sensitivity modelling undertaken by MACH in the Submissions Report (as requested by DPE Water) indicates that the potential for increased permeability in the area surrounding the open cut due to blasting would have negligible impact on the predicted water take in the respective aquifers.*

115. The SAR noted that identified groundwater inflows to the Mount Pleasant Mine would be in the range of the estimates already approved, with relatively minor indirect take from the Hunter River alluvium.

116. I noted that the proponent held the required water licences for the predicted take from all water sources, apart from a minor amount from the Dart Brook alluvial water source (up to 13 ML/year), which would be readily obtainable. I also adopt what I have stated above in relation to surface water impacts, namely that the proponent could obtain additional licences for any additional water take.

117. As I noted above (at [100]), concerns raised in the public submissions included impacts on private water users and privately-owned bores and on water supply works that are potentially located within the "very unlikely" and "unlikely" zones of 2 m drawdown determined in the Groundwater Assessment uncertainty analysis. In this regard, the IPC explained:

> *According to the Groundwater Assessment (pg 92) a total of six bores on private property were predicted to experience drawdown exceeding the AIP minimal impact considerations (i.e. more than 2 metres drawdown) due to cumulative impacts from the Mount Pleasant Operations (incorporating the Project) and neighbouring mines.*
>
> *The Groundwater Assessment and the Department's AR state that two of these bores are already dry, and a further three are not currently in use and/or are monitoring bores. The Commission notes that only one bore ('Belgrave') is active and not dry, and is predicted to experience more than 2 metres of drawdown as a result of the Project. The Commission also notes that this bore has also been historically affected by the Dartbrook mine, and as such the Project-related impacts are not expected to significantly impact the groundwater user (AR para 248). The Department has recommended that the Applicant be required to provide compensatory water supplies to the affected groundwater users, at the request of the landowner.*

118. In relation to GDEs, the following were identified in the Groundwater Assessment as being in the vicinity of the proposed action area:

a. the aquatic environment of Hunter River (Type 2 aquatic GDE);

b. approximately 3 ha of Forest Redgum Grassy Open Forest to the west of the mining area, within the Relinquishment Area (Type 3 terrestrial GDE); and

c. stygofauna collected from bores accessing the Hunter River alluvium.

119. The Groundwater Assessment concluded that the proposed action was unlikely to adversely affect any GDEs. The SAR and IPC did not dispute this conclusion, however considered that monitoring conditions ought be imposed.

120. Finally, in relation to groundwater quality, I noted that the Groundwater Assessment provided information on modelling of the potential seepage from the fines emplacement area and final landform areas where seepage was predicted. The modelling demonstrates that long term seepage would primarily report to the final void of the Mount Pleasant Mine, due to the hydraulic gradient (groundwater sink) caused by the increased depth of the voids. This hydraulic gradient would prevent any contaminants from migrating away from the mining area.

121. I noted that, for the purposes of assessing groundwater impacts, an independent expert was retained to peer review the Groundwater Assessment. Further information on the proposed management and monitoring of Potential Acid Forming (PAF) material, particularly in relation to emplacement of fines material, was also requested for the purposes of the SAR. An additional assessment was undertaken by the proponent. The SAR concluded:

> *Mr Middlemis is satisfied that [the proponent's] additional assessment reasonably demonstrates that there is no potential for groundwater flow away from the final void lake, and that any PAF material exposed in the final void wall/floor would be adequately managed to minimise adverse impacts.*

In this regard, any PAF material encountered (predicted to be a small proportion) would be managed in a manner that is consistent with contemporary mining standards and MACH's approved Mining Operations Plan. PAF material encountered during mining would be blended to produce a non-acid forming (NAF) material and disposed of in overburden emplacements, with a minimum final cover of 10 metres of inert material overlying any PAF material. Any PAF material exposed in the floor of the final void would be covered with at least 5 metres of inert NAF material, excavated and co-disposed as PAF in the emplacements, or flooded with water to prevent oxidation.

122. In addition to the independent expert, and the advice received by the EPA and the Water Group within DPE which informed the SAR, I noted that the IESC had also advised:

a. the proponent had developed an appropriate 3D numerical model to assess potential impacts on groundwater, the assumptions used in the groundwater model are generally appropriate, groundwater drawdown is accurately modelled and the impacts on privately owned bores were assessed adequately and the climate sensitivity analysis undertaken by the proponent was adequate;

b. further information and justification of modelling should be provided in relation to: potential impacts on alluvial aquifers, uncertainty with regard to extreme conditions that may constitute a notional worst-case scenario; documenting of: assessment of mine inflow rate, reduction in baseflow to the Hunter River, Dart Brook and Sandy Creek, indirect take from the Hunter River, Dart Brook and Sandy Creek alluvium and the zone of 2 m drawdown; impacts to groundwater quality; and impacts to GDEs;

c. matters for further consideration include:

– field-based studies to assess the presence of groundwater-dependent ecosystems including stygofauna and groundwater-dependent vegetation along Sandy Creek. If present, their condition and reliance on groundwater should be measured to guide prediction of likely impacts of the proposed action;

– assessment of changes in flow regime of Sandy Creek to identify increases in no- or low-flow days and other ecologically relevant components of the flow regime;

– extension of the proposed action's groundwater monitoring program, particularly in areas of the relinquished Forest Red Gum Grassy Open Woodland (a potential GDE) and part of the EPBC Act listed critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community;

– field-based assessment of groundwater usage by native vegetation especially the EPBC Act listed critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community in the relinquished area to identify potential vulnerability to drawdown using deeper monitoring bores; and

d. strategies to avoid the impact of drawdown on GDE's including the EPBC Act listed critically endangered White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community need to be included as it is unlikely that mitigation is feasible.

123. I noted that the proponent responded to the IESC advice, and the SAR considered that the IESC's comments were adequately addressed. I also noted that the report from the independent expert, and requests from the Water Group within DPE for further information on aspects of the proposed action were made and addressed after the IESC advice. Ultimately, the Water Group within DPE, the EPA, SAR and the IPC considered that the proposed action could be managed such that it would not result

in significant impacts to groundwater resources, including GDEs. This would be achieved by way of conditions and the implementation of best practice mitigation measures.

124. The IPC imposed the following conditions:

a. a requirement to obtain the necessary additional water licences prior to water take;

b. that the proponent will provide compensatory water supplies to the affected groundwater users, at the request of the landowner;

c. a requirement to comply with specified performance measures;

d. the proponent having to prepare a Water Management Plan for the proposed action, to the satisfaction of the Planning Secretary, and implement that Water Management Plan, and that the proponent cannot commence construction or extract more than 10.5 Mt of ROM coal in a calendar year until the Water Management Plan is approved; and

e. the proponent having to notify the owner of particular bores that they may request monitoring of those bores to determine the level of drawdown from the proposed action, and in the event that monitoring data records drawdown of more than 2 m as a result of the proposed action, the proponent must provide compensatory water to the owner affected.

125. I accepted that the proposed action could impact on groundwater resources, including in the ways identified in the public submissions. The department agreed with the conclusions of the SAR and IPC that the potential impacts on groundwater can be managed with appropriate conditions, such that the proposed action would not result in unacceptable impacts to groundwater and GDEs.

126. Having regard to the information that I have set out above, and the conclusions reached in the SAR and accepted by the IPC, I was satisfied that, with the conditions, the impacts on groundwater resources, and GDEs, would be avoided, mitigated and managed adequately and to a level that would not significantly impact upon water resources. In relation to the conditions, I accepted that they were necessary to ensure that those impacts were avoided, mitigated and managed adequately, such that the water resources would not be significantly impacted by the proposed action.

Final Void and Landform

127. I noted that the proposed action would consolidate the three final voids from the initial approval into a single final void, although this single void would be considerably larger and deeper than the existing approved voids.

128. I identified the following concerns which were raised in public submissions (as reported by the proponent):

a. justification for not backfilling the final void during site rehabilitation and potential cumulative impacts with the Bengalla Mine void;

b. the potential for concentration of dissolved salts and contaminants in the final void over time, the long period required for the pit lake to reach a water level equilibrium and the accuracy of long-term final void modelling; and

c. the potential for the final void to trap wildlife.

129. In relation to the latter concern, the proponent noted that the range of slopes in the proposed action's final void would be consistent with natural landforms in the region, and therefore would not be expected to form a material barrier to wildlife movement post-mining.

130. The Surface Water Assessment contained the final void water recovery analyses, which were informed by the groundwater inflows that were assessed in the Groundwater Assessment. The EIS stated that the large surface area of the void provides a suitable evaporative surface to offset inflows to the void and, therefore, maintain a final void equilibrium level that is well below the pre-mining groundwater table. At the equilibrium water level (90 mAHD), the final void would act as a groundwater sink, drawing groundwater from the in-situ strata, Eastern Out-of-Pit Emplacement and Fines Emplacement Area towards the final void. However, the SAR indicated that the equilibrium water level in the final void lake would be more likely to be approximately 75m AHD rather than 90m AHD, or 125m rather than 110m below the spill level of the void, based on additional groundwater review following the EIS. Consequently, there would be no risk of the water in the void spilling to the external environment.

131. The potential for seepage from the proposed final landform was assessed using groundwater model outputs and the semi-analytical particle tracking software, which demonstrates that the Mount Pleasant mine and Bengalla mine final voids act to constrain potential seepage. As with other final voids in the region (and the approved mine), the void lake would gradually increase in salinity over time. The Groundwater Assessment originally estimated that salinity would rise to 25,000 µS/cm after about 1,000 years, which was revised down by the proponent from an earlier estimate of 70,000 µS/cm. The saline water would be contained in the void, due to the hydraulic gradient towards the void, which I noted the independent expert engaged for the SAR agreed with (though identified that there are other potential causal pathways for impacts (human physical contact, stock or wildlife contact).

132. Regarding rehabilitation options that involve filling the final void, the proponent established that filling the void would not be a reasonable or feasible option, as it would cost approximately $1 billion in additional rehabilitation, cause additional environmental risks (including potential seepage of groundwater towards the Hunter River) and inefficiencies associated with rehandling emplaced material, coal rejects and PAF, and result in substantial delays to rehabilitation and final land use. The SAR accepted this was not a viable option and that it could, in any event, result in adverse environmental consequences such as an increased risk of seepage from the fines emplacement area migrating off-site.

133. Regarding mitigation measures, the proponent incorporated into the design of the final void measures including backfilling approximately 1.5 kilometres of the northern part of the void, reducing the depth of the void in areas and decreasing internal batter slopes and the highwall angle and applying geomorphic design concepts to the landform draining into the void.

134. I noted that the IESC advice had found that the surface water and groundwater impact modelling developed and used by the proponent to assess the potential impacts of the proposed action on landform and water resources is an appropriate model, appropriate assumptions were applied in the model and sufficient monitoring data has been used to provide meaningful predictions, including worst-case scenarios. The IESC noted the modelling indicates that groundwater levels will not return to pre-mining levels, with some residual impacts remaining in the Hunter River alluvium and the Permium groundwater levels, the latter driven by the proposed action's final void as well as the Bengalla mine void.

135. I also noted that the IESC had considered that an appropriate climate sensitivity analysis based on the adopted extremes from global climate records had been undertaken. Based on the proponent's modelling of several climate change scenarios on surface water levels, it was considered reasonable to conclude that climate change will not increase the risk of spills from the remaining voids under a notional worst-case scenario.

136. The SAR concluded:

> *… the Department has recommended conditions requiring MACH to minimise the size and catchment of the final void as far as practicable, to minimise any ongoing environmental impacts associated with the void and final landform, to comply with a number of best practice rehabilitation objectives, to prepare a detailed rehabilitation strategy and rehabilitation plan, and to implement comprehensive surface water and groundwater monitoring programs.*

137. The IPC concluded:

> *In relation to the final void, the Commission agrees with the Department and accepts that complete backfilling of the void is not a viable option, and that it may result in adverse environmental consequences such as seeping of contaminants off-site. The Commission accepts the findings of the Independent Groundwater Peer Review that there is no potential for flow of poor quality groundwater away from the final void. The Commission has therefore imposed a specific rehabilitation objective as part of Condition B87 to ensure that the final void is designed as long-term groundwater sink to prevent the release of saline water into the surrounding environment, unless further mine planning and final landform design processes identify a more suitable outcome for the final void. The Commission agrees with the Department (paragraph 193 above) and acknowledges the Applicant's commitment to refine final void design. The Commission has therefore imposed Condition B89(j) which requires the Applicant to investigate opportunities to refine and improve the final landform and final void outcomes over time as part of the Rehabilitation Strategy.*

138. The department agreed with these conclusions, and considered that the potential impacts on water resources arising from the final void and landform could be managed with appropriate conditions so that the proposed action will not result in unacceptable impacts to water resources. Those conditions have been described at [110] above. Those same conditions were considered by the department to avoid and mitigate potential impacts to the quality of surface water and groundwater resources, aquatic and riparian biota and flow regimes during and after mining operations due to changes in the landform and resultant changes in catchment areas.

139. I was also satisfied, having regard to the matters I have outlined above, that the potential impacts on water resources arising from the final void and landform could be managed with appropriate conditions so that the proposed action will not result in unacceptable impacts to water resources. For the same reasons as I have given at [111], I considered that the proposed conditions were necessary to protect water resources from impacts arising from the final void and landform.

Conditions

140. As I have set out above, I was satisfied that the proposed action would, with conditions, not have an unacceptable impact on water resources. I agreed that the conditions of the development consent would effectively manage and mitigate any impacts. I therefore agreed with the recommendation that a condition of my approval would be that the proponent must comply with the relevant conditions of the development approval, which I have summarised at [110] and [124] above.

141. In addition to those conditions, the department recommended I impose conditions:

a. that the proponent must not extract more than 21 million tonnes of run of mine coal from the proposed action area in any calendar year, and must cease extraction by 22 December 2048. This condition would provide certainty that impacts on water resources will not exceed those predicted in the proponent's hydrological models, and which I considered were appropriate addressed to an acceptable level by way of the conditions on the development consent;

b. that the proponent must ensure the proposed action has no adverse effect, being an impact which is greater than that which was predicted and assessed through the SAR, IPC and EPBC approval process;

c. requiring the proponent to submit to the department the Water Management Plan, a table stating every trigger value and where it is specified in the Water Management Plan, and any revised version of the Water Management Plan, to ensure the department can undertake auditing and monitoring, and to include in each compliance report a copy of all monitoring reports required under the development consent as part of the Water Management Plan;

d. that the proponent must notify the department if it predicts or detects the reaching of a trigger level (which will be specified in the Surface Water Management and Monitoring Plan to be approved under the development consent), and a condition that the Minister may direct corrective action to be taken, and the proponent to implement that corrective action; and

e. requiring the proponent to notify the department if it predicts or detects the breach of a performance measure (which is a water management measure specified in the development consent), and to submit an 'Impact Response Plan' which must be approved in writing by the Minister and published, and which the proponent must implement the corrective actions and measured specified in such plan, or the Minister may direct corrective action and that the proposed action must cease any aspect that contributed to the breach of the performance measure until the Minister approves the resumption of such aspects.

142. The department considered that these conditions would ensure that the proposed action was undertaken in a way that minimised and limited any impacts of the proposed action to water resources, included those which arise during the duration of the approval.

143. I also considered that these conditions were necessary, in addition to the conditions requiring compliance with the development consent, for the protection of water resources. The additional conditions would ensure that the department can monitor the impacts of the proposed action, and the Minister could require corrective action to be taken.

Conclusion on water resources

144. Having regard to the information before me and, in particular, that set out above, and noting that the SAR and department considered that the proposed action will not have unacceptable impacts on water resources, provided that it is undertaken in accordance with the proposed avoidance and mitigation measures (which I was satisfied the proponent would implement) and conditions and the IPC agreed with the SAR, I also agreed that approval of the proposed action, with conditions, would not have an unacceptable impact on water resources.

Economic and social matters

145. In making my decision, I had regard to the economic and social matters relevant to the proposed action, as follows.

Economic matters

146. I noted that the EIS included an Economic Assessment prepared in accordance with the *NSW Government's Guidelines for the economic assessment of mining and coal seam gas proposals* (2015). Consistent with the guidelines, the assessment included a cost benefit analysis to evaluate the net benefit/cost of the proposed action to NSW, and a local effects analysis to assess the net benefit that the proposed action will deliver to the local region.

147. I noted that the Economic Assessment stated:

> *The incremental net benefit of the Project for NSW is estimated at $855 million in net present value (NPV) terms, consisting of royalties of $684 million in NPV terms, and the NSW share of company income tax of $172 million in NPV terms. Overall, the Project's net contribution to NSW Gross State Product is estimated at $1.4 billion in NPV terms.*

148. DPE did not support the approach taken in the Economic Assessment, which included a calculation to reduce the direct GHG emissions attributable to NSW. DPE requested that the proponent recalculate the net benefits of the proposed action in NPV terms and ensure that GHG emission costs are alternatively apportioned to NSW, including a sensitivity analysis around carbon pricing. The proponent recalculated the net benefits in accordance with the request, which resulted in a revised net benefit to NSW of around $577 million, should the costs of GHG emissions be calculated as a share of Australia's population.

149. Overall, the IPC concluded as follows:

> *The Commission finds that the Project would have a positive economic impact in relation to employment through the provision of up to an average of 447 direct and indirect FTE jobs in the Muswellbrook and Upper Hunter LGAs, 643 FTE jobs in the wider Hunter Valley region, and 444 FTE jobs elsewhere in NSW. The Commission also finds that the Project would also result in approximately $140 million (NPV) in incremental disposable income in the Muswellbrook and Upper Hunter LGAs, $189 million in the wider Hunter Valley, $276 million in NSW and $1.4 billion (NPV) in incremental direct value added benefits in NSW.*

150. In addition to the conclusions of the IPC, and the SAR, I also noted that a large number of submissions received from the public identified the importance of job creation and job security, which would be supported by the proposed action.

151. The IPC and NSW DPE considered that, when weighed against the impacts, the proposed action is likely to generate economic benefits for the local area, Hunter region and NSW through employment, royalties and tax revenue whilst utilising existing mine infrastructure. I agreed with this assessment.

Social matters

152. The EIS was accompanied by a Social Impact Assessment (SIA) which indicated that the positive and negative social impacts of the proposed action are a continuation of existing social impacts of Mount Pleasant. The SIA concluded that the proposed action would not have any significant adverse impacts on lifestyle, culture and community cohesion.

153. I noted that the SAR found that negative social impacts are generally experienced by people residing close to the mine, whilst positive impacts are experienced by a wider geographic spread of residents. The IPC noted:

a. positive social impacts included employment opportunities being provided by Mount Pleasant mine within the local community. These were both direct and indirect employment opportunities; and

b. negative social impacts on the local community including impacts to health and wellbeing, emotional distress, impacts to the quality of the environment and landscape, cultural impacts and community division.

154. I acknowledged that the proponent was already implementing a number of measures to mitigate any negative social impacts, and had committed to other measures, including:

a. contributing $20 million to Muswellbrook Shire Council over the life of the proposed action via a voluntary planning agreement for community enhancement, local road maintenance and employment by Council of an Environmental Officer and 4 local apprentices (annually);

b. contributing $6 million to Upper Hunter Shire Council over the life of the proposed action via a voluntary planning agreement for community infrastructure and services;

c. running an Aboriginal Community Development Fund since 2006, contributing money to projects for the local Aboriginal community; and

d. making-good any adverse impacts on telecommunications infrastructure, which were matters raised in public submissions.

155. I also noted that the SAR recommended a range of conditions which would formalise these measures and commitments as a part of the approval under the EP&A Act.

156. Overall, the IPC, SAR and the department did not consider that the proposed action would lead to any substantial adverse social impacts. I agreed with this assessment.

Indigenous and cultural matters

157. I noted that the EIS contained a detailed Aboriginal Cultural Heritage Assessment (**ACHA**) for the proposed action.

158. The SAR noted that the ACHA for the proposed action involved consultation with 88 Registered Aboriginal Parties and drew upon detailed assessment and salvage operations undertaken for the proposed action. In response to requests from Heritage NSW, the proponent undertook an additional desktop analysis of small areas that could not be surveyed (for access reasons). The assessment identified approximately 1,736 tangible Aboriginal sites within the project area including artefact scatters and isolated finds, scarred trees and 1 spiritual place.

159. I noted that the ACHA concluded that the additional impacts of the proposed action on Aboriginal heritage will be relatively low in the local context, and very low in the regional context, with no significant cumulative impacts expected. Taking into account the proposed mitigation measures, the ACHA considered the additional impacts to be minor.

160. I noted that the initial approval provides for the establishment of an Aboriginal heritage conservation area (Area A) and two provisional conservation areas (Area B and Area C). The ACHA concluded that the implementation of alternative measures in lieu of Area B and Area C would counterbalance the approved and additional impacts on Aboriginal heritage resulting from the proposed action.

161. Heritage NSW, in comments made in response to the EIS, recommended that the proponent undertake further assessments as part of an Aboriginal Cultural Heritage Management Plan (**ACHMP**). The SAR recommended, and the IPC accepted, that a condition requiring the proponent to prepare an ACHMP in consultation with Aboriginal stakeholders should be imposed. The IPC stated:

> *The following measures and requirements must also be implemented under the ACHMP:*
>
> - *the establishment of Aboriginal cul1tural heritage conservation areas (as required under the Existing Approval);*
> - *the protection of Aboriginal objects and Aboriginal places located outside the approved disturbance area;*
> - *manage the discovery of suspected Aboriginal human remains over the life of the development;*
> - *manage the discovery of any new Aboriginal objects or Aboriginal places;*
> - *facilitate the ongoing consultation and involvement of RAPs*
> - *the inclusion of a strategy for the care, control and storage of Aboriginal objects salvaged from the Site.*

162. The department agreed with the SAR and the IPC assessment of Indigenous and cultural impacts of the proposed action, and that the proposed action will have similar impacts to those under the initial approval, and can be appropriately managed. I accepted these views.

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

163. In approving the proposed action subject to conditions, I took into account the principles of ecologically sustainable development, including the precautionary principle (subsection 391(2)). I acknowledged that the SAR and IPC had concluded that approval of the proposed action, with conditions, would be consistent with the principles of ecologically sustainable development. I agreed. I set out below ways in which I considered the individual principles in making my decision.

Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations

164. The department considered that the assessment of the proposed action (by way of the SAR and IPC) involved consideration of the long and short-term economic, environmental, social and equitable impacts, and included analysis of economic, environmental, social and equitable considerations, and included a public consultation process.

165. I was satisfied that the information before me allowed detailed consideration of long and short-term economic, environmental, social and equitable impacts. I acknowledged the detailed assessment process and thorough consideration given to the impacts of the proposed action in the SAR, by the IPC and then by the department. I considered that the short-term and long-term impacts on protected matters would be appropriately managed by the conditions attached to the approval.

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

166. Under subsections 3A(b) and 391(2) of the EPBC Act, the precautionary principle provides 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.

167. I noted that SAR concluded as follows:

> *While it is recognised the Project would result in a number of impacts of varying significance, the key matters that could cause serious or irreversible environmental damage relate to unmitigated impacts on air quality, biodiversity values (including threatened species and EECs), impacts on water resources and impacts to items of heritage significance.*
>
> *The EIS and Department's assessment have identified management and mitigation measures to address potential environmental impacts, and include commitments and requirements to implement monitoring, auditing and reporting mechanisms.*
>
> *Overall, the Department has assessed these matters in detail (see Section 6) and considers that the recommended risk-based conditions and performance measures would provide appropriate protection for the environment and minimise the potential for any serious or irreversible environmental damage*

168. Further, the department noted that the proponent engaged qualified ecologists, ecological consultants and hydrologists who conducted flora and fauna surveys in line with State and Commonwealth survey guidelines and undertook hydrological modelling. Based on the availability and quality of information provided by the proponent and thoroughly reviewed by the department, the department did not consider there was a lack of scientific certainty about the likely nature and/or extent of threats.

169. Having regard to the conclusions of the SAR (which were similarly expressed in the IPC) and the department's views, I considered that, even if there may be a threat of serious or irreversible

environmental damage, there was no lack of scientific certainty about the likely nature and/or extent of the environmental damage.

170. Accordingly, while I took account of the precautionary principle, I did not consider that it applied to the proposed action.

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

171. I noted that the SAR states that intergenerational equity has been addressed through maximising efficiency and coal resource recovery and developing environmental management measures which are aimed at ensuring the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations. The SAR acknowledges that coal and other fossil fuel combustion is a contributor to climate change, which has the potential to impact future generations. However, it also recognises that there remains a clear need to develop coal deposits to meet society's basic energy requirements for the foreseeable future. It noted that the direct energy use and associated GHG emissions assessment found that emissions would be low and comprise a very small contribution towards climate change at both the national and global scale.

172. The SAR concluded:

> *The Department considers that the socio-economic benefits and downstream energy generated by the Project would benefit future generations, particularly through the provision of national and international energy needs in the short to medium term.*

173. The department agreed with the SAR conclusion and considered that the proposed conditions of approval will ensure the protection and management of MNES. I agreed with the department's analysis and considered that approval, with conditions, would ensure that the proposed action is implemented in a sustainable way and the environment will be protected and rehabilitated for future generations, as the inter-generational equity principle provides.

The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making

174. In making my decision, I was satisfied that the conservation of biological and ecological integrity was integrated throughout the assessments of the proponent, in the SAR, IPC and the department. I particularly noted that avoidance, mitigation and management measures for impacts were committed to, and imposed (or proposed to be imposed) by way of conditions, to ensure that the proposed action will not have serious or irreversible impacts on biological diversity and ecological integrity.

Improved valuation, pricing and incentive mechanisms should be promoted

175. The SAR noted that valuation and pricing of resources has been considered through economic, social and cost-benefit analyses which have been completed as part of the EIS. I also noted that the development consent includes performance-based conditions, where possible, which I considered to provide incentive to the proponent to achieve environmental outcomes and objectives in the most cost-effective way.

Assessment Report - subsection 136(2)(b)

176. In making my decision I had regard to the SAR and, where relevant to my findings, I have referred to this throughout my reasons above.

Other information - subsection 136(2)(e)

177. The information on the relevant impacts of the action which I took into account is listed in Annexure B and, where it was relevant to the controlled action provisions which have formed part of my decision, I have also identified it above.

GHG Emissions

178. As noted at [20.a] above, a number of public submissions were received raising concerns about GHG emissions. I was also aware of the reconsideration request, which raised GHG emissions in some detail (see [25]-[26]). I accepted that the proposed action will produce GHG emissions. I noted that the EPBC Act does not regulate GHG emissions as a discrete protected matter. However, GHG emissions from the taking of an action may be considered where those emissions will, or are likely to, result in a 'significant impact' on a MNES. I agreed that, in a general sense, climate change from anthropogenic sources of GHG emissions has and/or will have adverse physical effects on MNES. Relevant to this proposed action, the combustion of coal and/or gas on a global scale results in GHG emissions, which increases the effects of climate change, including the regularity, scope and intensity of climate hazards. Against this context, I accepted that the GHG emissions and physical effects of climate change may adversely affect listed threatened species and ecological communities, and water resources in relation to unconventional gas or large coal mining developments.

179. In light of the matters in the paragraph immediately above, I considered whether GHG emissions from the proposed action will, or are likely to, result in a 'significant impact' on a MNES.

180. I note that the issue GHG emissions, and their impact, in relation to this proposed action was considered in detail by the Minister in the reconsideration decision. However, I was required, and did, come to my own conclusion, as I set out below.

<u>The proposed action and GHG emissions</u>

181. By way of context, I adopt the following explanation of the categories of GHG emissions from the SAR:

- *Scope 1: emissions released to the atmosphere as a direct result of an activity;*
- *Scope 2: emissions released to the atmosphere from the indirect consumption of energy; and*
- *Scope 3: indirect emissions (other than Scope 2 emissions) generated in the wider economy, which occur as a consequence of the activities of a facility, but from sources not controlled by that facility.*

182. As part of the EIS, the proponent prepared a Greenhouse Gas Assessment to evaluate the likely GHG emissions of the proposed action. In the Greenhouse Gas Assessment, the proponent estimated as follows:

Table 2
Summary of Greenhouse Gas Emission Estimates

Period	Estimated Greenhouse Emissions (Mt CO_2-e)		
	Scope 1	Scope 2	Scope 3
Annual average*	0.45	0.08	33.1
Maximum annual value	0.61	0.11	45.1
Total over life of Project*	12.0	2.17	860

After: Todoroski Air Sciences (2021).
Note: Mt CO_2-e = Million tonnes of carbon dioxide equivalent.
* The annual average values exclude the decommissioning phase, but the total values include the decommissioning phase.

183. Scope 1 emissions from the proposed action may occur through the combustion of diesel, consumption of oil and grease, release of stored carbon in vegetation, the use of explosives and fugitive emissions from the extraction of coal. Scope 2 emissions from the proposed action come from the consumption of purchased electricity to facilitate the activity. Scope 3 emissions arise from customers using proposed action product coal, with the majority of Scope 3 emissions from use anticipated to occur overseas.

184. I noted that the SAR had estimated that Scope 1 emissions were 13.9 Mt CO2-e over the life of the proposed action.

185. Through comparison with 2017 values, the Greenhouse Gas Assessment provided information that the estimated annual average GHG (Scope 1 and 2 emissions) from the proposed action during operations represent approximately 0.1% of Australia's annual GHG emissions. As provided in the SAR, the average annual GHG emissions (excluding the decommissioning phase) were estimated to be:

a. 0.54 Mt CO2-e for Scope 1;

b. 0.08 Mt CO2-e for Scope 2; and

c. 33.1 Mt CO2-e for Scope 3.

186. The total GHG emissions over the life of the proposed action (including the decommissioning phase) were estimated at 860 Mt CO2-e for Scope 3 emissions. Further, the Greenhouse Gas Assessment stated:

> *Comparison of the Project's annual average Scope 1 and 2 emissions during the operational phase (approximately 0.54 Mt CO2-e) to the total anthropogenic greenhouse gas emissions globally (excluding land use change) in 2017 of approximately 50 gigatonnes of carbon dioxide equivalent (Gt CO2-e) (United Nations Environment Program, 2018) indicates the Project's Scope 1 and 2 emissions would contribute approximately 0.001% in the context of cumulative global emissions.*
>
> *Further, comparison of the annual average Scope 3 emissions of customer entities combusting coal produced by the Project (approximately 32.4 Mt CO2-e) (Attachment A) to the total anthropogenic greenhouse gas emissions globally (excluding land use change) in 2017 suggests these emissions would be approximately 0.065% of global anthropogenic emissions.*

187. On 10 November 2022, the department requested further information from the proponent on GHG emissions associated with the proposed action. The proponent estimated the GHG emissions in Mt CO2-e from the proposed action specifically (as opposed to the emissions from the proposed action and the Mount Pleasant Coal Project which formed the basis of the estimate in the Greenhouse Gas Assessment) as follows:

	Scope 1	**Scope 2**	**Scope 3**		**Total (Scope 1, 2 & 3)**	
			Australia	Overseas	Australia	Globally (includes Aust.)
Annual average	0.4	0.0	1.1	19.1	1.5	20.6

Total	9.5	1.2	27.7	496.5	38.3	534.8

188. The proponent's response also outlined a comparison of the anticipated average annual GHG emissions to be generated by the proposed action compared to GHG emissions generated in Australia in 2020, and global GHG emissions in 2019. Based on this, the scope 1-3 GHG emissions resulting from the proposed action would represent 0.25% of Australia's GHG emissions, and 0.042% of global emissions. In addition, the proponent provided information about its emissions management measures and the consumers of the end-product coal.

An impact of the proposed action

189. Section 527E of the EPBC Act states:

> ***Meaning of impact***
>
> *(1) For the purposes of this Act, an event or circumstance is an impact of an action taken by a person if:*
>
> *(a) the event or circumstance is a direct consequence of the action; or*
>
> *(b) for an event or circumstance that is an indirect consequence of the action--subject to subsection (2), the action is a substantial cause of that event or circumstance.*

190. Based on the information available, the department assessed that the physical effects of climate change associated with the GHG emissions of the proposed action are, if anything indirect consequences of the proposed action. I agreed with this assessment. As such, I was required to consider whether the proposed action was a substantial cause of the physical effects of climate change on listed threatened species and/or on water resources in relation to unconventional gas or large coal mining developments.

191. I did not consider that the information before me demonstrated that the effects of climate change on listed threatened species and ecological communities, and on water resources in relation to unconventional gas or large coal mining developments, were 'impacts.' I agreed with the department that:

a. the available information did not demonstrate that the proposed action will cause a net increase in GHG emissions and global average temperature; and

b. even if a likely net increase were demonstrated, any contribution from the proposed action to global GHG emissions would be very small, such that it could not be said that the proposed action will be a 'substantial cause'.

The proposed action will not cause a net increase in GHG emissions and global average temperature

192. I agreed with the department that the likely contribution of the proposed action towards a net increase in global GHG emissions and global average temperature is subject to a number of variables. One variable is whether any emissions generated by the combustion of the coal from the proposed action will be offset, mitigated or abated. The countries or jurisdictions where the prospective buyers of the coal are expected to combust the coal may at any time implement new policies or regulations regarding emissions within their borders.

193. I noted that, in the reconsideration decision, the proponent had advised that it was anticipated that the coal from the proposed action will be consumed by Japan, South Korea, Malaysia, Taiwan, Vietnam and Australia. With the exception of Taiwan, each have respective nationally determined contributions (**NDCs**) under the Paris Agreement. The reconsideration decision explained:

Under the Paris Agreement, all parties must prepare, communicate and maintain successive NDCs and pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. Under the Paris Agreement, emissions that occur within a party's jurisdiction are accounted for within that party's national greenhouse gas inventory. As a result, emissions associated with the combustion of exported Australian coal are accounted for in the national greenhouse gas inventories of the importing countries.

…

Under Article 4 of the Paris Agreement, Parties aim to reach global peaking of GHG emissions as soon as possible, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removal by sinks of GHG in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty. 151 governments around the world, including Australia, have announced intentions to reach net zero emissions.

…

… Under the Paris Agreement (referred to at paragraphs 74 to 79 above), each Party must submit an NDC every five years. These NDCs are required to reflect increased ambition over time. Parties may also submit new or updated NDCs at any time. The emissions generated by combusting coal (including coal from the proposed action) would be counted as scope 1 emissions in the country where combustion occurred and may be subject to mitigation actions or offsetting.

194. I noted that, if the proposed action does not proceed (i.e., if I was to refuse the proposed action or something prevented the commencement), this will not necessarily affect the level of GHG emissions worldwide, or the extent to which listed threatened species and ecological communities, and water resources in relation to unconventional gas or large coal mining developments, will be impacted by the physical effects of climate change. That will be subject to a range of other factors, including the level of emissions from sources other than the proposed action.

195. I agreed with the department that the presence of other factors makes it very difficult to estimate the likely net increase (if any) in global GHG emissions from the proposed action's emissions and, by extension, the extent of any net increase in global average temperature and the extent to which listed threatened species and ecological communities, and water resources in relation to unconventional gas or large coal mining developments, will be impacted by the physical effects of climate change.

196. Further, it reasonable to expect that, if the proposed action does not proceed, the prospective buyers will purchase an equivalent amount of coal from a supplier other than the proponent, which would result in at least an equivalent amount of GHG emissions when combusted, when compared with the amount estimated for the proposed action. For example, the IEA Coal 2022 report states that, in 2022, China increased its imports from Indonesia and Russia when it reduced its imports from Australia. It also stated:

…Russia is the third largest coal exporter in the world and the sanctions have as a result given rise to a reshuffling of global trade flows as buyers, especially in Europe, seek alternative supplies. In addition, owing to the lack of rail capacity, part of the Russian coal volumes previously sent by rail to Europe or shipped from northwestern Russian ports towards Europe cannot be redirected to the east or the south. This has resulted in a decline of Russian exports and a tightening of the market. The gap left by Russian coal supplies in Europe has been largely filled by South Africa, Colombia and other smaller producers such as Tanzania and Botswana. Indonesia, which started the year banning coal exports in order to meet its own domestic demand, once again demonstrated its flexibility as it shifted its exports to Europe to help offset the Russian shortfall.

197. The department noted the more recent IEA Coal 2023 report, which post-dated the reconsideration decision, notes that, although coal demand will fall in almost all advanced economies, the European Union and the United States with the biggest drops, the growth in China, India, Indonesia, Vietnam, and the Philippines will more than offset these decreases on a global level. I considered that, should the proposed action not proceed, the market would respond through an increase in supply elsewhere, in circumstances where there is still anticipated demand for the coal from the proposed action. That is, if the proposed action did not proceed, the emissions from the proposed action would nevertheless occur, it would just be by way of a different action.

198. The department recommended that I conclude that the proposed action will not, or is not likely to, result in a net increase to GHG emissions, or affect the extent to which the MNES will be affected. I accepted that recommendation. The matters I have discussed above (at [178]-[197]), and the information before me was such that I could not be satisfied that there would be any net increase to global GHG emissions as a result of the proposed action, such that the proposed action will be a substantial cause of the physical effects of climate change on these MNES.

In any event, any contribution from the proposed action to global GHG emissions would be very small, such that the proposed action will not be a 'substantial cause'

199. The department considered that, in the alternative, even if the proposed action would result in a net increase in global GHG emissions and global average temperature, there is no reasonable basis for concluding that the proposed action will be a substantial cause of the physical effects of climate change on listed threatened species and ecological communities, and on water resources in relation to unconventional gas or large coal mining developments.

200. As explained in the reconsideration decision, in response to a request by the department for information, the proponent provided information demonstrating that the average total annual GHG emissions (scope 1, 2 and 3) from the proposed action represents approximately 20.6 Mt CO-2e or 0.042% of global annual emissions in 2019. The proponent used Climate Watch's Historical GHG Emissions 2019 data, the latest data available at the time, as the basis for its calculations.

201. As noted in the reconsideration decision, the department estimated as follows:

> *… the likely increase in global temperature that could arise from the proposed action's estimated total GHG emissions, in a scenario where it could be shown that the proposed action would result in a net increase in global GHG emissions and global average temperature, is approximately 2.4x10-4 0C or 0.000240C. The department prepared this estimate assuming a one-for-one relationship between temperature and tons of GHG emissions, based on the information EJA provided about findings by the IPCC Working Group I that the relationship between anthropogenic CO2 and global temperature has thus far been approximately linear.*

202. While the reconsideration decision relied on a predicted amount of coal consumption in 2022, the IEA Coal 2023 report noted that global coal consumption in 2022 (based on preliminary data) was 8,415 Mt. That was more than had been predicted, and exceeded what the global consumption was predicted to reach in 2025. The proposed action's maximum annual output is 21 million tonnes per annum (Mtpa). As such, the proposed action would represent 0.25% of the preliminary global coal consumption for 2022. Estimates for global coal consumption for 2023 was 8,536 Mt.

203. I agreed that climate change occurs in a global context and, having regard to the percentages and figures in the paragraphs above, I considered that the amount of coal to be combusted from the proposed action, and any possible increase in net global GHG emissions and global average temperature that would result from combusting this amount of coal, would be of such a minimal amount that I could not accept that the proposed action would be a 'substantial' cause of the physical

effects of climate change on listed threatened species and ecological communities, and on water resources in relation to unconventional gas or large coal mining developments.

204. Further, and for the same reasons, even if it was said that impacts on listed threatened species and ecological communities and water resources arising from Scope 1, 2 and 3 GHG emissions could be said to be impacts of the proposed action, I would not accept that those impacts were significant.

Relevant comments - subsection 136(2)(f)

205. I have identified and summarised the relevant comments received at [27]-[34] above, and had regard to those when making my decision.

Relevant advice - subsection 136(2)(fa)

206. As required, I had regard to the advice obtained from the IESC. I refer to the advice in my consideration of the impact on water resources at [92]-[144] above

Person's environmental history – subsection 136(4)

207. I noted that, pursuant to subsection 136(4) of the EPBC Act, I may take into account the proponent's history in relation to environmental matters. The information before me stated that:

- by letter dated 17 February 2023, the proponent stated that over the previous 10 years:
  - the executive officer (the proponent's current managing director), has never received any penalty or sanction (including warnings or cautions) for any environmental non-compliance in Australia or in his country of origin;
  - the proponent received two warning letters from state-based entities, one official caution, one improvement notice and one penalty notice;
  - in relation to the one penalty notice, this was received on 22 January 2021 from the EPA and related to an alleged breach of the Mount Pleasant EPL resulting from a blast fume allegedly being emitted from the premises and travelling across nearby privately-owned residential properties. In response, the proponent and the mining contractor at the Mount Pleasant Operation (Thiess) undertook an investigation and Thiess amended its blast fume procedures.
- on 14 June 2023, Environment Compliance Branch provided an Environmental History Check on the proponent. The check found no adverse history. Environment Compliance Branch also advised that they are not aware of any contraventions of state laws associated with this entity.
- by letter dated 17 June 2024, the proponent confirmed that there have been no additional instances of enforcement action (under relevant environmental laws) against the proponent since the letter dated 17 February 2023; and
- on 17 September 2024, the Environmental Permitting and Compliance Division provided an Environmental History Check, which advised that based on the available information, no adverse history was identified relating to contraventions of national environmental law for this entity, over the last three years based on their database review.

208. The department considered that the proponent was a suitable person for approval, and that they will fully implement all conditions. I agreed with this assessment.

Requirements for decisions about listed threatened species and communities - section 139

Biodiversity Convention

209. In my making my decision, I was required to ensure that any decision I made would not be inconsistent with the Biodiversity Convention. 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.

210. The Biodiversity Convention requires Contracting Parties, as far as possible and as appropriate, to introduce procedures requiring environmental impact assessments of proposed actions that are likely to have significant adverse effects on biological diversity to avoid and minimise such impacts, and requires Parties to introduce appropriate arrangements to ensure that the environmental consequences of their programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account.

211. The proposed action was subject to an environmental impact assessment process under the EP&A Act. The SAR identifies the likely impacts of the proposed action on listed threatened species and communities, and recommends measures to avoid and mitigate those impacts, and I have referred to these in my discussion above. I noted that the proposed approval conditions expressly provided for these measures.

212. I noted that biological diversity was considered and addressed by the proponent in the EIS, which has identified impacts and measures to ensure that the adverse impacts of the proposed action on biological diversity have been taken into account. This was most obvious by the inclusion of a Biodiversity Development Assessment Report, and I also noted that the IPC had indicated that a condition would be imposed requiring the preparation and implementation of a comprehensive Biodiversity Management Plan. Further, I agreed with the SAR that, as the conditions required the proponent to make information publicly available, this would ensure equitable sharing of information and improved knowledge relating to biodiversity.

213. Taking into account my findings in relation to the listed threatened species, and the matters above, I did not consider that the proposed action if approved, with conditions, would have an unacceptable impact on biodiversity. I was satisfied that approval of the proposed action with conditions would not be inconsistent with Australia's obligations under the Biodiversity Convention.

Apia Convention

214. 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.

215. The department informed me that the Apia Convention was suspended with effect from 13 September 2006. As Australia currently has no international obligations under the Apia Convention, I did not consider that any decision could be inconsistent with the Convention.

216. Nevertheless, I noted the Department's advice that the Apia Convention had been taken into consideration, and that the SAR had concluded that approval with conditions would not be inconsistent with the Apia Convention which has the general aims of conservation of biodiversity. Further, the department advised that the proposed action has undergone an environmental

assessment which concluded that the proposed action will not have an unacceptable impact on biodiversity, geological formations and objects of aesthetic interest or historic, cultural or scientific value, subject to the proposed conditions.

217. Accordingly, even if the Apia Convention did impose obligations, I was satisfied that approval with conditions would not be inconsistent with the Apia Convention.

International trade in endangered species

218. 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. I agreed with the department that as the proposed action does not involve international trade in specimens of wild animals and plants, approval would not be inconsistent with the CITES.

Recovery Plans and Threat Abatement Plans Recovery Plan

219. I was required to consider any Recovery Plans and Threat Abatement Plans relevant to my decision, and ensure that my decision was not inconsistently with these statutory documents.

220. I have had regard to these documents in making my decision, as discussed above at [39]-[144] above. I am satisfied that approval of the proposed action (subject to conditions) would not be inconsistent with any of these plans.

Conservation Advice(s)

221. I was required to have regard to any approved conservation advice for any species which is likely to be, or will be, significantly impacted by the proposed action. I have identified the relevant conservation advices, and how I took them into account, in my discussion at [39]-[144] above.

Bioregional plans - subsection 176(5)

222. I am required to have regard to a bioregional plan in making any decision under the EPBC Act to which the plan is relevant. The proposed action is not located within or near an area designated by a bioregional plan, and therefore there is no bioregional plans for me to consider.

Conditions

223. I have noted above in my consideration of the listed threatened species and water resources the conditions that I considered necessary for the protection of those MNES. In deciding that those conditions were necessary, I had regard to the very detailed conditions of the development approval, and agreed that the minor variations to the proposed conditions of approval requested by the proponent following my proposed decision were appropriate as they would ensure alignment and consistency in the conditions of my approval and the development consent.

224. I noted that the department had also recommended various standard administrative conditions that allow for enforcement, record-keeping and appropriate documentation to be provided to the department. These conditions include:

- the proponent notifying the department of the commencement of the proposed action.
- the proponent maintaining and supplying upon request accurate and complete compliance records;
- annual compliance reporting and relevant timeframes;
- the reporting of instances of non-compliance and the relevant procedures and timeframes;

- independent audits of compliance with the proposed conditions and the relevant procedures and timeframes;
- completion of action protocols; and
- the proponent notifying the department of any change or proposed change to the development consent.

225. I agreed that these conditions should be imposed as they were both necessary and convenient for the purposes of ensuring that the department can maintain adequate oversight over the proposed action and ensure protection of the MNES.

CONCLUSION

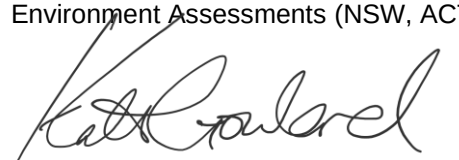
226. In making my decision, I considered each of the matters I have discussed above. There were no other matters which I took into account.

227. For the reasons I have detailed above, I found that:

227.1. the proposed action will have a significant impact on the Box Woodland and the Striped Legless Lizard, however, with appropriate conditions including requiring offsets, the proposed action would not have an unacceptable impact on the species; and

227.2. the proposed action will not have a significant impact on water resources, with appropriate conditions imposed.

228. Having considered all matters required to be considered under the EPBC Act, I accepted the recommendation of the department that the proposed action be approved, with conditions.

Name and position	Kate Gowland Branch Head Environment Assessments (NSW, ACT) Branch
Signature	
Date of decision	7 February 2025

ANNEXURE A

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.

133 Grant of approval

…

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.

134 Condition to inform persons taking action of conditions attached to 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).

…

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.

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

…

(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

…

(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 Coal Seam Gas 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.

137A Requirements for decisions about National Heritage places

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

(b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

(c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

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.

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).

176 Bioregional plans

…

(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

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

Precautionary principle

(2) The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

ANNEXURE B

A: Updated Legal Considerations Report – finalised version to support final decision

B: Responses to invitation for comment on proposed decision

C: Notice of decision

D: Letters to relevant parties

E: Proposed approval decision briefing package

A: NSW Assessment and decision documentation

B: Legal Considerations

C: Proposed Decision Notice

D: Letters to proponent, Commonwealth Ministers and NSW Planning Minister

E: Background and assessment documents

F: Line Area advice

G: Statutory documents

Recovery Plan for Box Woodland.

Threat Abatement Plan for the biological effects, including lethal toxic ingestion, caused by cane toads, Threat Abatement Plan for predation, habitat degradation, competition and disease transmission by feral pigs (*Sus scrofa*), Threat Abatement Plan for disease in natural ecosystems caused by *Phytophthora cinnamomi*, Threat Abatement Plan for predation by feral cats, Threat Abatement Plan for competition and land degradation by rabbits, Threat Abatement Plan for predation by the European red fox.

Conservation Advices for Box Woodland and striped legless lizard.

H: Proponent's EIS and attachments

I: Response to submissions

J: Amendments

K: Additional Information

L: IESC Advice

F: Other information

F1: NSW BCD advice - Commonwealth Bilateral Assessment

F2: Notice of Decision – track change version displaying updates between proposed and final decision

F3: Environmental History Check dated 17 September 2024

F4a: Department correspondence with MACH Energy Pty Ltd dated 16 September 2024

F4b: Response to department correspondence from MACH Energy Pty Ltd dated 17 September 2024