



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

I, Kylie Calhoun, Branch Head, Environment Assessments West (WA, SA, NT) Branch, Department of Climate Change, Energy, the Environment and Water, delegate for the Minister for the Environment and Water, provide the following statement of reasons for my decision of 14 February 2025, under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), that the proposed action by Bennett Resources Pty Ltd (the proponent) to undertake the Valhalla Gas Exploration and Appraisal Project (Phase I and II), an unconventional gas exploration and appraisal drilling project using hydraulic fracture stimulation (HFS) in the Canning Basin, West Kimberley Western Australia (the proposed action) is to be assessed by preliminary documentation under Division 4 of the EPBC Act.

Legislation

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

Background

Description of the referral

- 2) On 25 July 2024, Bennett Resources Pty Ltd (the proponent) submitted a referral for the Valhalla Gas Exploration and Appraisal project (EPBC 2024/09889). The intent of the proposed action was to explore and appraise the extent of the tight gas reservoirs in the Canning Basin in two phases. Phase I was exploration only, and the subject of this referral EPBC 2024/09889. Phase II was field appraisal, which would be referred subject to the outcomes of the referred action, Phase I. The proponent stated that should a commercially viable resource be identified additional approvals as required under both Federal and State Government legislation would be sought at that time
- 3) On 8 August 2024, the delegate requested further information from the proponent to enable a decision on whether the Valhalla Gas Exploration and Appraisal project (EPBC 2024/09889) was part of a larger action or can be considered as a split referral – staged development.
- 4) On 27 September 2024, the proponent requested the Valhalla Gas Exploration and Appraisal project (EPBC 2024/09889) to be withdrawn. On 8 October 2024, the withdrawal notice was published on the EPBC Portal.
- 5) On 9 December 2024 the Valhalla Gas Exploration and Appraisal Project (Phase I and II) (EPBC 2024/10006) was referred. The proponent proposes to construct and operate an unconventional gas exploration and appraisal drilling program to examine the large tight gas resource availability within the proposed action development envelope. The proposed action includes the construction of up to twenty (20) exploration wells on ten (10) well sites with a drilling depth ranging between 2000 metres (m) and 5000 m.

- 6) The action was referred by the proponent, which stated its belief that the proposal was not a controlled action for the purposes of the EPBC Act.

Description of proposed action

- 7) The proponent is proposing to conduct the proposed action in two phases over a seven-year timeframe. Phase I consists of drilling six (6) initial wells located at the Nidavellir, Midgard and Vanaheim well sites, believed to be the most gas prospective. Phase II involves drilling the remaining up to fourteen (14) wells over ten well sites. The proponent notes that Phase II is contingent on Phase I indicating commercial production is economically feasible. Should the proposed action indicate a commercially viable product, the proponent will submit a separate referral for the production phase for assessment under both State and Commonwealth environmental laws.
- 8) The proponent stated that Native title is held in the proposed action area by two registered native title groups—the Warlangurru Aboriginal Corporation and Yungngora (Noonkanbah) Aboriginal Corporation.
- 9) The proposed action involves the following activities across the development envelop:
- a) Site preparation:
 - i) clearing of vegetation
 - ii) construction of well sites, well site ponds, pits, sumps and well collars
 - iii) establish a main workers' camp to house workforce for the duration of activities, comprising of accommodation units, a kitchen, laundry, dining room, utility (with water storage), ablutions and gym facilities
 - iv) installation of groundwater extraction and monitoring bores.
 - b) Drilling activities (likely to be conducted 24 hours per day):
 - i) mobilisation of the drilling package, ancillary services, construction of rig camp, personnel and supplies
 - ii) completion of drilling activities
 - iii) casing and suspending the well; or
 - iv) (if required), plugging and decommissioning the well.
 - c) Hydraulic fracture stimulation (HFS):
 - i) mobilisation of HFS spread (equipment), personnel and supplies (approximately 70 personnel are expected to be located at a single well site during HFS activities).
 - ii) well perforation and clean-up

- iii) HFS treatment and well testing (runs for 24 hours per day and expected to continue for 'several months').
- 10) The department noted in the briefing package that the proponent's referral documentation states the proposed action development envelope is 210.98 ha. The proposed development envelope includes the well sites, access tracks, camps and existing roads. The proposed action disturbance footprint is estimated to be 106.14ha. However, the proponent's environmental review document (ERD), provided to the WA EPA for assessment, states that the proposed disturbance footprint of 112 ha is fixed and flexibility is not sought for this proposed action. I agreed with the department that further clarification on the size of the fixed disturbance footprint was to be sought in the assessment phase. The proponent notes in the ERD that the proposed development envelope is 'larger to encompass horizontal drilling of up to five kilometres in length, although they are unlikely to extend beyond three kilometres'.
- 11) The proposed action is situated in the Canning Basin region within the Fitzroy River Catchment. The Fitzroy River is located approximately 16 km south of the proposed development envelope. Mount Hardman Creek is an ephemeral stream with persistent groundwater fed pools, a tributary to the Fitzroy river and a groundwater dependant ecosystem which is located approximately 1 km from the proposed development envelope. It is noted that the proposed disturbance footprint has been designed to avoid Mount Hardman creek. Mount Wynne creek is located to the north of the proposed development envelope.
- 12) In addition to Mount Hardman creek, Mallah Swamp, Sandhill Swamp and Camballin Floodplain are groundwater dependant ecosystems located within 30 km's of the proposed action.

Evidence or other material on which my findings were based

- 13) I made my decision having considered the information provided in the referral decision brief and its attachments, prepared by the department. Annexure A sets out, in full, the attachments to the brief.

Public comment

- 14) As required by section 74(3) of the EPBC Act, the proposed action was published on the department's website on 8 December 2024 and public comments were invited until 23 December 2024. 1,747 public submissions were received on the referral. As per section 75(1A) of the EPBC Act, these comments were considered by the delegate.
- 15) I considered all submissions received which raised the following issues:

Matters of National Environmental Significance

- a) Submissions referencing flora and fauna made specific reference to the greater bilby, Gouldian finch, common sandpiper and largetooth sawfish. The majority of submissions raised concerns around the Martuwarra Fitzroy River National Heritage Area, including impacts on the groundwater and surface water.

Hydraulic Fracture Stimulation

- b) Submissions were largely unsupportive of the fracking element of the proposed action, with several submissions highlighting the use of chemicals in the fracking process and potentially long-term impacts, as well as the risk of spillages and byproducts of the toxic waste pools. One submission made reference to the Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure (Ninth Edition, October 2023) and quoted unacceptable environmental degradation, social injustice and health impacts as a result of the proposed action. There were public comments stating the project area development envelope is commonly subject to flooding with no information contained within the referral documentation to address how the risk of flooding is proposed to be managed, which could lead to seeping due to a lack of barrier with the surrounding environment.

Climate Impacts

- c) The submissions highlighted concern for the increase of emissions and its impacts on the climate, referencing the International Energy Agency statement to stop emissions-inducing exploration projects.

Traditional Owners

- d) Submissions raised concern with the consultation undertaken with Traditional Owners, stating that the cultural significance of the area must have been understated, and that Traditional Owners did not agree with the project (including from the Kimberley Land Council), this included multiple submission from traditional owners in the area indicating they were not consulted on the proposed action. Further, submissions stated that impacts to groundwater and surface waters, flora and fauna would impact the ongoing cultural and spiritual connections with country.

Proponent's History

- e) Several submissions made reference to previous environmental breaches from Black Mountain Energy Parent company, to which the proponent is subsidiary company, including illegal habitat destruction and failure to comply with state and federal environmental regulations, and concerns about the quality of the information and datasets presented by the proponent for the referral. One submission in particular highlighted different information made previously in a public presentation when Black Mountain Energy was previously listed on the ASX.

Precedence

- f) Several submissions highlighted the importance of the referral decision establishing a consistent approach to assessments under the water trigger, and similar projects in the Kimberley.

Assessment method

- g) Submissions stated that the project should undergo an environmental assessment under the EPBC to ensure all potential impacts to MNES from the project are considered.

Commonwealth and State Minister's comments

- 16) By letter dated 9 December 2024, the following ministers were invited to comment on the referral:
- a) The Hon Chris Bowen MP, Minister for Climate Change and Energy
 - b) Senator The Hon Malarndirri McCarthy, Minister for Indigenous Australians
 - c) The Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia
- 17) On 20 December 2024, the National Indigenous Australians Agency (NIAA) responded on behalf of Minister McCarthy. The NIAA noted that the proponent should ensure they have engaged with the Traditional Owners and First Nations stakeholders with an interest in a project and provide them with sufficient time to make informed assessments of the possible impact of the project on their interests. The department provided NIAA advice to the proponent on the 14 February 2025.
- 18) On 20 December 2024, the Department of Industry, Science and Resources (DISR) responded on behalf of Minister King. The DISR stated they have nil comment on the referral, noting that Geoscience Australia has received a direct request from DCCEEW to comment on this matter.
- 19) By letter dated 9 December 2024, the following State or Territory ministers were invited to comment on the referral:
- a) The Hon Reece Raymond Whitby MLA – WA Minister for Energy; Environment and Climate Action
 - b) The Hon David Robert Michael MLA – WA Minister for Mines and Petroleum
- 20) On 19 December 2024, the Department of Water and Environmental Regulation (DWER) responded on behalf of the above listed WA State Ministers. They advised the WA Environmental Protection Authority (EPA) received a referral related to this proposal and the level of assessment was set at Public Environment Review (PER) on 3 February 2021. DWER further noted that while the proposal is consistent with the proposal currently under assessment by the EPA, the advanced stage of the EPA's assessment may make it unfeasible to be assessed as an accredited assessment under section 87 of the EPBC Act.
- 21) The PER provided to DWER was published for public comment from August 2024 to October 2024.

Findings on material questions of fact

Section 74A – referral of a larger action

- 22) Section 74A(1) of the EPBC Act states that if the Minister (or delegate) is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister (or delegate) may decide not to accept the referral. This is a discretionary decision.

- 23) I considered that the referred action and the activities described as Valhalla Gas Exploration and Appraisal Project (Phase I and II) comprise a larger action proposed to be undertaken by the same person. I noted that the proposed action is to conduct exploration and appraisal activities only. Should the proponent identify commercial production is economically feasible, the proponent will submit a referral for that action as a separate action. The proponent has committed to seeking all relevant approvals as required under both Commonwealth and State Government environmental law for that action.
- 24) The outcome of the proposed action is to determine if there is an 'economically feasible' resource, which the proponent has advised is highly uncertain at this time. The proponent has stated if the proposed action determines production is 'economically feasible' any of the proposed action wells that form part of a production program in the future, will be included in the new referred action for impact assessment. I agreed with the department that if the proposed action receives approval, any wells that are approved as part of the proposed action are unable to be assessed as part of a new action, however, they will be considered as part of an assessment of cumulative impacts. I considered the acceptance of the referred proposed action will not prevent sufficient assessment of the impacts of the larger action, if the production phase does go ahead.
- 25) For these reasons, I considered that while the referred action is clearly part of the larger action, consistent with the *EPBC Act Policy Statement – Staged Development – Split referrals: Section 74A of the EPBC Act*, the splitting of the action will not reduce the ability to achieve the objects of the Act, therefore, I recommended that the referral be accepted.

Decision

Section 75 controlled action decision

- 26) On the 14 February 2025 I considered there is no likelihood of the proposed action having a significant adverse impact on a matter protected by any provision of Part 3 or the EPBC Act other than potentially:
- Sections 15B and 15C (National Heritage values of a national heritage place)
 - Sections 18 and 18A (listed threatened species and communities)
 - Sections 20 and 20A (listed migratory species)
 - Sections 24D and 24E (unconventional gas or large coal mining development with impact on water resources).

Section 87 assessment approach decision

- 27) On the 14 February 2025 I decided the proposed action will be assessed by Preliminary Documentation (Division 4 of the EPBC Act), with a request for further information.
- 28) Subsection 87(5) of the EPBC Act states the Minister, or in this case the delegate, may decide on an assessment on preliminary documentation under Division 4 if satisfied that that approach will allow an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

- 29) The matters I am required to consider in deciding which approach must be used for assessment of the relevant impacts of the proposed action are set out in subsection 87(3) of the EPBC Act, as follows:
- a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
 - b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions 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
 - c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
 - d) the matters (if any) prescribed by the regulations; and
 - e) the guidelines (if any) published under subsection 87(6).
- 30) In making the assessment approach decision I considered the information provided to me in the referral and decided, given the extent of information provided in the referral documentation, which includes the 3,910 page Environmental Review Document provided as part of the assessment being undertaken at the state level – public environmental report, that an assessment on preliminary documentation with a request for further information will provide sufficient information for me to make an informed decision.
- 31) This assessment approach provides the opportunity for public comment prior to an approval decision being.
- 32) In making my decision, I:
- considered the public submissions and Ministerial comments received (and summarised above);
 - considered the EPBC Act Policy Statements 1.1 Significant Impact Guidelines – Matters of National Environmental Significance and 1.3 Significant Impact Guidelines – Coal seam gas and large coal mining developments – impacts on water resources, which provides guidance on determining whether an action is likely to have a significant impact on a matter protected by Part 3 of the EPBC Act. These are policy documents, not legal instruments. However, I considered that the factors identified in the Significant Impact Guidelines were appropriate in assessing the likely impacts of the proposed action;
 - took account of the precautionary principle (as stated in section 391 of the EPBC Act) when making my decision. The precautionary principle is triggered where there is a threat of serious or irreversible environment damage and scientific uncertainty as to the environmental damage. The precautionary principle requires that, if there are threats of

serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

- noted that, pursuant to section 176(5) of the EPBC Act, there were no bioregional plans relevant to the location of the proposed action which I was required to have regard to;
- concluded that my decision that the proposed action is a controlled action would not be contrary to section 362(2) of the EPBC Act, as there were no Commonwealth reserve management plans relevant to the location of the proposed action.

33) Having regard to the information before me, and the matters relevant to my decision, for the reasons set out below I agreed with the department's recommendation that the proposed action is a controlled action to be assessed by preliminary documentation, with a request for further information.

Part 3 provisions that are controlling provisions

34) As outlined at above in paragraph 26, I decided that the proposed action was a controlled action and the controlling provisions for the proposed action are: Sections 15B and 15C (National Heritage values of a national heritage place), Sections 18 and 18A (listed threatened species and communities), Sections 20 and 20A (listed migratory species), and Sections 24D and 24E (unconventional gas or large coal mining development with impact on water resources).

35) I considered the information in the referral documentation when making the assessment approach decision under subsection 87(3) of the EPBC Act. I also considered the information relating to the impacts of the action and the description of the proposed action provided in the referral decision briefing package as provided below.

36) I provided a statement of reasons for the controlled action decision, section 75, which was published on the EPBC Portal on 24 April 2025. The information below is a duplicate of what is provided in that statement of reasons as the reasons for the section 75 decision remain the same.

A water resource, in relation to a large coal mining development or unconventional gas development (s24D and s24E)

37) The department's water assessment information portal states that unconventional gas exploration and production activities can pose risks to water resources. The majority of these are associated with the water extraction and HFS processes and can be broadly categorised as interconnectivity, well integrity, materials handling, and water-use conflicts. These risks are amplified by the number of wells required for commercial production.

38) The major aquifer groups in the Fitzroy trough include the Liveringa Formation, Grant Group (containing the Poole Sandstone), Wallal Sandstone and Broome Sandstone. The Liveringa and Grant aquifers are the shallowest and considered the most relevant to the proposed action as groundwater is proposed to be extracted from the Liveringa aquifer to meet project demands, including water volumes required for HFS.

- 39) Monitoring conducted of the Liveringa Aquifer and surface alluvial waters associated with the Fitzroy River has indicated a strong connection between the river and the aquifer. Due to the long dry season, many of the tributaries of the surface fluvial system draining into the Fitzroy River are ephemeral streams or swale washes. The Fitzroy River contracts to pools with very low flows from about June to October. Ecologically, these permanent pools are important refuges for aquatic species, enabling them to survive the harsh dry season.
- 40) On 16 December 2024, the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development (IESC) released a report about the potential nature, extent and cumulative impacts of exploration and appraisal activities for unconventional gas on the (Beetaloo) Basin's water resources. The findings of the IESC report included that providing mitigation strategies are adopted and correctly implemented, that potential impacts on the Beetaloo Basins water resources from initial exploration and appraisal activities for unconventional gas are minor. However, these activities will likely lead to further production, exploration and appraisal which will inevitably intensify impacts, along with those from current and proposed land uses such as irrigated agriculture (e.g. cotton, mangoes) and from climate change.
- 41) The report concluded that detailed local-scale environmental studies are needed to ensure adequate understanding and protection of the Basin's surface and groundwater water resources in areas where unconventional gas development is planned.
- 42) Whilst the IESC advice was specific to the Beetaloo Basin, which is located in the Northern Territory, I considered that the report identified information required and relevant to all proposals of this type to enable an assessment of the significance of the impacts to a basin, which includes having an adequate understanding of the geological framework of the basin, detailed characterisation of groundwater, surface water flow characterisation, surface water and groundwater connectivity, water quality and ecology.

Impacts, avoidance and mitigation measures of proposed action

- 43) The proponent states that potential direct impacts to water resources from the proposed action includes changes to groundwater levels (groundwater drawdown) associated with water extraction. The proponent states that due to the migration timeframe and the nature of the low-toxicity mud system used, that it is extremely unlikely that any change to groundwater quality would be observed, noting that the closest groundwater user is at least 18 km from the project area.
- 44) The proponent's referral states that potential indirect impacts to water resources from the proposed action are:
- a) potential contamination of aquifers through unplanned fracture heights.
 - b) potential contamination of surficial aquifers from an accidental release at the surface of drilling fluids, HFS chemicals, liquid hydrocarbons, or produced formation water.
 - c) potential risk to site activities and infrastructure due to extreme rainfall events.

- 45) The proponent's assessment of impacts against the significant impacts guidelines states that throughout the planning phase, the proponent has reviewed studies undertaken by the previous operator of the exploration permit and analysed geological records to understand the potential impacts associated with the proposed action. Based on this information, the outcomes of the proposed action are predicted to be:
- a) no impacts to hydrological regimes or groundwater quality, demonstrated by:
 - b) no significant drawdown of the aquifer following completion of the Proposal that is considered outside seasonal fluctuations
 - c) no change to groundwater quality attributable to the Proposal.
- 46) In making my decision, I considered technical advice received from the department's office of water science, which determined that the proponent had not conceptualised or modelled alluvial groundwater, and there is the potential for changes to groundwater levels or pressures due to drawdown associated with pumping in the Liveringa or Grant/Poole aquifers to impact on groundwater levels in the alluvial aquifer.
- 47) The information used by the proponent to support the assessment of impacts from the proposed action to water resources is based on reviewing studies from previous operations in the area, and regional data, predominantly obtained from previous drilling programs in the regions, with limited local scale environmental studies, including no site-specific data, or detailed survey's/studies of the Mount Hardman creek. I noted the IESC advice with regards the need for local-scale environmental studies to be completed to ensure adequate understanding and protection of a basin's surface and groundwater water resources in areas where unconventional gas development is planned.
- 48) I found there were further uncertainties, and inconsistencies in the information provided, as to the surface water and groundwater flows and their connections, which resulted in an inadequate justification of the assessment of no impact.
- 49) I further noted that the proponent provided avoidance and mitigation measure for managing impact to a water resource in a groundwater management plan. This plan documents the groundwater monitoring requirements along with management actions associated with trigger and threshold criteria that must be implemented. The groundwater management plan has been provided as part of the referral documentation in the proponents ERD. I considered that the proposed avoidance and mitigation measures provided by the proponent to manage impacts from the proposed action required further improvement to ensure they appropriately mitigate and manage the impacts to an acceptable level.

Conclusion

- 50) I considered the precautionary principle in my decision as to the likely impacts from the proposed action to a water resource, which as per section 391 of the EPBC Act, states to enact the precautionary principle, there:
- a) are threats of serious or irreversible damage to the relevant protected matters; **and**

- b) is a lack of full scientific certainty as to the nature or scope of the threat of this damage.
- 51) The expansion of the water trigger provisions in the EPBC Act, in December 2023, to include all new unconventional gas developments and consider their impact on water resources demonstrates there is a threat of serious or irreversible environmental damage from this form of activity to water resource.
- 52) I considered the proponent's referral information indicates uncertainties to surface water and groundwater flows as a result of the proposed action and includes inconsistencies in their connections. I considered advice received from the department's Office of Water Science and determined the groundwater modelling provided to support the assessment of impacts to water resources from the proposed action is overall inadequate to perform an assessment of the impacts to the Canning Basin, and the surface waters in and adjacent to the proposed action. I considered the lack of robust modelling, conceptualisation of the hydrology of the area, and the uncertainties highlighted in the referral document results in a lack of full scientific certainty as to the nature or scope of the threat of this damage.
- 53) I considered that the lack of local scale, site specific, information resulted in a level of uncertainty in the proponents conceptual understanding of hydrological and hydrogeological processes, particularly in the shallow formations and alluvial aquifers in the proposed action area. I considered this level of uncertainty resulted in a real or not remote chance or possibility that the proposed action will directly or indirectly result in a change to the hydrology and/or water quality of a water resource that is of a sufficient scale or intensity as to reduce the current or future utility of the water resource for third party users, including environmental or other public benefit outcomes, or to create a material risk of such reduction in utility occurring.
- 54) I agreed with the department's recommendation to request further information from the proponent to enable a full assessment of impacts to water resources from the proposed action, and to further consider the groundwater management plan.

Listed threatened species and communities (s18 and s18A) and Listed migratory species (s20 and s20A)

- 55) The Protected Matter Search Tool identified the following listed threatened and migratory species as known or likely to occur within a 20 km buffer of the proposed action development envelope:
- a) Listed threatened species
- i) Grey Falcon (*Falco hypoleucos*) – Vulnerable
 - ii) Ghost Bat (*Macroderma gigas*) – Vulnerable
 - iii) Northern Brushtail Possum (*Trichosurus vulpecula arnhemensis*) – Vulnerable
 - iv) Northern Blue-tongue Skink (*Tiliqua scincoides intermedia*) – Critically endangered
 - v) Largetooth Sawfish (*Pristis pristis*) – Vulnerable

- b) Listed migratory species
 - i) Fork-tailed swift (*Apus pacificus*)
 - ii) Salt-water Crocodile (*Crocodylus porosus*)
 - iii) Largetooth Sawfish (*Pristis pristis*)
 - iv) Common Sandpiper (*Actitis hypoleucos*)
 - v) Pandion haliaetus (*Osprey*)
- 56) In total there were 19 threatened species and 15 migratory species identified which may occur within the 20 km buffer of the proposed action development envelope. On the basis of the information provided by the proponent in the referral documentation, which included surveys conducted in 2013, 2019, 2021 and 2024, and consideration of the context and scope of the proposed action, I concluded the proposed action was likely to have a significant impact on the following listed threatened and migratory species:
- a) Greater Bilby (*Macrotis lagotis*) – Vulnerable
 - b) Northern Blue-tongued Skink (*Tiliqua scincoides intermedia*) – Critically endangered
 - c) Largetooth Sawfish (*Pristis pristis*) – Vulnerable; migratory.
- 57) I note that while the Protected Matter Search Tool did not include the greater bilby as known or likely to occur within the proposed action development envelope, surveys conducted by the proponent identified suitable habitat within and surrounding the proposed action area, records of the species found during surveys (diggings), and evidence, albeit somewhat contradictory, as to the presence of the species from traditional owners in the area provided suitable evidence of the potential likelihood of the species to occur in the proposed action area.
- 58) The proponent provided that the proposed action will involve the disturbance of 112 hectares of native vegetation, which includes the clearing of:
- a) 22.5 ha of suitable greater bilby foraging habitat, consisting of mixed open woodland over tussock grasses on dune slopes and crests; and
 - b) ~106 ha of suitable habitat for the northern blue-tongue skink, consisting of mixed open woodland over grassland on sandy clay flats and slopes, as well as mixed woodland over tussock grasses on dune slopes and crests.
- 59) In addition to the clearing of habitat, the proponent's supporting documentation also acknowledged the following potential indirect impacts on species known or likely to occur within the proposed action development envelope:
- a) Light, noise and vibration and dust emissions,
 - b) Introduction or spread of weeds,

- c) Indirect impacts to habitat arising from:
 - i) changes to groundwater levels,
 - ii) potential contamination of surficial formations due to lost circulation or well integrity issues, including casing failure,
 - iii) potential contamination of aquifers through unplanned fracture heights; and
 - iv) potential contamination of surficial aquifers from an accidental release at the surface of drilling fluids, HFS chemicals, liquid hydrocarbons, or produced formation water.
- 60) The proponent provided the following general avoidance, mitigation and management measures for all of the listed threatened species:
- 61) The proponent's avoidance measures for the proposed action include:
- a) Fauna exclusion and egress – the proponent will implement fauna exclusion and egress management measures where lined ponds or fauna traps are present to reduce likelihood of entrapment. Water retention ponds will be fenced with 1 m high feral ring lock mesh fencing. During drilling activities, one section of the sumps will be unfenced in front of the shakers to allow the cuttings chute to be directed into the sumps.
 - b) Firebreaks – firebreaks will be installed and maintained to ensure clearances between vegetation and the petroleum activities to reduce the risk of causing a fire.
 - c) Adherence to Bush Fires Regulations 1954 – management measures such as clearing of flammable materials and ensuring firefighting equipment is kept and well maintained.
- 62) The proponent's mitigation measures for the proposed action include:
- a) Speed limits – vehicle speed limit signage will be installed along access tracks and at well sites to reduce vehicle strikes.
 - b) Site inspections of fauna traps – the proponent will conduct routine inspections of areas considered to be potential fauna traps, including open excavations or well cellars and egress paths from ponds.
 - c) Weed management – fill for civil works (e.g. gravel, limestone marl, soil or sand) will be verified to have a low weed risk. Earthmoving machinery and equipment will be checked for weeds or weed-contaminated materials and cleaned if necessary.
 - d) Introduced predator management – the proponent will provide all records of introduced predatory species observed over the course of the proposed action to the Department of Biodiversity, Conservation and Attractions. Where high numbers are observed, the proponent will identify and implement measures that are considered suitable and commensurate to the nature of the activity.
- 63) I noted that the avoidance and mitigation measure provided for the listed threatened and migratory species were not specific to the species likely to be impacted and considered that

further consideration and improvement of these measures to ensure they appropriately mitigate and manage the impacts to an acceptable level is required. I have agreed with the department's recommendation to request further information from the proponent.

- 64) I note for the purpose of this statement of reasons the impacts and avoidance measures discussed above under a water resource also apply to the assessment of the indirect impacts to listed threatened and migratory species habitat, as described above.
- 65) The species I considered likely to be significantly impacted by the proposed action are discussed in further detail below.

Greater Bilby (*Marcotis Lagotis*) - Vulnerable

Species information

66) In considering the greater bilby, I had regard to the following information:

- a) Conservation Advice for the Greater Bilby (in effect from 15 July 2016)
- b) *Recovery Plan for the Greater Bilby* (in effect from 12 April 2023)
- c) *Threat abatement plan for feral cats 2024* (in effect from 24 December 2024)
- d) *Threat abatement plan for competition and land degradation by rabbits* (in effect from 7 January 2018)
- e) *Threat abatement plan for predation by the European red fox* (in effect from 1 October 2008)

- 67) The greater bilby is a solitary species that shelters in burrows during daylight (and intermittently during the night). The species is omnivorous and primarily digs for food. Its diet consists of invertebrates, seeds, bulbs and fungi.
- 68) Greater bilbies can use up to 18 burrows concurrently over several months and construct a new burrow on average every 2.5 weeks. The average home range of the species varies from 0.18 square kilometres for females and 3.16 square kilometres for males. Both active and disused burrows exist within the home range.
- 69) Key threats to the species include predation by invasive species and feral animals, habitat loss and fragmentation, increased frequency of fires, and land degradation.

Impacts, avoidance and mitigation measures of proposed action

- 70) I considered the direct impacts associated with the proposed action include the clearing of 22.5 ha of suitable greater bilby habitat. I noted that the survey data describing the habitat to be cleared is consistent with potentially critical habitat for the greater bilby identified in the relevant recovery plan. I agreed with the department to seek further information to determine this.
- 71) Indirect impacts to the species are as per those listed above for all species.

- 72) I noted that, the Recovery Plan for the Greater Bilby indicates the proposed action sits on the inner edge of the current distribution range for the species, and that habitat critical to the survival of the species is likely to present within and in proximity to the proposed action area.
- 73) I noted that surveys undertaken by the proponent for the proposed action and other related projects in the area in 2013, 2019, 2021 and 2024 each recorded signs of the greater bilby in the area, which demonstrated that the greater bilby has periodically occupied the proposed action area, and therefore, as per the recovery plan description of critical habitat, the proposed action includes potential clearing of 22.5 ha of critical habitat for the greater bilby.
- 74) I considered the importance of the greater bilby to Indigenous people across Australia, and noted the documentation provided by the proponent included conflicting traditional owner information on recordings of greater bilbies and bilby burrows within and in proximity to the proposed action area. For example, surveys conducted in 2013 and 2019, stated that the traditional owners confirmed bilbies and bilby burrows did occur within the proposed action area. However, in the 2024 survey it was stated that “traditional custodian Tyrone Skinner indicated that bilbies are generally seen south of the Fitzroy River in the sandy country and not regularly encountered within the vicinity of the project area.”
- 75) I considered that given there is likely critical and supporting habitat that will be directly, and indirectly impacted, and as a result of the findings of the proponent’s surveys within the proposed action area, that further information was required to be provided from the proponent to further consider the extent of impact to the species from the proposed action.
- 76) In addition to the general mitigation and avoidance measures provided by the proponent listed above, I considered the mitigation and avoidance measures provided by the proponent specific to the greater bilby. These included pre-clearance surveys to be undertaken 6 months prior to clearing activities, and where active/nonactive burrows are identified, buffers would be applied of 75/50 m respectively. I agreed with the department that further information and supporting evidence was required for these proposed measures to ensure the acceptability, and ability of the proponent to apply these buffers.

Conclusion

- 77) I considered the precautionary principle in my decision as to the likely impacts from the proposed action to the greater bilby, which as per section 391 of the EPBC Act, states to enact the precautionary principle, there:
- a) are threats of serious or irreversible damage to the relevant protected matters; **and**
 - b) is a lack of full scientific certainty as to the nature or scope of the threat of this damage.
- 78) The conservation status of the greater bilby as a vulnerable listed threatened species is evidence that the threats of serious or irreversible damage from the proposed action to the species are present. This is the basis of the statutory test required for a species to be listed as a threatened species.
- 79) I considered the presence of critical habitat, the limited scope of the surveys conducted, the inconsistent views provided by the proponent of the traditional owners in the area, and the

requirement for further site-specific investigations to support the understanding of surface/groundwater connectivity in the proposed action area, resulted in a lack of full scientific certainty as to the nature or scope of the threat.

- 80) I determined there is a real chance or possibility that the proposed action may reduce the area of occupancy of an important population, fragment an existing important population into two or more populations and / or adversely affect habitat critical to the survival of a species. I note that as per the Significant Impact Guidelines 1.1 populations that are near the limit of the species range are considered important populations.
- 81) I considered the information provided in the referral brief and determined, taking into consideration the precautionary principle, that the proposed action was likely to have a significant impact on the greater bilby.
- 82) I agreed with the department to request further information during the assessment phase to seek clarification from the proponent with regards to the impacts from the proposed action to the greater bilby, and the avoidance and mitigation measures that have been proposed.

Northern Blue-tongue Skink (Tiliqua Scincoides Intermedia) – Critically Endangered

Species information

- 83) In considering the northern blue-tongue skink I had regard to the following information:
- a) *Conservation Advice for Tiliqua scincoides intermedia (northern blue-tongue) (in effect from 21 December 2023)*
 - b) *Threat abatement plan for predation by feral cats 2024 (in effect from 24 December 2024)*
 - c) *Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads (in effect from 6 July 2011)*
- 84) I note that the northern blue-tongue skink was listed as Critically Endangered under the EPBC Act in December 2023. The proponent indicated that as the northern blue-tongue skink was not listed at the time of the 2021 surveys no further surveys were conducted to confirm the presence of the species or the species habitat.
- 85) The northern blue-tongue skink is a terrestrial species that occurs in a wide variety of ecosystems. The species eats a diverse diet of plants, insects, and other invertebrates, as well as small vertebrates. The species is active year-round, with females producing a single annual litter in the wet season.
- 86) The greatest key threat to the long-term persistence of the species is the cane toad, which is known to negatively affect the species at the population level, particularly when toads first appear in a new area. I noted that the proposed action is currently outside the areas occupied by the cane toads as of October 2020, however, distribution mapping indicates the predicted spread of the cane toad is likely to occur into the proposed action area.
- 87) Other threats to the species include invasive species, fire regimes, habitat loss and natural water resource use.

Impacts, avoidance and mitigation measures of proposed action

- 88) The *Conservation Advice for Tiliqua scincoies intermedia* (Northern Blue-tongue Skink) indicates that the species is known or likely to occur within the proposed action development envelope. The conservation advice further notes that habitat critical to the survival of the species includes areas of dense vegetation that provide cool and moist conditions in otherwise hot, dry and flammable landscapes. Most – but not all – detections of the species have occurred near seasonal or permanent water.
- 89) I noted that the proponent indicated the proposed action is likely to directly impact the northern blue-tongue skink through clearing 106 ha of suitable habitat.
- 90) I agreed with the department that further information should be sought from the proponent as to the possible presence of critical habitat within and in proximity to the proposed action development envelope, specifically with regards to the habitat associated with Mount Hardman Creek. I further agreed, in the absence of survey's conducted for the species, to request the proponent to demonstrate consideration of the Survey guidelines for Australia's threatened reptiles Guidelines for detecting reptiles listed as threatened under the Environment Protection and Biodiversity Conservation Act 1999 (survey-guidelines-reptiles.pdf).
- 91) I noted that whilst Mount Hardman Creek is not within the proposed action development envelope, it is located within 1km, and in range of the suitable habitat for the species. Mount Hardman Creek is an ephemeral stream with persistent groundwater-fed pools. The proponent provided limited information on groundwater-dependent ecosystems within the proposed development and surrounds. I agreed further information was required from the proponent on the groundwater-dependent ecosystems, in particular Mount Hardman Creek, that are in proximity to the proposed action development, noting the relevance of indirect impacts to water resources from the proposed action, as described above under 'impacts to a water resource'.
- 92) In addition to the indirect impacts listed above for all species, I considered that indirect impacts to habitat as a result of impacts to water resources i.e. water extraction activities, aquifer contamination, gas extraction activities, and HFS activities, are also relevant to consider for the northern blue-tongue skink. I agreed that further information was required from the proponent to allow adequate consideration of the indirect impacts to the species habitat.
- 93) I noted that the conservation advice includes the area of occupancy for the species are areas where cane toads have not yet arrived, i.e. the west Kimberley. The proponent states that it is highly unlikely the proposed action would cause an invasive species to be introduced which would then establish local populations that would cause broader impacts to this species given industry standards and best practice mitigations they have proposed, however, I noted that there is no specific consideration given to the potential of the proposed action to support the movement of cane toads to the area.

Conclusion

- 94) I considered the precautionary principle in my decision as to the likely impacts from the proposed action to the northern blue-tongue skink, which as per section 391 of the EPBC Act, states to enact the precautionary principle, there:

- a) are threats of serious or irreversible damage to the relevant protected matters; **and**
 - b) is a lack of full scientific certainty as to the nature or scope of the threat of this damage.
- 95) The conservation status of the northern blue-tongue skink as a critically endangered listed threatened species is evidence that the threats of serious or irreversible damage from the proposed action to the species are present. This is the basis of the statutory test required for a species to be listed as a threatened species.
- 96) I considered the potential presence of critical habitat within the species area of occupancy and in proximity to the proposed action development envelop; the absence of surveys conducted for the species; and the lack of site-specific investigations to support the understanding of surface/groundwater connectivity in the proposed action area, in particular to determine indirect impacts to temporary water sources in Mount Hardman Creek which is within the range of the northern blue-tongue species, resulted in a lack of full scientific certainty as to the nature or scope of the threat to the species from the proposed action.
- 97) I determined that as a result of the proposed action there is a real chance or possibility of an invasive species that is harmful to the northern blue-tongue skink becoming established in the species' habitat, and; there is a real chance or possibility that the proposed action will modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the northern blue-tongue skink is likely to decline.
- 98) I considered the information provided in the referral brief and determined, taking into consideration the precautionary principle, that the proposed action was likely to have a significant impact on the northern blue-tongue skink.
- 99) I agreed with the department to request further information during the assessment phase to seek clarification from the proponent with regards to the impacts from the proposed action to the northern blue-tongue skink, and to require avoidance and mitigation measures specific to the northern blue-tongue skink where relevant.

Largetooth Sawfish (Pristis Pristis) – Vulnerable

Species information

- 100) In considering the largetooth Sawfish I had regard to the following information:
- a) *Conservation Advice for Pristis Pristis (largetooth sawfish)* (in effect from 11 April 2014)
 - b) *Sawfish and River Sharks Multispecies Recovery Plan* (in effect from 7 November 2015)
 - c) *Marine bioregional plan for the North Marine Region* (in effect from 27 August 2012)
 - d) *Marine bioregional plan for the North-west Marine Region* (in effect from 27 August 2012)
- 101) The largetooth sawfish is the largest fish found in freshwater in Australia. They inhabit sandy or muddy bottoms of shallow coastal waters, estuaries and river mouths, as well as the central and upper reaches of freshwater and isolated water holes, with records of largetooth sawfish up to 400 km inland.

102) Important regions for largemouth sawfish in Australia include: King Sound, the Fitzroy, Durack, Robinson and Ord Rivers in Western Australia. I note that all Australian populations are considered to be of high conservation value.

103) The greatest key threat to the species are both commercial and recreational fishing activities, and habitat degradation and modification. Other threats to the species include land clearing, barriers in rivers, water quality and sedimentation, interrupts to migration pathways, water extraction and destruction of benthic habitat.

Impacts, avoidance and mitigation measures of proposed action

104) The proponent stated direct impacts for the species were not credible due to the absence of habitat within the proposed action development envelope. However, I noted as per the Conservation Advice for the largemouth sawfish potential impacts from the proposed action to the species includes chemical pollution/contaminants, extraction of living resources and changes in hydrological regimes.

105) I noted that as per the Sawfish and River Sharks – Multispecies Recovery Plan the proposed action is within the distribution range of largemouth sawfish, with juveniles being known to occur along river systems leading to and including the Fitzroy Crossing; a body which has tributaries within or near the proposed action development envelope.

106) The recovery plan also notes the generally accepted model of movement and migration of the species in Australian waters is that young are born at the mouths of rivers and in estuaries and then migrate upriver where they spend the first several years of life, as they reach maturity they move out of the rivers and into the marine environment. The Fitzroy River is considered an important region for largemouth sawfish in Australia.

107) While no surveys provided by the proponent have identified presence of largemouth sawfish within the proposed action developed envelope, I noted inconsistency between the surveys conducted as to whether suitable habitat for the species is found within or in proximity to the proposed action development envelope.

108) The proponent states that Mount Hardman Creek is non-perennial and is limited to maintaining areas of isolated surface water expressions until large rainfall events result in the connection of surface waters and the creek flows. I agreed with the department that this habitat description is consistent with the freshwater river isolated water hole habitats identified within the multispecies recovery plan and conservation advice as habitat for the largemouth sawfish. Further, in the event of large rainfall events occurring within the area Mount Hardman Creek will flow as a tributary into the Fitzroy River, where critical habitat for the species has been recorded, as per the generally accepted model of movement and migration in Australian waters.

109) I also considered the discussion above under impacts to a water resource are also applicable to the largemouth sawfish considering the species and species habitat reliance on water resources.

110) I considered there is insufficient site-specific information to conclude with scientific certainty that the species habitat will not be impacted by the proposed action. I consider that further

information is required with regards to the lack of survey's conducted, given the proximity of the project to potential critical habitat for the species.

Conclusion

- 111) I considered the precautionary principle in my decision as to the likely impacts from the proposed action to the largetooth sawfish, which as per section 391 of the EPBC Act, states to enact the precautionary principle, there:
- a) are threats of serious or irreversible damage to the relevant protected matters; **and**
 - b) is a lack of full scientific certainty as to the nature or scope of the threat of this damage.
- 112) The conservation status of the largetooth sawfish as a vulnerable listed threatened species is evidence that the threats of serious or irreversible damage from the proposed action to the species are present. This is the basis of the statutory test required for a species to be listed as a threatened species.
- 113) I considered the potential presence of critical habitat in proximity to the proposed action, the absence of surveys conducted for the species, and the lack of site-specific investigations to support the understanding of surface/groundwater connectivity in the proposed action area, in particular to determine impacts to temporary water sources in Mount Hardman Creek which includes isolated water hole critical habitat, results in a lack of full scientific certainty as to the nature or scope of the threat to the species from the proposed action.
- 114) I considered there is a real chance or possibility that the proposed action will adversely affect habitat critical to the survival of the species. I considered the information provided in the referral brief and determined, taking into consideration the precautionary principle, that the proposed action is therefore likely to have a significant impact on the largetooth sawfish.
- 115) Noting the largetooth sawfish is also a listed migratory species, I also considered the proposed action had a real chance or possibility to seriously disrupt the lifecycle of an ecologically significant proportion of the population of the species, considering the importance of the Fitzroy River population.
- 116) I agreed with the department to seek further information from the proponent in regard to habitat assessment, indirect / direct impacts, and evidence that surveys have been conducted for the species and are consistent with *Survey guidelines for Australia's threatened fish*.

National Heritage Places - West Kimberley National Heritage Place (WKNHP)

- 117) In considering potential significant impact from the proposed action to the West Kimberley National Heritage Place (WKNHP) I had regard to the following information:
- a) [Environmental and heritage values and the importance of water in the Fitzroy \(DWER\)](#)
 - b) [Australian Heritage Database - The West Kimberley \(31 January 2025\)](#)
 - c) [National Heritage Property - Working Together Principles](#)

- 118) The WKNHP occurs within 10 km of the proposed action development envelope. I note that the Fitzroy River and a number of its tributaries within the WKNHP, together with their floodplains and the jila (permanent water) sites of Kurrpurrngu, Mangunampi, Paliyarra and Kurungal, demonstrate four distinct expressions of the Rainbow Serpent tradition with Indigenous interpretations of the different ways in which water flows within the catchment area of outstanding heritage value to the nation as outlined under **Criterion (d)** for their exceptional ability to convey the diversity of the Rainbow Serpent tradition within a single freshwater hydrological system.
- 119) Advice received from the Heritage Division indicated significant impacts to the above heritage value can occur indirectly from the proposed action due to:
- a) accidental release of drilling fluids and chemicals during drilling;
 - b) changes to water quality from vertical migration of reservoir fluid;
 - c) changes to water regime from groundwater extraction; and
 - d) hydraulic connectivity to the WKNHP.
- 120) I considered surface waters from the proposed action area are connected to the WKNHP via Mount Hardman Creek as a tributary to the Fitzroy River, with the connection established during the wet season and mostly remaining disconnected for the remainder of the year.
- 121) Similarly to the reason discussed above for water resources and listed threatened and migratory species above, I considered the uncertainty as to the impacts to water resources from the proposed action also applies to potential impacts to the outstanding heritage values of the WKNHP, and the Rainbow Serpent tradition. Without robust groundwater modelling and understanding of surface water and groundwater connectivity (including groundwater drawdown), I was not satisfied the proposed action was unlikely to have significant impact on the heritage values of the WKNHP.
- 122) I also note the proposed action includes the use of Calywynyardah-Noonkanbah Road, which lies within the areas identified as the Noonkanbah station. The areas of Noonkanbah station encompassing the station gates, the crossing at Mickey's Pool, Pea Hill (Umpampurru) and the unsuccessful exploration well, have outstanding heritage value to the nation under Criterion (a) as the site of the Noonkanbah dispute, an important event in the national struggle of Aboriginal people to have their rights to practice traditional law and culture recognised, and to protect their heritage for future generations.
- 123) I assessed the stakeholder engagement documents provided by the proponent, which included engagements with traditional owner groups whose lands the proposed action directly impacts on, the Warlangurru and the Yunggora (Noonkanbah) People.
- 124) The National Heritage Management Principles provide a framework for how national heritage properties should be managed, as set out in the regulations (schedule 5B) of the EPBC Act. I considered the proponent's referral documentation and assessment of impact to the WKNHP does not consider principles 2 and 6, which includes that the management of national heritage

properties should include community input into decisions and actions that may have a significant impact on their national Heritage values, and Indigenous people are the primary source of information on the value of their heritage.

- 125) This conclusion is supported by the public submission provided by the Kimberley Land Council in opposition for the project, stating ‘the proponent has failed to consult with relevant and critical stakeholders, being Traditional Owner groups whose traditional Country and native title determination areas lie adjacent to or in the area likely to be impacted by the proposal.’
- 126) I considered the national Heritage values associated with this proposed action extend beyond the development envelope. Currently, the stakeholder engagement appears to be limited solely to the traditional owner groups directly impacted by the proposed action within the development envelope and does not extend to who may be potentially indirectly impacted. Further information on this will be sought in the assessment of the proposed action.
- 127) I also noted that whilst the EPBC Act does not regulate GHG emissions as a matter of national environmental significance (MNES), the department considered and recommended that I generally accept the premise that climate change from anthropogenic sources of GHG emission has and/or will have adverse physical effects on matters of national environmental significance. I agreed with the department and considered that the combustion of 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.
- 128) To verify whether the proposed action is likely to lead to a significant impact, I considered information provided in the proponents GHG management plan, which is an attachment to the ERD and was included in the referral documentation. The department determined that based on the latest reported data from Climate Watch, total global emissions in 2021 were 49,545 Mt CO₂-e. Based on this data, the department estimated the proposed action’s average annual emissions represent 0.003% of global emissions. I noted no scope 2 or 3 emissions associated with the proposed action.
- 129) I noted that while the proposed action will result in GHG emissions, the relevant ‘events or circumstances’ that may impact matters of national environmental significance for the purposes of s 527E are the physical effects of climate change. Based on the information available, I considered that the physical effects of climate change on MNES, such as increases in ocean acidification, coral bleaching and changes to rainfall patterns, would be, if anything, indirect consequences of the proposed action. They would be events or circumstances that are removed in time and distance from the taking of the proposed action the construction and operation of an unconventional gas project.
- 130) Therefore, for those events or circumstances to be ‘impacts’ of the proposed action under s 527E of the EPBC Act, the proposed action must be a ‘substantial cause’ of the physical effects of climate change on matters of national environmental significance.
- 131) I considered that there may be a potential impact on the matters protected by the controlling provisions at sections 18, 18A, 15B, 15C, 20, 20A, 24D and 24E due to the flow on effects of global climate change. However, I did not consider that the proposed action is likely to

constitute a substantial cause of global climate change, because any amount of gas production from the proposed action, and any possible increase in net global GHG emissions and global average temperature resulting from the production of this gas is likely to be extremely small. Therefore, it is not possible to conclude that the proposed action will be a substantial cause of the flow-on physical effects of climate change.

132) I agreed with the department in that if we were to consider the proposed action's contribution to global climate change as a direct consequence of the proposed action, due to a small increase in global temperatures, it is not possible to conclude that the proposed action will be a substantial cause of the effects of climate change on matters protected by sections 18, 18A, 15B, 15C, 20, 20A, 24D and 24E.

133) I considered the departments estimates that 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 $7.2 \times 10^{-7} \text{C}$ or 0.00000072C . The department prepared this estimate assuming a one-for-one relationship based on the information provided by the IPCC Working Group 1 that the relationship between anthropogenic CO₂ and global temperature has thus far been approximately linear, meaning that each 1,000 gigatons of cumulative CO₂ emissions contributes to an approximate 0.45°C increase in global temperature.

134) I noted that some public comments expressed the view that however minor the projected GHG emissions of the proposed action may appear, they are still 'cumulative' and as such that they result in a 'impact' on MNES. However, in view of the proposed action's total possible contribution to global temperature increase, I considered that the possible increase in global GHG emissions and global average temperature that would result from the proposed action is very small, and therefore, the contribution to global temperature increase is not likely to have a significant impact on the matters protected by the controlling provisions at sections 18, 18A, 15B, 15C, 20, 20A, 24D and 24E.

Conclusion

135) I considered the precautionary principle in my decision as to the likely impacts from the proposed action to the WKNHP, which as per section 391 of the EPBC Act, states to enact the precautionary principle, there:

- a) are threats of serious or irreversible damage to the relevant protected matters; **and**
- b) is a lack of full scientific certainty as to the nature or scope of the threat of this damage.

136) I considered the lack of consultation with all traditional owner groups with regards to the indirect impacts to the values of WKNHP, specifically, those groups associated with outstanding heritage value of the Rainbow Serpent tradition and the Indigenous interpretations of the different ways in which water flows within the catchment, and the lack of robust modelling and conceptualisation of the hydrology in the area, result in a lack of full scientific certainty as to the nature or scope of the threat of this damage.

137) I determined the proposed action had potential indirect impacts to the WKHNP as a result of impacts to the water resources of Mount Hardman Creek which is a tributary to the Fitzroy River.

138) I considered there is a real chance or possibility that the proposed action will cause one or more of the National Heritage values to be degraded or damaged, or to be notably altered, modified, obscured or diminished.

139) I considered the information provided in the referral brief and determined, taking into consideration the precautionary principle, that the proposed action is therefore likely to have a significant impact on the national heritage values of the WKNHP.

140) I will be seeking evidence from the proponent that stakeholder engagement with the relevant Traditional Owner groups has occurred and is consistent with the National Heritage management *principles*.

Protected matters that are not controlling provisions

141) I have explained above why I found that sections 15B & s15C, s18 and s18A, s20 & s20A and sections 24D and 24E are controlling provisions for the proposed action.

142) I also considered whether any other Part 3 provision was a potential controlling provision for the proposed action. For the reasons set out below, I was satisfied that the remaining Part 3 provisions were not controlling provisions.

Provision	Discussion
World Heritage properties (s12 & s15A)	<p>I noted the PMST did not identify any declared World Heritage properties located within or adjacent to the proposed Action area.</p> <p>Further, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to World Heritage properties, the proposed Action is unlikely to have a significant impact on the World Heritage values of World Heritage properties.</p> <p>For these reasons the department considers that sections 12 and 15A are not controlling provisions for the proposed Action.</p>
Ramsar wetlands (s16 & s17B)	<p>I noted the PMST did not identify any declared Ramsar listed wetlands of international importance within or adjacent to the proposed Action area.</p> <p>Further, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to Ramsar listed wetlands of international importance, the proposed Action is unlikely to have a significant impact on the ecological character of Ramsar listed wetlands of international importance.</p> <p>For these reasons the department considers that sections 16 and 17B are not controlling provisions for the proposed Action.</p>

Provision	Discussion
Nuclear action (s21 & s22A)	I noted proposed action does not meet the definition of a nuclear action as defined in the EPBC Act. For this reason, the department considers that sections 21 and 22A are not controlling provisions for the proposed Action.
Commonwealth marine environment (s23 & s24A)	I noted proposed action is not being taken in a Commonwealth marine area. Further, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to a Commonwealth marine area, the proposed Action is unlikely to have a significant impact on the environment in a Commonwealth marine area. For these reasons the department considers that sections 23 and 24A are not controlling provisions for the proposed Action.
Great Barrier Reef Marine Park (s24B & s24C)	I noted the proposed action is not being taken in the Great Barrier Reef Marine Park. Further, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to the Great Barrier Reef Marine Park, the proposed Action is unlikely to have a significant impact on the Great Barrier Reef Marine Park. For these reasons the department considers that sections 24B and 24C are not controlling provisions for the proposed Action.
Commonwealth land (s26 & s27A)	I noted the proposed action is not being taken on Commonwealth land. Further, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to Commonwealth land, the proposed Action is unlikely to have a significant impact to the environment on Commonwealth land. For these reasons the department considers that sections 26 and 27A are not controlling provisions for the proposed Action.
Commonwealth Heritage places overseas (s27B & s27C)	I noted the proposed action is not being taken overseas. For this reason, the department considers that sections 27B and 27C are not controlling provisions for the proposed Action.
Commonwealth action (s28)	I noted the person proposing to take the action is not a Commonwealth agency. For this reason, the department considers that section 28 is not a controlling provision for the proposed Action.

Reasons for decision

143) In view of my findings based on the reasons given above, and not having considered any matter which I am not required or permitted to consider, I was satisfied that the proposed action will, or is likely to, have a significant impact on the National Heritage values the West Kimberley

National Heritage Place, listed threatened species and listed migratory species and a water resource, in relation to a large coal mining development or unconventional gas development.

144) I therefore decided on 14 February 2025 that the proposed action was to be assessed by Preliminary Documentation with a request for further information as this is method would ensure an informed decision as to the acceptability of impacts from the proposed action can be made.

name and position Kylie Calhoun, Branch Head, Environment Assessments West

signature



date of decision 6 August 2025

Annexure A:**Legislation**

Section 75 of the EPBC Act relevantly provides:

Is the action a controlled action?

- 1) The Minister must decide:
 - a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - b) which provisions of Part 3 (if any) are controlling provisions for the action.

1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Section 87 of the EPBC Act relevantly provides:

Minister must decide on approach for assessment

Minister must choose one assessment approach

- (1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:
 - (a) assessment by an accredited assessment process;
 - (aa) assessment on referral information under Division 3A;
 - b) assessment on preliminary documentation under Division 4;
 - (c) assessment by public environment report under Division 5;
 - (d) assessment by environmental impact statement under Division 6;
 - (e) assessment by inquiry under Division 7.

Considerations in making choice

- (3) In making the decision, the Minister must consider:
 - (a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
 - (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions 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
 - (c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
 - (d) the matters (if any) prescribed by the regulations; and
 - (e) the guidelines (if any) published under subsection (6).

Accredited assessment process

- (4) The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:
- (a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and
 - (b) the process and the law meet the standards (if any) prescribed by the regulations; and
 - (c) the process will ensure that the relevant impacts of the action are adequately assessed; and
 - (d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Assessment on referral information

- (4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.

Assessment on preliminary documentation

- (5) The Minister may decide on an assessment on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Guidelines for choosing assessment approach

- (6) The Minister may publish in the *Gazette* guidelines setting out criteria for deciding which approach must be used for assessing the relevant impacts of an action.

Annexure B:

Document Name
Dampierland Bioregion Information
Land systems of the Kimberley Region, Western Australia
Greater Bilby Conservation Advice
Greater Bilby National Recovery Plan
Guidelines for surveys to detect the presence of bilbies, and assess the importance of habitat in Western Australia
Threat Abatement Plan - Feral Cats
Threat Abatement Plan - European Red Fox
Threat Abatement Plan - Rabbits
Grey Falcon Conservation Advice
Survey Guidelines Birds 2017
Gouldian Finch Conservation Advice
Gouldian Finch National Recovery Plan
Threat Abatement Plan - Reduction in five listed grasses
Threat Abatement Plan - Feral Pigs
Ghost Bat Conservation Advice
Northern Blue-tongue Skink Conservation Advice
Fork-tailed Swift SPRAT page
Salt-water Crocodile SPRAT page
North Marine Region Bioregional Plan
IESC 2024-150: Beetaloo Basin – Unconventional gas exploration and appraisal

Significant impact guidelines 1.3 - Coal seam gas and large coal mining developments — impacts on water resources
Greater Bilby Survey: La Grange Area, Department of Biodiversity, Conservation and Attractions (2018)
A review of ghost bat ecology, threats and survey requirements.pdf
EPBC Act Policy-staged-developments.pdf
Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads.pdf
North-west Marine Region Bioregional Plan.pdf
Largetooth Sawfish Conservation Advice.pdf
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