



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

I, KATE GOWLAND, Branch Head, Environment Assessments NSW and ACT, Department of Climate Change, Energy, the Environment and Water (the **department**), delegate for the Minister for the Environment (the **Minister**), provide the following statement of reasons for my decision of 20 September 2024, under subsection 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to approve, with conditions, the proposed Action by Manyana Coast Pty Ltd (the **proponent**) to construct a residential development and ancillary infrastructure at Lot 172 DP 755923 and Lot 823 DP 247285, Manyana, NSW [See EPBC Act referral 2020/8704] (**proposed action**).

Legislation

- 1) Relevant legislation is set out in Annexure A.

Evidence or other material in which my findings were based

- 2) My decision of 20 September 2024 to approve the taking of the proposed action under sections 130(1), 133 and 134 of the EPBC Act was based on consideration of the final approval decision brief prepared for me by officers of the department (**approval decision brief**).
- 3) The approval decision brief contained the attachments set out at Annexure B.

Background

Description of proposed action and location

- 4) The proponent proposes to construct a residential development and ancillary infrastructure at Lot 172 DP 755923 and Lot 823 DP 247285, Manyana, NSW.
- 5) The proposed action area is comprised of approximately 20.4 hectares (ha) of vacant freehold land, situated to the west and north-west of Manyana village, a town located in the Shoalhaven Local Government Area on the South Coast of NSW.
- 6) The proposed action area is bordered by existing residential development to the south and east and by Berringer and Cunjurong Point Roads to the north and west respectively. Beyond Berringer and Cunjurong Point Roads there is a large area of native vegetation, which includes Conjola National Park, approximately 800 metres (m) from the proposed action area boundary.
- 7) The proposed action area is currently zoned R2 – Low Density Residential under the 2014 Shoalhaven Local Environmental Plan.
- 8) The proposed action comprises the clearance of vegetation over five stages as well as the conservation, and enhancement and protection of two areas of vegetation.
- 9) The proposed action received approval from the NSW Government in 2008.

- 10) The proposed action area was not directly impacted by the 2019-2020 bushfires, however the wider area, including approximately 56,150 ha (44 per cent) of the Jervis Interim Biogeographic Regionalisation for Australia (**IBRA**) subregion, where the proposed action is located, was affected.

Procedural history

Referral and assessment approach

- 11) On 24 June 2020, the department received, on behalf of the Minister, a valid referral from the proponent under section 68 of the EPBC Act. The referral was published on the department's website on the same date, and public comments were invited until 8 July 2020.
- 12) A total of 1,505 public comments were received on the referral during the public comment period, and an additional 81 public comments were received outside of the public comment period. The then Minister for the Environment considered all public comments that were received up until 22 July 2020 in making the referral decision.
- 13) Key issues raised by the public at the referral stage included impacts to threatened species and communities from the 2019-2020 bushfires, the potential for the proposed action area to be a wildlife refuge after the fires, application of the precautionary principle, the adequacy of the survey effort for listed species and communities in the proposed action area, lack of consideration of all listed species and communities potentially impacted by the proposed action, and the need for a cumulative impact assessment to assess the impacts of the proposed action and the bushfires.
- 14) On 16 August 2020, the proposed action was determined to be a controlled action, due to likely significant impacts on listed threatened species and communities (sections 18 & 18A). At the same time, it was also determined that the controlled action would be assessed by preliminary documentation (**PD**) (further information). The threatened species that were considered likely, or, potentially significantly impacted at the time of the referral decision were:
 - (a) Grey-headed Flying-fox (*Pteropus poliocephalus*) – Vulnerable.
 - (b) Greater Glider (southern and central) (*Petauroides volans*) – Endangered (Vulnerable at the time of the referral decision).
 - (c) Swift Parrot (*Lathamus discolor*) – Critically Endangered.
- 15) On 21 August 2020, the department provided the proponent with a request for further information in accordance with section 95A(2) of the EPBC Act.

Species workshop and Greater Glider surveys

- 16) On 15 December 2020, the department held a workshop, attended by a range of external species experts, to gather information about the habitat needs of the Grey-headed Flying-fox, Greater Glider, and Swift Parrot in the South Coast region.
- 17) On 12 March 2021, the department entered into a contract with Gaia Research Pty Ltd to undertake surveys for the Greater Glider in the Conjola area, NSW, in order to gain a better understanding of the current status of the species' population in the region. The department published this report on 23 June 2021.

Assessment

- 18) On 2 June 2021, the proponent provided a draft PD to the department that adequately met the minimum requirements of the request for further information.
- 19) On 11 June 2021, a delegate of the Minister directed the proponent to publish the draft PD, along with an invitation for anyone to give the proponent comments relating to the proposed action.
- 20) On 18 June 2021, the proponent published the draft PD, inviting comments until 16 July 2021. The notification of publication and invitation to comment was also published on the department's public portal on 23 June 2021.
- 21) On 10 July 2023, the proponent advised that 1,068 public comments were received on the draft PD. On the same date, in accordance with section 95B of the EPBC Act, the proponent provided the department with a copy of the public comments.
- 22) The public comments raised concerns about general impacts, including environmental impacts, preservation of bushland, community impact, refuge for wildlife, intergenerational impact, impact on endangered species, loss of habitat, importance of regeneration, housing, climate change, mental health impacts, insult to firefighters, development out-of-character, rate of land clearing, special conservation area, lack of infrastructure, impact on tourism, symbol of hope, inadequate preliminary documentation, and inappropriate location.
- 23) On 11 January 2024, the final PD was provided to, and accepted by, the department. The department was satisfied that the finalised PD, including the response to public comments, adequately addressed the relevant issues raised. The public notice advising of the PD's completion was published in newspapers on 24 January 2024 and the documentation was placed on exhibition for information, for 10 business days, from 25 January 2024 to 8 February 2024. The department also requested that the proponent keep the PD available on the public website until the final decision due date.
- 24) As the payment of stage 3 and 4 fees EPBC Act cost recovery fees was made on 15 June 2021, the submission of the finalised PD commenced the 40-business day statutory timeframe for a decision on whether or not to approve the proposed action under section 130(1B)(a) of the EPBC Act, with a statutory due date of 8 March 2024.

Department site visit

- 25) On 22-23 January 2024, department ecologists conducted an ecological survey of the proposed action area to gather contemporary and independent data regarding the biodiversity values of the site to inform the decision under Part 9 of the EPBC Act and in response to public comments in the final PD, which raised the possible presence of protected matters that had not been considered in the PD.
- 26) The department provided a report detailing the findings of the site visit to the proponent on 6 February 2024. Further information about this is provided under the sub-heading '*Survey efforts*' below.

Independent expert ecologist site visit

- 27) Due to the divergent views between the department and the proponent's ecologist about the presence of the EPBC Act Critically Endangered *Littoral Rainforest and Coastal Vine Thickets of*

Eastern Australia ecological community (**Littoral Rainforest**), which had been identified on site during the department's 22-23 January 2024 survey, the department engaged a consultant ecologist to undertake a review of the available information and to determine whether the ecological community was present on site. To confirm the desktop analysis, the consultant ecologist also undertook a site inspection.

- 28) The consultant ecologist prepared and provided a report to the department on 20 May 2024, which was provided to the proponent on 21 May 2024. Further information about this report is provided under the sub-heading '*Survey efforts*' below.

Survey efforts

- 29) As noted in paragraph 22), one of the issues raised through public comments was the adequacy of the PD, which included comments relating to the adequacy of survey effort. Given that the first surveys were undertaken some years ago, I noted that the proponent had followed up with additional survey work to support the PD and confirm the earlier surveys. In addition, I noted that the department conducted their own site visit surveys and commissioned independent surveys for Matters of National Environmental Significance. I considered the survey efforts in my decision.

Proponent surveys

2006 – Flora and fauna assessment

- 30) This 2006 assessment was undertaken by Bushfire and Environmental Services (BES), with the report published in September 2006. The executive summary states the existing environment was described in detail from a literature review and from data gathered during fieldwork between December 2004 and August 2006.
- 31) The BES report states a detailed botanical survey was conducted in the study area by BES on 15, 16, 17 and 24 December 2004, 7 and 21 January 2005, and 2 August 2006. The Random Meander technique documented by Cropper (1993)¹ was used across the study area in general, to document the flora species present, including those of conservation significance, and the location and extent of vegetation communities. Specific searches for plant species of conservation significance known from the locality were conducted using the Random Meander method and by systematically walking along designated transects, targeting areas of potential or suitable habitat.
- 32) The BES report also states investigations for fauna were conducted in the study area by BES on 15 December 2004, 8, 9, 10, 11 and 17 February 2005, 12, 13, 14, 19, and 20 April 2005, 2 June 2005, 5 and 6 July 2005, and 2 August 2005. Fauna survey methods included opportunistic

¹ Cropper, S.C. 1993, *Management of Endangered Plants*, CSIRO Publishing, Melbourne.

diurnal surveys, nocturnal spotlighting and call playback surveys, nocturnal stagwatching survey, nocturnal ANABAT survey, trapping surveys, and habitat analysis.

2017-2018 – Vegetation validation, hollow-bearing tree assessment and targeted remote camera survey

- 33) Following a request for further information from the department, the proponent provided a response which detailed survey effort undertaken in 2017 during the preparation of a Flora and Fauna Management Plan.
- 34) The 2017 survey effort included assessing the ecological values and constraints within the site through a site-specific literature review and site inspection, undertaken on 14 June 2017 by Thomas Hickman (Ecologist, Ecoplanning) and Kieren Northam (Graduate Ecologist, Ecoplanning). The purpose of the site visit was to validate vegetation condition, management requirements and locate hollow-bearing trees at the study area.
- 35) There was reference to desktop analyses which indicated that, following the identification of a desktop record of Southern Brown Bandicoot (eastern) (*Isoodon obesulus obesulus*), and discussions with Threatened Species Officers and experienced fauna ecologists from the then NSW Office of Environment and Heritage, additional targeted remote camera surveys were also undertaken. The response states the targeted remote camera survey involved installing nine remote cameras from 11 March 2018 until 29 March 2018.

2020 – Matters of National Environmental Significance Assessment

- 36) In 2020, the proponent provided an updated Matters of National Environmental Significance (MNES) Assessment to contemporise the results of earlier assessments. The MNES Assessment states this assessment was informed by a literature and database review coupled with the following targeted survey:
 - Remote cameras deployed in two separate events
 - 9 cameras over 18 days in 2018 (see paragraph 35))
 - 10 cameras over 14 days in 2020.
 - Spotlighting over three separate survey periods
 - 14 person-hours over 5 nights
 - 85 person hours over 3 nights using systematic transects
 - 15 person-hours over 2 nights.
 - Bird census 15 hours 20 minutes over 7 days.
 - Opportunistic bird survey over 16 days.
 - Nest box inspections.
 - Habitat assessment.
 - Vegetation validation of Google Earth Engine Burnt Area Mapping (GEEBAM) in locality (Surveys of the vegetation surrounding the site were undertaken to validate the accuracy of GEEBAM, following the Currowan fire).

2020 – Biobanking Assessment Methodology (BBAM) vegetation plots

- 37) The proponent stated, in the response to further information that two BioBanking Assessment Methodology vegetation plots were completed on 6th May 2020, one within the Bangalay Paperbark Woodland and one in the Northern Coastal Sands Shrub/Fern Forest. Both plots are in the retained reserve (the retained reserve being a requirement of the earlier NSW assessment). The intent of these plots was to provide a baseline for monitoring vegetation condition within the reserve following development. The proponent's response to further information states the plot data from these surveys confirms the accuracy of the vegetation community descriptions provided in the 2006 report.

2021 – Grey-headed Flying-fox winter and spring foraging habitat mapping

- 38) The PD states additional survey effort was undertaken on 12 and 13 February 2021 to accurately map the total area of winter and spring foraging habitat on the site (defined by the proponent as Grey Ironbark (*Eucalyptus paniculata*), Coast Banksia (*Banksia integrifolia*), and Turpentine (*Syncarpia glomulifera*)). For these surveys, two observers walked parallel transects 10 to 20 m apart.

External surveys

2020 – Supplementary surveys targeting the Greater Glider

- 39) The MNES assessment states supplementary surveys which targeted the Greater Glider were conducted between 31 May and 2 June 2020 (three nights) by Chris MacGregor (Australian National University, Fenner School of Environment & Society), Robert Brewster, Patrick Giumelli (Rewilding Australia Incorporated), Bret Stewart, Lucas McKinnon and Bruce Mullins (Principal Ecologist) (Ecoplanning).
- 40) The MNES assessment states - Chris MacGregor determined the survey method and effort, and surveys were conducted across 6 × 300 m north-south transects, spread equidistant across the site at approximately 100 m intervals. In addition, the perimeter of the site was surveyed with all observed and heard fauna recorded. Call playback was undertaken on at least two occasions on the second and third night of survey from different locations across the site, for Powerful Owl and Yellow-bellied Glider. Surveys were undertaken between the hours of 17:30 and 01:00 over three nights totalling approximately 85 person-hours of supplementary survey.

2021 – Targeted surveys for the Greater Glider in the Conjola area, Nowra

- 41) The department contracted Gaia Research Pty Ltd to undertake surveys for the Greater Glider in the wider Conjola area, to gain contemporary data on the distribution and density of the species in the area.
- 42) Twenty-five 500m transects/sites were surveyed for Greater Glider by spotlighting on 15 and 16 March 2021.

Department site visit

2024 – NSW Biodiversity Assessment Method vegetation mapping

- 43) On 22-23 January 2024, departmental ecologists conducted an ecological survey of the proposed action area to gather contemporary and independent data regarding the biodiversity values of the site to inform the decision under Part 9 of the EPBC Act.

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- 44) Nine vegetation integrity plots were undertaken over two days across the proposed action area as per the NSW Biodiversity Assessment Method (**BAM**), which is part of the NSW Biodiversity Offsets Scheme². This data was used in conjunction with the PD to assess the presence of EPBC Act protected matters and potential impacts to them.
- 45) The department prepared a report following the site visit which noted the following:
- (a) Analysis undertaken by the department after the site visit confirmed that a previously unidentified patch of EPBC Act listed Littoral Rainforest was likely to be present within the proposed action area. The department considered that the patch of vegetation within the proposed action area satisfied the general features, key diagnostic characteristics and condition thresholds of the EPBC Act listed community, as described in the Littoral Rainforest's Listing Advice.
 - (b) Following analysis against the Littoral Rainforest's Listing Advice after the site visit, the department considered that there was 2.50 ha of the Littoral Rainforest within the project area and that it would be significantly impacted by the proposed action. The area of 2.50 ha of Littoral Rainforest was based on the NSW State Vegetation Type Map polygons³.

Proponent survey

Proponent's ecologist's 2024 survey

- 46) In response to the department's identification of Littoral Rainforest on site and the delegate's proposed decision and conditions, which required avoidance of Littoral Rainforest and a conservative 100 metre buffer, the proponent's ecologist undertook their own survey to identify the presence of the Littoral Rainforest.
- 47) Summarised comments from the proponent's ecologist are:
- (a) that the department's site visit report has failed to provide a substantive analysis of the field data,
 - (b) the vegetation boundaries have not been interrogated,
 - (c) the ecology and processes that influence the formation of littoral stands of vegetation, not only Littoral Rainforest, remain unjustified,
 - (d) the department's plot data supports the finding that the vegetation is not rainforest but is more accurately described as a Wet Sclerophyll Forest.

² The *EPBC Act Condition-setting Policy, March 2020*, ([Attachment G6](#)) lists endorsed state and territory policies which correspond to the Australian Government *EPBC Act Offsets Policy, October 2012* ([Attachment G8](#)). Endorsed policies include the *New South Wales Biodiversity Offsets Scheme*.

³ <https://datasets.seed.nsw.gov.au/dataset/nsw-state-vegetation-type-map> (Version: C2.0M2.0 (December 2023)).

- 48) The department noted that while the proponent's ecologist's 2024 surveys referenced existing literature regarding Littoral Rainforest, their advice to the department did not include an analysis of the survey results against the Ecological Community's Listing Advice.
- 49) The department wrote to the proponent's ecologist on 10 April 2024, requesting that their analysis include specific reference to the relevant statutory documents. On 19 April 2024, the proponent's ecologist provided analysis against the statutory documents.
- 50) When assessed against the statutory documents, the proponent's ecologist maintained that the Littoral Rainforest does not occur on site. Their primary arguments against the patch of vegetation being considered Littoral Rainforest relate to maritime influences, plant foliage cover and emergent vegetation, including hybrid *Eucalyptus* individuals present onsite.
- 51) Based on their survey and analysis, the proponent's ecologist concluded that the Littoral Rainforest is not present on site. They maintained that, when considered against the diagnostic criteria, the Littoral Rainforest cannot be considered present.

External survey

Consultant ecologist site visit

- 52) Due to the divergent views between the department and the proponent's ecologist about the presence of Littoral Rainforest, the department sought independent expertise to review and determine whether the Littoral Rainforest occurred onsite. In correspondence to the department, the proponent's ecologist had also suggested an independent review.
- 53) The department sought advice from the internal Ecological Communities Section (**ECS**) area of the department; ECS advised the details of a consultant ecologist who had a strong understanding of EPBC Act statutory documents.
- 54) The department engaged the consultant ecologist to undertake a review of the available information, including, the department's and the proponent's ecologist's 2024 survey reports and the EPBC Act statutory documents (including the EPBC Act Listing Advice) to determine whether the EPBC Act listed Littoral Rainforest was present on site.
- 55) A final report was provided to the department on 20 May 2024 by the consultant ecologist. The final report included an assessment of the vegetation patch against the key diagnostic criteria as set out in the Littoral Rainforest Listing Advice.
- 56) Based on this analysis, the consultant ecologist confirmed that the Littoral Rainforest Ecological Community is present on the site. The consultant ecologist also noted that the vegetation also potentially met the EPBC Act listing criteria for the *Illawarra-Shoalhaven Subtropical Rainforest of the Sydney Basin Bioregion (ISSR)* Critically Endangered ecological community.
- 57) In preparing the report, the consultant ecologist advised the department they considered both the department's survey results and that of the proponent's ecologist were sufficient to conclusively determine Littoral Rainforest was present on site when that data was analysed against the ecological community's listing advice.
- 58) To confirm the desktop analysis, the consultant ecologist also undertook a site inspection. During this inspection, no new floristic plots or transects were undertaken. During the site inspection, the consultant ecologist took notes, took digital photos of relevant observations, and

investigated the boundary of Littoral Rainforest as best as conditions would enable (with a GPS track log operating). Soil conditions were also noted where relevant.

- 59) On 21 May 2024, the department provided the consultant ecologist's independent survey results to the proponent. The department also advised that the refined area of Littoral Rainforest that had been identified by the consultant ecologist on site would be used for the purposes of the EPBC Act conditions. A mapping data shapefile of the area of Littoral Rainforest which had been identified by the consultant ecologist was also provided to the proponent indicating an area of 1.01 ha of Littoral Rainforest. The consultant ecologist's report indicated the Littoral Rainforest boundary was generated through NearMap aerial photo interpretation, combined with a GPS tracklog. This is because the subject vegetation was often too dense to walk through to generate an accurate boundary using GPS alone, and GPS accuracy is reduced under a dense canopy.
- 60) The proponent's ecologist continued to maintain Littoral Rainforest is not present on site. Their arguments against the Littoral Rainforest's presence relates to the interpretation of the ecological community's listing advice and the intent of the Threatened Species Scientific Committee (TSSC) in listing the ecological community. For this reason, on 13 June 2024, the department provided the following documents to ECS for review (the department sought advice from ECS because that section provides departmental support to the TSSC, including preparation of listing documentation and advice to the TSSC on the listing criteria for ecological communities):
- (a) 2006 BES Report.
 - (b) Proponent's ecologist's 2020 advice to the department regarding the presence of Littoral Rainforest at the site.
 - (c) Department's January 2024 site visit report.
 - (d) Proponent's ecologist's interim report, 5 April 2024.
 - (e) Proponent's ecologist's report 2, 19 April 2024 (response to Littoral Rainforest listing advice).
 - (f) Consultant ecologist's report.
 - (g) Proponent's ecologist's response to consultant ecologist's report, 23 May 2023.
- 61) The department's ECS confirmed the evidence supports that Littoral Rainforest is present on site. The department advised the proponent of ECS's findings on 14 August 2024.

Public comments

- 62) I noted that public comments were invited on the referral and the draft assessment documentation. More than 1,000 public comments were received for each of these invitations. In addition, following the publication of the final PD, additional public comments in the form of Ministerial Correspondence were received in the lead up to the proposed decision on 20 March 2024, which I also considered.
- 63) Following the proposed decision and before my final decision, further Ministerial Correspondence was received, which I also considered.

- 64) One piece of correspondence included a report, which provided additional analysis regarding EPBC Act protected matters that may be impacted by the proposed action. I noted that the majority of the species analysed i.e. Scrub Turpentine (*Rhodamnia rubescens*) and Yellow-bellied Glider (*Petaurus australis*) were listed after the referral decision and therefore, the approval process decision is not affected by those listing events in accordance with section 158A of the EPBC Act.

Species from report	Date Listed ⁴	Date of Section 75 decision
Yellow-bellied Glider (<i>Petaurus australis</i>)	2 March 2022	16 August 2020
Pilotbird (<i>Pycnoptilus floccosus</i>)	2 March 2022	16 August 2020
Scrub Turpentine (<i>Rhodamnia rubescens</i>)	11 December 2020	16 August 2020

- 65) The report provided additional analysis regarding the EPBC Act listed Vulnerable Magenta Lilly Pilly (*Syzygium paniculatum*) (**MLP**), however as discussed in my reasons below, I did not consider that the species was likely to be significantly impacted by the proposed action.
- 66) I noted that many of these same issues were raised through both public comment periods. Similar issues were also raised in the additional public comments before the final decision. I noted that the proponent has responded to the main issues raised in public comments through the PD.
- 67) Based on the above, the department considered, and I agreed, adequate public consultation for the proposed action has occurred, and all relevant matters have been addressed. Therefore, I accepted the department's recommendation not to invite public comment under section 131A when I made the proposed decision and recommended conditions of approval on 20 March 2024, because additional consultation was unlikely to elicit new views or information that had not already been considered in relation to the proposed action. I noted the additional public comments received through Ministerial correspondence since my proposed approval decision on 20 March 2024 reflect the views and information that had already been considered during the proposed action's public consultation on the referral and the PD.

⁴ [Species Profiles \(SPRAT\) \(environment.gov.au\)](https://environment.gov.au/species/profiles), listing date retrieved from the database on 4 July 2024.

Proposed Approval

- 68) On 20 March 2024, I proposed to approve the proposed action, with conditions, as delegate of the Minister. In accordance with sections 131 and 131AA of the EPBC Act, I also invited comments on the proposed decision from the:
- (a) proponent
 - (b) Minister for Indigenous Australians, The Hon Linda Burney MP
 - (c) delegated contact for the New South Wales Minister for Planning and Public Spaces, The Hon Paul Scully MP.

Response to the proposed decision: Ministerial responses

Minister for Indigenous Australians

- 69) On 4 April 2024 the National Indigenous Australians Agency (**NIAA**) responded to the invitation to comment on the proposed decision on behalf of the Minister for Indigenous Australians. The NIAA recommended that:
- (a) The proponent ensure that they have identified and engaged with the Traditional Owners and other First Nations stakeholders with interests in the project and provide them with sufficient time and information to make informed assessments of the project.
 - (b) The proponent ensure they engage with the Traditional Owners who speak for particular Country. The proponent be aware of the Native Title, land owning, representative, community or First Nations local government organisations in their area.
 - (c) The proponent considers developing a formal agreement with the relevant Traditional Owner group. Where relevant this may be an Indigenous Land Use Agreement with Native Title claimants or Native Title holders.
 - (d) The proponent should determine if there are any Native Title claims, determinations or settlements relevant to the project. Where a Native Title claim, determination or settlement is identified, the proponent should consult with the claimants, Native Title holders or settlement body, the relevant Native Title representative body and service provider, legal representative, Prescribed Body Corporate or other relevant organisation.
 - (e) The proponent assess the potential cultural heritage impacts in collaboration with the relevant Traditional Owners, knowledge holders and other First Nations stakeholders. It is recommended that this assessment include on-site inspections with the Traditional Owners and knowledge holders and includes consideration of both tangible and intangible cultural heritage values.
 - (f) The proponent collaborate with the relevant Traditional Owners, knowledge holders and other relevant First Nations stakeholders. The NIAA recommends that the proponent considers developing a Cultural Heritage Manage Plan which includes:
 - i) outcomes of the cultural heritage assessment
 - ii) measures agreed with the Traditional Owners for the protection and management of both tangible and intangible cultural heritage values and mitigation of impacts
 - iii) agreed protocols for the identification, protection and management of any cultural heritage values discovered during the project

- iv) delivery of cultural awareness training to project staff and contractors to ensure that CHMP measures are implemented.
- (g) Encourages the engagement of First Nations employees and businesses to help realise the economic benefit of a project for the local First Nations community. The NIAA encourages the proponent to discuss opportunities for First Nations people and businesses with Tradition Owners and other First Nations stakeholders.
- (h) The proponent develop a First Nations employment, training and procurement plan incorporating participation targets. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts' [Indigenous Employment and Supplier-use Infrastructure Framework](#) and the Australian Government's [Indigenous Procurement Policy](#) contain useful tools for setting employment and business procurement targets respectively.
- (i) Proponents may wish to contact local employment providers such as Workforce Australia to connect with potential First Nations employees. Likewise, Supply Nation maintains an online directory that can be used to identify suitable First Nations businesses to support a project.

NSW Minister for Planning and Homes

70) No comments were received from the NSW Minister for Planning and Homes.

Consultation with other Ministers – section 131 of the EPBC Act

- 71) I noted that the proponent considers that the following ministers have administrative responsibilities relating to the proposed decision and should be invited to provide comments:
- a) The Hon Claire O'Neill MP, Minister for Housing.
 - b) The Hon Catherine King MP, Minister for Regional Development and Local Government.
 - c) The Hon Dr Jim Chalmers MP, Treasurer.
- 72) I considered the department's advice that the role of the Housing Minister is to provide affordable housing and homelessness services via initiatives administered by the Department of Social Services.
- a) I noted that the federal government has two primary functions in the housing market:
 - i) Structurally determining the policy framework by which the housing market operates.
 - ii) Direct interventions where the market is unable to provide appropriate outcomes for specific groups or where the Government is seeking specific outcomes.
 - b) I noted that state and territory governments are primarily responsible for the delivery of housing and homelessness services. The Australian Government provides rent assistance to help eligible Australians pay their rent and provides funding to states and territories through the National Housing and Homelessness Agreement.
 - c) Subsequently, I did not consider that the Housing Minister has administrative responsibilities for this proposed action, because the action does not involve the provision of rent funding or relate to the National Housing and Homelessness Agreement.

- 73) I noted the department's advice that the Treasurer has administrative responsibilities for all aspects of the Department of the Treasury, this includes Housing Australia, which is included in the Treasury portfolio.
- a) The objective of Housing Australia is to improve housing outcomes by providing loans to registered community housing providers and operating a National Housing Infrastructure Facility to provide loans, grants and investments to supply housing in areas with a lack of necessary infrastructure. This objective aims to improve housing outcomes for Australians, including through financial and other assistance to improve the efficiency and scale of the community housing sector.
 - b) The department did not consider, and I agreed, that the administrative responsibilities of Housing Australia relate to the proposed action. The proposed action is focussed on providing owner-occupier housing; not providing community housing. The department noted the proponent's lawyers stated that the proponent "is willing to contribute 10% affordable housing within each stage of the project ... but agreements cannot be entered into until the homes are at least close to completion".
 - c) I noted the department's advice that there is no binding mechanism to ensure the proponent provides affordable housing under the EPBC Act and the proponent may subsequently choose not to contribute affordable housing within the development. Considering the department's advice, I concluded that the Treasurer does not have administrative responsibilities relating to the proposed action.
- 74) I noted the department's advice that the Hon Catherine King MP has administrative responsibility for the functions of Infrastructure, Transport, Regional Development and Local Government. This includes administrative responsibility for Regional Development Australia.
- a) Regional Development Australia Illawarra Shoalhaven (RDAIS) are neutral brokers across all levels of government, community and business for the growth of the region's economy.
 - b) RDAIS operates under a charter developed by the Minister for Regional Development, Local Government and Territories (Attachment J1). Under the charter, Regional Development Australia Committees (**RDAs**):
 - i) Focus activities and strategy on the delivery of the Regional Investment Framework in their region.
 - ii) Support regional stakeholder to seek grant opportunities that advance strategic regional priorities.
 - iii) Facilitate meaningful engagement across the three levels of government to ensure investments deliver better outcomes for regions.
 - iv) Build the evidence for economic development, including innovation and diversification strategies.
 - c) Additionally, RDAs drive economic growth, innovation, and entrepreneurship in regions through investment in community, industry and the environment. RDAs bridge the regional development gaps by working with a broad range of stakeholders and supporting the delivery of Australian Government strategic priorities.

- d) The focus of Regional Development Australia (**RDA**) is to identify key priorities that benefit the economic future of the region. Key priorities are:
 - i) Workforce development.
 - ii) Innovation skills and workforce.
 - iii) Diversification of industry.
 - iv) Environmental and Natural Assets.
 - e) In addition to the RDA charter, I reviewed the Regional Investment Framework (**RIF**). The framework is a new approach to how the Australian Government delivers regional investment – valuing local voices and priorities, being informed by and building evidence, operating with flexibility integrity and transparency, and coordinating across government to make investments work better for regions. The RIF supports targeted Australian Government Investment to support better outcomes for regions.
 - f) I considered that the proposed action does not address the key strategic priorities of the Charter, or the RIF. While the development will provide direct investment, the department does not consider that this development satisfies the criteria of the RDA Charter, or the RIF. The proponent has not indicated that they are receiving support under any of these programs. Therefore, the department considers that it is open to you to find that the Minister for Infrastructure, Transport, Regional Development and Local Government does not have administrative responsibilities relating to the proposed action.
- 75) I noted that the administrative arrangements for the Minister for Housing, the Treasurer, and the Minister for Regional Development are large-scale national policy levers and do not relate specifically to individual housing developments.

Extension of timeframes

- 76) On 23 February 2024, I agreed to extending the statutory timeframe for making a decision under Part 9 of the EPBC Act on whether or not to approve the proposed action. The final approval timeframe was extended until 28 March 2024.
- 77) I agreed to this extension to allow the department to undertake a robust assessment of the protected matters to ensure all impacts are considered.
- 78) On 26 March 2024, a delegate for the Minister further extended the statutory timeframe for making a decision under Part 9 of the EPBC Act. The timeframe for making a decision on the final approval was extended from 28 March 2024 to 30 April 2024.
- 79) The delegate agreed to this extension as one of the proposed conditions of approval required avoidance of a threatened ecological community (Littoral Rainforest), which the proponent did not consider to be present onsite. The extension of time allowed the proponent to survey for the ecological community.
- 80) On 29 April 2024, I agreed to extending the timeframe for making a decision under Part 9 of the EPBC Act on whether or not to approve the proposed action. The timeframe for making a decision on the final approval was extended from 30 April 2024 to 30 June 2024.
- 81) I agreed to this extension to provide additional time to allow a consultant ecologist to verify whether the Littoral Rainforest occurs on site.

- (a) On 3 May 2024, the department engaged a consultant ecologist to undertake a desktop analysis using the existing survey data generated by both the proponent and the department to determine whether the Littoral Rainforest occurs on site.
 - (b) On 14 May 2024, the consultant ecologist undertook a site inspection to verify their assumptions from the desktop study and confirm the Littoral Rainforest occurs on site. On 20 May 2024, the consultant ecologist provided a final report to the department which confirmed that the Littoral Rainforest occurs on site.
 - (c) On 21 May 2024, the department provided the consultant ecologist's report to the proponent.
- 82) On 25 June 2024, I agreed to extending the timeframe for making a decision under Part 9 of the EPBC Act on whether or not to approve the proposed action. The timeframe for making a decision on the final approval was extended from 30 June 2024 to 31 July 2024.
- 83) I agreed to this extension to ensure that additional internal ecological community advice would be adequately considered in the final decision briefing package.
- 84) On 30 July 2024, a delegate for the minister further extended the timeframe for making a decision under Part 9 of the EPBC Act on whether or not to approve the proposed action. The timeframe for making a decision on the final approval was extended from 31 July 2024 to 22 August 2024.
- 85) This extension was to ensure procedural fairness to the proponent by providing an adequate period for them to comment on the revised conditions of approval.
- 86) On 22 August 2024, I agreed to extending the timeframe for making a decision under Part 9 of the EPBC Act on whether or not to approve the proposed action. The timeframe for making a decision on the final approval was extended from 22 August 2024 to 30 September 2024.
- 87) I agreed to this extension to provide the proponent sufficient time to comment on the revised conditions of approval, while allowing the department to consider and respond to any additional comments provided by the proponent.

Response to the proposed decision: Proponent response

5 April and 19 April 2024 Comments

- 88) On 5 April 2024, the proponent and the proponent's ecologists, responded to the invitation to comment on the proposed conditions.
- 89) The proponent considered that the proposed conditions required significant re-drafting. Concerns raised included:
- (a) The site does not contain Littoral Rainforest, and the findings of the department's ecologists are flawed.
 - (b) The proposed conditions are fundamentally unworkable and will render the development consent granted by the NSW Planning Minister in 2008 and subdivision works certificate issued by Shoalhaven City Council inutile.
 - (c) The proposed conditions will create negative social and economic impacts, as the conditions constitute a constructive refusal of the controlled action. The target market for

the proposed project are owner occupiers which will reduce the number of 'ghost homes' within the Manyana area.

- (d) That other Federal Government Ministers should be consulted pursuant to section 131 of the EPBC Act, given the effect of the decision would undermine policy commitments and the need to achieve housing targets.
 - (e) If it is considered that Littoral Rainforest exists, the imposition of offsets should occur rather than the proposed conditions.
 - (f) The proposed conditions of approval would impact small to medium land developers who are focused on providing new supply to the market.
- 90) On 10 April 2024, the department responded to the proponent, regarding the analysis of the Littoral Rainforest. The department noted that the relevant statutory documents (the Commonwealth Listing Advice and Conservation Advice) contained the information, and conditions thresholds which needed to be considered when determining whether the threatened ecological community occurs on site or not.
- 91) On 19 April 2024, the proponent's ecologists wrote to the department with an analysis of the site against the Littoral Rainforest Listing Advice documentation. The proponent's ecologists contended that when considered against the Listing Advice the vegetation did not meet all the criteria to be considered Littoral Rainforest. Specifically, they noted:
- (a) The site is within 2 km of the coast, but is not adjacent to a large salt water body.
 - (b) Whilst there is some influence from oceanic aerosols on the vegetation at the subject site, this is not considered extreme as you would expect in the littoral zone. More specifically, there is no evidence that the ecological community is influenced by the sea.
 - (c) None of the landforms in the Listing Advice are consistent with the landform of the subject site.
 - (d) The substrate "reddish-brown silty clay loam to silty clay" is not consistent with described substrates of occurrences of Littoral Rainforest in the locality, or more broadly the state of NSW.
 - (e) There is no evidence that the subject site receives a strong influence of saline aerosols, and the subject site is not subject to '*strong or persistent salt-laden winds and storm events*'.
 - (f) The site is not in an exposed coastal situation and there is not evidence of canopy decapitation.

24 May 2024 Comments

- 92) On 24 May 2024, the proponent provided comments on the proposed conditions. Concerns raised by the proponent included:
- (a) The report by the consultant ecologist is fundamentally flawed regarding the presence of the Littoral Rainforest and the proposed conditions are unworkable.
 - i) The proposed conditions constitute an effective refusal.
 - ii) The proposed conditions have negative social and economic impacts for much needed housing stock on the South Coast.

- iii) The changing goalposts could lead to a significant sovereign risk for housing investment.
- iv) Other Ministers should be consulted if the delegate agrees with the finding on the Littoral Rainforest.
- v) Offsets should be considered and used, rather than only focussing on avoidance.

4 June 2024 Comments

- 93) On 4 June 2024, the proponent provided comments in response to one of the proposed conditions of approval which required there be no clearance of vegetation within 100 m of Littoral Rainforest. Specifically, the proponent raised concerns about defining the boundary of the ecological community and whether 100 m was a scientifically justifiable buffer.
- 94) On 5 July 2024, I wrote to the proponent with revised conditions of approval, inviting comment by 15 July 2024. The revised conditions of approval included an updated buffer of 30 m around the area of Littoral Rainforest

15 July 2024 Comments

- 95) On 15 July 2024, the proponent responded to the 5 July 2024 invitation to comment. The proponent reiterated their concerns regarding the consultant ecologist and raised further concerns as follows:
 - (a) Under s 131AA of the EPBC Act, the Minister must inform the proponent of the proposed decision including any proposed conditions and must invite the proponent to give comments in writing within 10 business days. The proponent was only given 6 business days to respond.
 - (b) The proponent's ecologists have planned a consolidated and improved Protection Area with accompanying vegetation management which avoids "Stage 3" of the approved subdivision so as not to extend across four stages of the approved subdivision for no significant environmental advantage, and this alternative approach should be considered at a roundtable meeting.
 - (c) The proponent has serious concerns that the department's consultant ecologist has undisclosed links to institutions opposed to the development, and this raises a potential conflict of interest and a reasonable apprehension of conscious or unconscious bias in their report.
- 96) On 18 July 2024, the department wrote to the proponent informing them that the deadline to submit comments was extended to 1 August 2024.

26 July 2024 and 31 July/1 August 2024 Comments

- 97) On 26 July 2024 the proponent wrote to the department requesting:
 - (a) A suspension to the statutory clock to facilitate discussion between the department and the proponent, including a meeting to discuss technical findings of the ecology reports.
 - (b) A peer review of the consultant ecologist's findings regarding the presence of Littoral Rainforest.
- 98) The proponent re-iterated their previous arguments regarding the integrity of the consultant ecologist, particularly in relation to the potential undisclosed links to organisations opposed to

the development, the lack of engagement between the department and the proponent and that the current proposed conditions rendered the development obsolete.

- (a) The proponent also requested a Statement of Reasons and the opportunity to make submissions once the Statement of Reasons was received. The department advised the proponent a Statement of Reasons was not possible at that time as the final decision had not yet been made. The department advised the proponent that a Statement of Reasons would be provided following the final decision.
- 99) On 31 July 2024, the proponent emailed the department with further comments from the proponent’s ecologists regarding the presence of Littoral Rainforest on site. The proponent’s ecologists maintained in their letter that emphasis must be placed on the importance of coastal processes (i.e. marine influences on the vegetation, such as salt spray, tidal inundation and storm tides) in defining Littoral Rainforest.
- (a) The proponent’s ecologists stated that no occurrences of Littoral Rainforest mapped in the Statewide Vegetation Map, were able to be located during groundtruthing >500 metres of the coast in the south of the Sydney Basin, and that many patches were incorrectly mapped. The proponent’s ecologists reiterated their recommendation that an Expert Rainforest Ecologist be engaged to review the patch.
- 100) On 31 July 2024, the department contacted the proponent, and organised a meeting to discuss the proposed conditions of approval and the proponent’s comments.

4 August 2024 Comments and 5 August 2024 Meeting

- 101) On 4 August 2024, the proponent provided updated information regarding the proposed conditions of approval, with particular reference to the application of buffer zones. The proponent noted the recent court decision *Goldcoral Pty Ltd (Receiver and Manager Appointed) v Richmond Valley Council* [2024] NSWLEC 77. In this decision, the court found that a 15-metre buffer zone to Littoral Rainforest was appropriate for providing bushfire protection. The proponent noted that while this judgement provided a judicial precedent, they maintained that “there remains a serious question as to whether there is any Littoral Rainforest on the site”.
- 102) On 5 August 2024, the department met with the proponent, the proponent’s ecologists and the proponent’s lawyers. During this meeting, the proponent reinforced their previous comments regarding the independence and rigor of the consultant ecologist’s assessment of Littoral Rainforest. Additionally, the proponent reinforced the difficulty surrounding the interactions between the 2008 NSW Development Approval and the EPBC Act draft condition requirements. Due to the NSW Government repealing the previous planning legislation in 2018, modifying existing development approvals is more complex for the proponent.
- 103) The department noted that the proponent had proposed an option of removing Stage 3 from the proposed development area and ensuring its ongoing protection as a conservation area.

7 August 2024 Comments

- 104) The proponent wrote to the department on 7 August 2024.
- (a) The proponent maintained that Littoral Rainforest is not present on site.
 - (b) As a way forward, the proponent outlined a conservation strategy for Stage 3 (where the department had determined the majority of Littoral Rainforest is present).

- (c) The proponent provided comments on the conditions of approval which had been revised and sent to the proponent on 5 July 2024.
- 105) Following the consideration of this additional information, including taking into account the additional concerns raised by the proponent, on 14 August 2024, the department provided updated proposed conditions.
- (a) The revised conditions of approval drew on the proponent's conservation strategy for the Stage 3 area, outlined in their correspondence of 7 August 2024.
 - (b) The department, however, did not agree with the proponent's mapping of vegetation. The department considered the area of Littoral Rainforest is still the area identified by the independent expert, resulting in an impact to 0.04 ha of Littoral Rainforest which would require offsetting.
 - (c) The department's letter also addressed key matters which had been raised by the proponent in previous correspondence.

16 August 2024 Comments and 19 August 2024 Meeting

- 106) On 16 August 2024, the proponent wrote to the department seeking to clarify a comment in the department's response to the proponent's letter. On 19 August 2024, the department met with the proponent to clarify the information, while also discussing the draft conditions of approval.

26 August 2024 Final Comments and Final Conditions

- 107) On 26 August 2024, the proponent responded to the department's 14 August 2024 letter and draft conditions of approval of the same date.
- (a) The proponent included clarifications about the extent of the Reserve area required under the NSW conditions, clarifications to the Asset Protection Zone area in Stage 3 and drew the department's attention to minor inconsistencies and duplicative conditions and definitions.
 - (b) The proponent advised that if the amendments are accepted by the department, they would not have any further comments prior to the end of the 10-business day period.
- 108) The department materially accepted all the proponent's comments, and they are reflected in the final conditions of approval recommended to me, and which I decided to impose.

Final approval decision

- 109) On 20 September 2024, I approved the taking of the proposed action under sections 130(1) and 133 of the EPBC Act, subject to conditions imposed in accordance with section 134 of the EPBC Act.

Findings of material questions of fact

- 110) My findings in relation to relevant controlling provisions for the proposed action (being sections 18 and 18A), and other matters which I was required to take into account in my decision making, are set out below.
- 111) I considered that the information before me was sufficient to decide whether or not to approve the proposed action.

Mandatory Considerations – section 136(1)(a)

- 112) Section 136(1)(a) of the EPBC Act requires me, in deciding whether or not to approve the taking of an action and what conditions to attach to an approval, to consider matters relevant to any matter protected by a provision of Part 3 that is a controlling provision for the action, so far as they are not inconsistent with any other requirement of Subdivision B of Division 1 of Part 9 of the EPBC Act.
- 113) The proposed action was determined a controlled action, and sections 18 and 18A (listed threatened species and ecological communities) were the controlling provisions for the proposed action.

Listed threatened species and communities – sections 18 and 18A

- 114) I noted that at the time of the controlled action decision, three threatened species were considered likely, or potentially, significantly impacted by the proposed action:
- (a) Grey-headed Flying-fox (*Pteropus poliocephalus*) – Vulnerable.
 - (b) Greater Glider (*Petauroides volans*) – Endangered (Vulnerable at the time of the referral decision).
 - (c) Swift Parrot (*Lathamus discolor*) – Critically Endangered.
- 115) I noted the department's advice that the department's site visit undertaken in January 2024 confirmed the presence of an additional threatened ecological community: *Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community (Littoral Rainforest)* – Critically Endangered.
- 116) I also noted that the subsequent independent consultant ecologist's report considered that the EPBC Act listed, Critically Endangered *Illawarra-Shoalhaven Subtropical Rainforest (ISSR)* threatened ecological community may be present on site.
- 117) I further noted that the department received correspondence from the Manyana Matters Environmental Association (**MMEA**) that the EPBC Act listed Vulnerable Magenta Lilly Pilly (*Syzygium paniculatum*) (**MLP**) may be present on site.

Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community – Critically Endangered

- 118) I noted that since my proposed decision on 20 March 2024, additional information regarding the presence and extent of Littoral Rainforest within the proposed action area had become available.

Description

- 119) I noted that according to the *National Recovery Plan for the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community (Littoral Rainforest Recovery Plan)*, Littoral Rainforest is typically made up of rainforest and vine thickets and occurs close to the coast and on offshore islands.
- 120) I noted the department's description of the community's distribution, which stated the ecological community extends from northern Queensland southwards to eastern Victoria. I also noted the department's advice that Littoral Rainforest occurs as a series of naturally disjunct

and localised stands, on a range of landforms which have been influenced by coastal processes including dunes and flats, headlands, knolls, and sea cliffs.

- 121) I noted that the Littoral Rainforest Recovery Plan states that, at the time of the listing (in 2008), the extent of Littoral Rainforest was estimated to be approximately 18,000 ha, though more recent mapping suggests the extent may be larger than that estimate. I noted that the 2008 data also estimated the total area of the ecological community in NSW as approximately 1600 ha. I further noted that the 2008 *Commonwealth Listing Advice on Littoral Rainforest and Coastal Vine Thickets of Eastern Australia (Littoral Rainforest Listing Advice)* describes the community as occurring in 433 patches in NSW, with around 398 of these patches occurring as less than 10 ha. I noted that given the small area remaining and the relatively small size of the majority of patches, all sites that meet the criteria for the listed community should be considered habitat critical to the survival of the ecological community.
- 122) I noted that according to the Littoral Rainforest Recovery Plan, the primary threats to the community are human mediated as they are either a direct result of human activity (e.g. habitat clearing, degradation from human activity) or an indirect consequence of human actions (e.g. feral animals and weeds, climate change). A primary strategy of the Littoral Rainforest Recovery Plan is to protect the remaining distribution of Littoral Rainforest and its surrounds from coastal development and land use change, including urban development. This reflects the recovery plan's goal to avoid all impacts to patches of Littoral Rainforest that meet the condition thresholds in the ecological community's Listing Advice. This includes not undertaking activities within close proximity of the ecological community.

Proposed action area – Littoral Rainforest extent validation

- 123) I noted that the PD included an assessment of Littoral Rainforest against the description (including the general features and key diagnostic characteristics), and condition thresholds of the listed ecological community as outlined in the Littoral Rainforest Listing Advice. I noted that the PD's assessment was based on random meander surveys completed between May – June 2020 and that it stated that the proposed action area does not fit several of the diagnostic characteristics. I noted that the PD contained no recent plot data from vegetation surveys that confirmed the presence or absence of the ecological community.
- 124) I noted that during the department's ecological survey site visit in January 2024, survey plots were undertaken, and Littoral Rainforest was identified as present within the proposed action area.
- (a) I noted that specifically, the department's site visit determined that, when assessed against the statutory documents, the patch of vegetation met the required key diagnostic criteria to be considered Littoral Rainforest.
- 125) I noted that the department's Site Visit Report estimated the extent of the Littoral Rainforest at the site based on the NSW State Vegetation Type Map polygons. This put the area of Littoral Rainforest at the site at 2.50 ha.
- 126) I noted that in response to the department's identification of Littoral Rainforest on site, the proponent's ecologists undertook their own survey to identify the presence of the Littoral Rainforest. I considered updated information provided by the proponent's ecologists, which

included an analysis of the Littoral Rainforest against the Listing Advice. I noted that the proponent's consultant maintained that the Littoral Rainforest does not occur on the site.

(a) I noted that the proponent's ecologists maintained that even when considering the statutory documents, the patch in question does not meet the key diagnostic criteria to be considered Littoral Rainforest due to the apparent lack of maritime (littoral) influence, and that the vegetation composition and structure is not typical of Littoral Rainforest communities.

127) I noted that because the proponent's ecologists' analysis was not consistent with the department's findings, the department contracted a consultant ecologist to review the available information and determine whether the Littoral Rainforest occurred on the site. I noted that, based on the available information, including a site inspection, the consultant ecologist determined that the Littoral Rainforest occurred on the site.

(a) I noted that the consultant ecologist concluded that the proposed action area supports a rainforest assemblage that fits the Littoral Rainforest Listing Advice. I noted that the consultant ecologist considered that while there is a higher presence of sedges onsite, which is not typical of Littoral Rainforest, there were multiple factors which explained their presence, including:

- i) moisture-retentive soil
- ii) the land use history, i.e. land clearing, pastoral use and subsequent regrowth
- iii) high rainfall throughout the coastal zone, and
- iv) low cover of otherwise competing vegetation such as ferns, likely due to the salt-laden winds/maritime aerosols which influence the site.

128) I considered that the consultant ecologist's findings were consistent with the department's survey and was another source of information supporting the department's findings that Littoral Rainforest is present on site.

129) I noted that the consultant ecologist stated the site "is not typical for Littoral Rainforest, nor a good example of it due to relatively lower maritime influence compared with some reference sites". However, I noted that, as stated by the proponent's ecologists, and shown in their additional information, the reference sites for Littoral Rainforest occur on beach ridges and headlands which are exposed to significantly higher maritime influence whereas, the consultant ecologist noted, the Manyana site is exposed to less maritime influences compared to the reference sites cited by the proponent's ecologists. I noted that the consultant ecologist ultimately concluded that the site still experiences moderate coastal exposure which can suppress vegetation diversity, favouring hardier species.

130) I noted that the consultant ecologist provided a refined area of extent of the ecological community, and that this extent included fringing eucalypts, with rainforest structure and floristics persisting under the eucalypt canopy. This interpretation is consistent with the Littoral Rainforest listing advice, which allows for emergent species, including eucalypts, to be present in the community's species assemblage. I noted that the consultant ecologist provided the department with a polygon of the Littoral Rainforest's extent on site, which is an area of 1.01 ha.

- 131) I noted that following the findings of the consultant ecologist's report, the department sought internal advice from the department's Ecological Communities Section to verify whether, based on the available data, the patch in question meets the key diagnostic criteria in the Littoral Rainforest Listing Advice. I noted that the Ecological Communities Section considered that, based on the survey data and information, the patch meets the description and key diagnostic criteria of Littoral Rainforest.
- 132) Based on the department's survey findings, the proponent's ecologist's submissions, data and analysis provided by the consultant ecologist, and subsequent internal advice from the Ecological Communities Section, I considered that the area of Littoral Rainforest within the proposed action area is 1.01 ha. I noted that this area contains predominantly rainforest species, with a small percentage of eucalyptus emergent species.

Proposed action area – buffer zone and Stage 3 protection

- 133) I noted that following the consultant ecologist's report, the department updated the proposed conditions of approval to include the polygon with the refined extent of Littoral Rainforest (1.01 ha), and which required avoidance of this area, and that these were provided to the proponent for comment.
- 134) I noted that in addition to the refined extent of Littoral Rainforest included in the updated proposed conditions of approval, the conditions also included changes to the proposed buffer around the area of Littoral Rainforest. The conditions had initially provided for a 100-metre buffer (consistent with the conservative requirements in the Littoral Rainforest Recovery Plan). I noted that the buffer was subsequently refined by the department to 30 metres following the work of the consultant ecologist. I noted that information provided by the proponent was also considered by the department in refining the buffer.
- (a) I noted the department's research that, based on existing literature, the root zone of tree species is generally a 1:1 ratio between tree height and the root zone⁵. I noted that based on this, the department considered an appropriate buffer zone should be a 1:1 ratio with the maximum height of the tallest trees within the patch (i.e. 25 metres). I acknowledged that the department applied a precautionary buffer zone of 30 metres.
- (b) Additionally, I noted that the department referred to the existing Australian Tree Protection Standards *Protection of trees on development sites* (AS 4970-2009). The calculations for a Tree Protection Zone (TPZ) for a single stem tree is diameter at breast height in centimetres (DBH)*12. I noted that proponent's PD states that the largest DBH located on site was

⁵ Day, S. *et al.* (2010) 'Contemporary concepts of root system architecture of urban trees', *Arboriculture & Urban Forestry*, 36(4), pp. 149–159. doi:10.48044/jauf.2010.020.

approximately 100 cm, therefore indicating an appropriate TPZ of 12 m would be sufficient to protect any given tree root zone.

- (c) I noted that the department considered, based on the lack of weed incursion identified in site surveys, the resilience of the patch, the existing literature outlining the relationship between root zone and height of trees and the physical characteristics of the coastal knoll, a buffer zone of 30 metres was suitable for the protection of the Littoral Rainforest patch.
- 135) I noted that on 15 July 2024, the proponent responded to the updated conditions of approval, suggesting alternative ameliorative and offsetting measures by offering the *'entirety of Stage 3 for vegetation enhancement and protection, which would result in a superior sustainable ecological outcome'* when compared with the simple avoidance of Littoral Rainforest and a 30-metre buffer which had been proposed in the department's proposed conditions of approval.
- (a) I noted that, while not accepting the department's determination that Littoral Rainforest was present, the 15 July 2024 letter from the proponent's consultant provided a map of vegetation that the proponent's ecologists considered commensurate with Littoral Rainforest. I did not agree with the proponent's mapping and considered the area of Littoral Rainforest identified in the consultant ecologist's report was an accurate identification of the ecological community.
 - (b) I noted that the proponent had also previously provided comment that the proposed action is not a matter in which the development is at the early stages where the area of Littoral Rainforest can be easily avoided. I noted correspondence from the proponent's ecologists which stated that offsets to Littoral Rainforest should be accepted, and that this was consistent with the Littoral Rainforest's Recovery Plan.
- 136) I did not accept these arguments and considered the area of Littoral Rainforest identified by the proponent's consultant should be avoided. I did, however, partially accept the proponent's submission to avoid Stage 3. I noted that this would provide for 0.04 ha of Littoral Rainforest to be cleared within Stage 4 on the edge of the patch.
- (a) In addition, I noted that the proponent subsequently advised a bushfire Asset Protection Zone (**APZ**) is likely to incur on the retained native vegetation in Stage 3, which would require some additional clearance of Littoral Rainforest. I further noted that the protection of Stage 3 proposed by the proponent did not include a defined buffer. I noted the department's advice that the avoidance of Stage 3 provided for an average buffer distance from the Littoral Rainforest to the boundary of Stage 3 to be 22 metres, with the greatest distance of approximately 58.0 metres and the smallest distance to be 0.0 metres at some points.
- 137) In response to the proponent's submission, I noted that there were ecological benefits resulting from the protection of Stage 3 proposed by the proponent. I noted that additional measures were now recommended by the department which would further benefit Littoral Rainforest in Stage 3. I considered advantages of the final proposed conditions of approval included:
- (a) The ability to condition for an Offset Management Plan for Stage 3 that would provide for proactive management and habitat quality improvements to the Littoral Rainforest protected within Stage 3 (0.97 ha).

- (b) The ability to condition for the legal securement of Stage 3 as an offset site which will require enduring legal protection for the site against activities incompatible with conservation.
- 138) I noted that the department updated the conditions of approval to enable clearance of the 0.04 ha of Littoral Rainforest in Stage 4 and to require protection of Stage 3 as an offset site, and that these conditions were provided to the proponent on 14 August 2024.

Avoidance

- 139) I noted that the proponent's PD did not include avoidance measures specific to Littoral Rainforest and that this was because the PD had determined the ecological community was not present.
- 140) I noted that, whilst not accepting the department's determination that Littoral Rainforest is present, the proponent has now proposed avoiding, enhancing and protecting vegetation contained within Stage 3 of the proposed action area. The area of Littoral Rainforest within Stage 3 that will be avoided is approximately 0.97 ha (minus what is required to be removed for the establishment of an APZ in accordance with NSW legislation), which represents about 96.040% of the Littoral Rainforest identified on site by the consultant ecologist.

Impacts – Direct impacts

- 141) I noted that the PD did not address impacts to Littoral Rainforest and that this is because the PD had determined the ecological community was not present.
- 142) I noted that, at the time of the proposed decision, the department considered that without the recommended conditions of approval, the proposed action would directly impact up to 2.50 ha of Littoral Rainforest through vegetation clearance.
- 143) Noting the revised extent of Littoral Rainforest determined by the consultant ecologist, and the avoidance of Littoral Rainforest within Stage 3, I considered the proposed action would directly impact approximately 0.04 ha of Littoral Rainforest which exists in the area described as Stage 4 of the proposed action area.
- 144) I noted that additional clearing of Littoral Rainforest may be required for the establishment of an APZ. I acknowledged that an APZ is a buffer zone between a bush fire hazard and buildings and is a requirement under NSW legislation. I noted that the conditions of approval specify the area of Littoral Rainforest to be cleared for an APZ is confined, and must be the minimum that is required by NSW legislation.

Impacts – Indirect impacts

- 145) I noted the Littoral Rainforest Recovery Plan indicates relevant indirect impacts as being increased weed invasion, dumping of garden waste and other rubbish, pollution, and disturbance to native fauna from domestic pets and impacts to Littoral Rainforest flora species resulting from pollutants such as detergents. I considered that indirect impacts are anticipated to affect retained areas of Littoral Rainforest, particularly around the edges of the community. I considered that aside from clearing, the demonstrable indirect impact vectors already occurring at the proposed action site are primarily weed incursion, rubbish dumping and disturbance from domestic pets (as outlined in section 2.2.1 of the Littoral Rainforest Recovery Plan).

- 146) I noted the department's advice that the vegetation on site currently has low weed establishment with approximately 0.1% weed coverage (despite the road and residential properties being located between 6 and 19 meters from the edge of the patch). I also noted that the department's survey and the proponent's ecologists' subsequent advice noted existing evidence of rubbish dumping and resulting weed incursion into native vegetation.
- 147) I noted that the Littoral Rainforest Recovery Plan also references potential hydrological changes due to development as known impacts. I considered the topographical analysis provided by the proponent's ecologists and accepted that the Littoral Rainforest patch is located within an elevated coastal knoll within the north-eastern section of the site. I considered that the positioning of the Littoral Rainforest uphill from the development site would largely mitigate the risk of run-off or associated hydrological changes from construction and increased impervious surfaces.

Mitigation measures

- 148) I noted that the PD does not include mitigation measures specific to Littoral Rainforest and acknowledged that the Major Project Approval for the project issued by the NSW Government includes a number of conditions that are likely to be effective in mitigating indirect impacts to the ecological community including a requirement to implement a Vegetation Management Plan that addresses means of weed control and potential impacts of the adjoining residential development.
- 149) In addition, I noted the department's recommended conditions of approval require the preparation and implementation of an Offset Management Plan. I considered the Offset Management Plan would allow for proactive management and habitat quality improvements to the Littoral Rainforest protected within Stage 3 (~0.97 ha).

Compensatory measures

- 150) I noted that the department's recommended conditions of approval require the proponent to offset clearing of 0.04 ha of Littoral Rainforest in Stage 4. In addition, I considered the Offset Management Plan will quantify any additional impacts, which cannot be avoided, such as the establishment of an APZ, should it be required, and other indirect impacts.
- 151) I noted that, under those recommended conditions, the proponent will be required to avoid and apply enduring legal protection on the area that was proposed for Stage 3. In addition, the proponent will be required to develop and implement an Offset Management Plan designed to manage the apparent and anticipated threats to Littoral Rainforest. I considered these will ensure that impacts of the proposed action on Littoral Rainforest are minimised and consistent with the ecological community's EPBC Act statutory documents.

Proposed outcomes and conditions

- 152) I noted that the department proposed conditions to avoid, mitigate and offset impacts to Littoral Rainforest:
- (a) Condition 1 limits the proposed action to the action area, ensuring that no Littoral Rainforest outside the action area is cleared.

- (b) Condition 2 restricts clearance of Littoral Rainforest in Stage 4 to 0.04 ha and the avoidance of Stage 3 except where required to provide an APZ, should it be required in accordance with NSW State guidelines for staged developments.
 - (c) Condition 3 requires the legal securement of Stage 3.
 - (d) Condition 5 requires the proponent to implement relevant conditions of the NSW approval. Relevant NSW conditions include those relating to implementation and approval of a Vegetation Management Plan and Environmental Management Plan.
 - (e) Condition 11 requires the offsetting of impacts to Littoral Rainforest prior to the commencement of the action through either the Commonwealth endorsed NSW Biodiversity Offsets Scheme or the EPBC Act Environmental Offsets Policy. Condition 12 requires evidence of offsets if they are retired under the NSW Biodiversity Offsets Scheme.
 - (f) Condition 13 requires the proponent to develop and implement an Offset Management Plan which provides for habitat quality improvements, and management activities aligned to the anticipated indirect impacts to the Littoral Rainforest retained in Stage 3.
- 153) I accepted the department's recommendation to impose these conditions. I considered that it is necessary and convenient to do so, to ensure that the impacts to Littoral Rainforest from the action are appropriately avoided, minimised, and offset.

Conditions for Littoral Rainforest

- 154) Based on the above information and consistent with the Littoral Rainforest Recovery Plan and the approval conditions, I concluded that if approved subject to the recommended conditions, the proposed action will not have an unacceptable impact on Littoral Rainforest.

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

- 155) I noted that according to the *National Recovery Plan for the Grey-headed Flying-fox Pteropus poliocephalus* (GHFF Recovery Plan), the Grey-headed Flying-fox (GHFF) is endemic to Australia, with a distribution ranging from Ingham in Queensland to Adelaide in South Australia. They are usually found on the coastal lowlands and slopes of eastern Australia below altitudes of 200 m. Patterns of occupancy and relative abundance within its distribution vary widely seasonally and temporally.
- 156) I noted the department's advice that the GHFF feeds primarily on blossoms and fruit in canopy vegetation and supplements this diet with leaves. Foraging behaviour alters when native food sources are scarce. They roost in large aggregations, known as camps, in the exposed branches of trees.
- 157) I noted that according to the GHFF Recovery Plan, areas containing important winter and spring flowering vegetation communities are considered habitat critical to the survival of the GHFF. Habitat critical to the survival of the GHFF may also be vegetation communities that do not contain the winter and spring flowering species but which:
- (a) contain native species that are known to be productive as foraging habitat during the final weeks of gestation, and during the weeks of birth, lactation, and conception (August to May),
 - (b) contain native species used for foraging and occur within 20 km of a nationally important camp as identified on the department's interactive flying-fox web viewer, or

- (c) contain native and or exotic species used for roosting at the site of a nationally important GHFF camp as identified on the department's interactive flying-fox monitoring viewer.
- 158) I noted that according to the GHFF Recovery Plan, the primary known threat to the survival of the species is the loss and degradation of foraging and roosting habitat. Conflict with people is considered a moderate threat, which is increasing in urban areas.
- 159) I noted that the GHFF is included on the *Revised provisional list of animals requiring urgent management intervention* following the 2019-2020 bushfires.

Proposed action area – surveys

- 160) I noted that the PD states that small numbers of GHFF were recorded foraging on the site during nocturnal surveys, and one dead GHFF was opportunistically found on the site.
- 161) I also noted the department's advice that there are 17 records (dating as far back as 1998) of GHFF within an approximate 10 km x 10 km area of the proposed action on the NSW Government BioNet site.
- 162) I noted that the *Survey guidelines for Australia's threatened bats* states surveys for GHFF based on animal sightings are unlikely to be reliable and that a more effective survey method is to search appropriate databases and other sources for the locations of camps, and to conduct vegetation surveys to identify feeding habitat.

Proposed action area – habitat (winter and spring flowering vegetation)

- 163) I noted that the PD identified that four tree species within the proposed action area are considered to be important winter and spring flowering species, and thus, habitat critical to the survival of the GHFF. The four species listed in the PD are Grey Ironbark (*Eucalyptus paniculata*), Blackbutt (*Eucalyptus pilularis*), Coast Banksia (*Banksia integrifolia*), and Turpentine (*Syncarpia glomulifera*).
- 164) Regarding Blackbutt, I noted that further analysis was undertaken through the PD assessment to determine whether this species is winter and spring flowering in the region. Although the GHFF Recovery Plan lists Blackbutt as an important winter and spring flowering species, I accepted the proponent's assessment in the PD that the species does not reliably flower in the proposed action area during winter and spring and therefore more accurately constitutes summer and autumn foraging habitat.
- This fact is supported by Dr Eby, a co-author of the Draft National Recovery Plan for the GHFF, and is maintained in peer-reviewed, published literature which was provided to me as an attachment to the approval decision brief.
- 165) I noted that the GHFF Recovery Plan states that few diet plants flower in winter, and those that flower reliably in winter occur on coastal lowlands in northern NSW and southern Queensland. Additionally, the GHFF is rarely found south of Nowra during spring, and in winter they are only occasionally found on the south coast of NSW, which is associated with flowering Spotted Gum (*Eucalyptus albens*) or Mugga Ironbark (*E. sideroxylon*). I noted that neither of these were identified in the proposed action area during the department's site visit.
- 166) I noted that according to the PD, there is a combined total of approximately 1.62 ha of winter and spring flowering species within the proposed action area, comprised of:

- (a) 0.22 ha of Grey Ironbark
- (b) 1.39 ha of Turpentine
- (c) less than 0.01 ha of Coast Banksia.

I considered this vegetation constitutes habitat critical to the survival of the GHFF in accordance with the GHFF Recovery Plan because this is winter and spring flowering habitat. I noted that 1.25 ha of this habitat is within the area to be cleared, the remainder is in the reserve area.

- 167) I noted that the figures listed in paragraph 166) above, are based on surveys for these species undertaken in 2021. I also noted that department's ecologists conducted surveys of the site in accordance with the NSW Biodiversity Assessment Method in January 2024. The department's surveys confirmed that the proportion of these species within the proposed action area accords with the figures and mapping provided in the PD, as summarised above.

Proposed action area – Habitat (summer and autumn flowering species)

- 168) I noted that the GHFF Recovery Plan states that vegetation communities that do not contain the winter and spring flowering species, but which contain native species that are known to be productive as foraging habitat during the final weeks of gestation, and during the weeks of birth, lactation, and conception (August to May) may also be habitat critical to the survival of the GHFF.
- 169) I noted that the PD states there is a combined total of 9.81 ha of Blackbutt and Red Bloodwood (*Corymbia gummifera*) within the proposed action area, however, provides no estimate of the amount of other potential summer and autumn flowering foraging habitat within the proposed action area (e.g. Lilly Pilly (*Acmena smithii*), Bangalay (*Eucalyptus botryoides*), and Sweet Pittosporum (*Pittosporum undulatum*)). I conservatively assumed that the entirety of the approximate 20.4 ha proposed action area minus the 1.62 ha of winter and spring flowering foraging habitat discussed above constitutes potential GHFF summer and autumn flowering foraging habitat.
- 170) I did not consider the summer and autumn flowering foraging habitat within the proposed action area to be habitat critical to the survival of the GHFF. This is because:
- (a) Results of surveys in the proposed action area, BioNet records in the wider locality and occupancy rates at the Yatteyattah camp, suggest the GHFF is unlikely to occupy the area in large numbers, permanently, or seasonally (including during breeding periods). I considered that the summer and autumn flowering foraging habitat in the proposed action area is therefore unlikely to be necessary as foraging habitat during the final weeks of gestation, and during the weeks of birth, lactation, and conception (August to May); and is therefore unlikely to constitute habitat critical to the survival of the species in accordance with the GHFF Recovery Plan.
 - (b) When the GHFF diet species that make up the majority of the proposed action area (such as Blackbutt, Red Bloodwood and Bangalay) typically flower on the south coast (December to March), this is the time of greatest nectar productivity across the broader region (Eby and

Law, 2008⁶). I considered that this vegetation is therefore a very small component of what is available during these flowering periods given the abundance of surrounding alternative foraging resources. The summer and autumn flowering vegetation on the site is thus unlikely to constitute habitat critical to the survival of the species in accordance with the GHFF Recovery Plan.

- 171) In reaching the above conclusion, I acknowledged the impacts of the 2019-2020 bushfires on the Jervis IBRA subregion (where the proposed action is located). Having regard to this, I noted that whilst 44 per cent of the subregion was burnt by the bushfires, approximately 72, 066 ha of habitat in the Jervis IBRA subregion remained unburnt, according to the department's Bushfire Recovery Environmental Analysis Decision Support (**BREADS**) tool. Given the highly mobile and widely distributed nature of the GHFF, as indicated in the GHFF Recovery Plan, I considered the species would adequately be able to access alternative foraging habitat during the final weeks of gestation, and during the weeks of birth, lactation, and conception (August to May).

Proposed action area – camps

- 172) I noted that the GHFF Recovery Plan states habitat critical to the survival of the species may include communities that do not contain winter and spring flowering species, but which:
- (a) contain native species used for foraging and occur within 20 km of a nationally important camp as identified on the department's interactive flying-fox web viewer, or
 - (b) contain native and/or exotic species used for roosting at the site of a nationally important GHFF camp as identified on the department's interactive flying-fox viewer.
- 173) I noted the department's advice that the department's interactive flying-fox web viewer indicates that the nearest nationally important GHFF camp, Yatteyattah, is approximately 8 km to the west of the proposed action area. There are no other nationally important camps within 20 km of the action area.
- 174) I considered that the foraging habitat within the proposed action area is not habitat critical to the survival of the species in accordance with the criteria relevant to nationally important camps in the GHFF Recovery Plan for the following reasons:
- (a) The data included in the interactive flying-fox web viewer for Yatteyattah indicates the site has not contained more than 10, 000 GHFF in more than one year since February 2013, nor has it been occupied by more than 2,500 GHFF permanently or seasonally since the first instance of survey data in February 2012; thus, as at the last survey date of February 2019, the site no longer met the definition of a nationally important camp as defined in the GHFF Recovery Plan.

⁶ Eby, P. and Law, B. 2008. [Ranking the feeding habitats of Grey-headed Flying-foxes for conservation management](#). A report for a report for The Department of Environment and Climate Change and Water (NSW) & The Department of Environment, Water, Heritage and the Arts.

- (b) I acknowledged that the last instance of survey data included in the interactive flying-fox viewer for Yatteyattah is from February 2019 and that recent data not yet received or uploaded may subsequently result in the site meeting the definition of a nationally important camp as defined in the GHFF Recovery Plan. I considered that the trend in the data indicates this is unlikely, however, I conservatively assumed Yatteyattah is a nationally important camp. Despite this, I considered that the results of surveys in the proposed action area, BioNet records in the wider locality and occupancy rates at the Yatteyattah camp, suggest the proposed action area is unlikely to be used for foraging by large numbers of GHFF and is therefore unlikely to constitute habitat critical to the survival of the species in accordance with the GHFF Recovery Plan.

Impacts of proposed action

- 175) I noted that the PD states the proposed action will result in the clearance of approximately 1.25 ha of Grey Ironbark, Turpentine and Coast Banksia. I accepted this figure, which had been validated by the department's site visit, as accurate. I considered this to be potential winter and spring GHFF foraging habitat, and therefore habitat critical to the survival of the GHFF.
- 176) As discussed above, I considered that the summer and autumn habitat on site is not habitat critical to the survival of the species within the meaning of the GHFF Recovery Plan, and as such, considered that there will not be a residual significant impact from the clearance of this vegetation.
- 177) I noted that according to the PD, indirect impacts are expected to be minimal but may include noise and light disturbance and weed invasion. I acknowledged that disturbance, injury, and death from conflict between people and GHFF in residential areas are also potential indirect impacts.
- 178) In accordance with the GHFF Recovery Plan and the Significant Impact Guidelines, I considered that the proposed action will have a significant residual impact to 1.25 ha of habitat critical to the survival of the Vulnerable GHFF.

Avoidance and mitigation measures

- 179) I noted that the avoidance and mitigation measures in the PD relevant to the GHFF included:
- (a) The permanent retainment of native vegetation in a reserve within the proposed action area. The retained vegetation has a dominant canopy of Blackbutt and Bangalay, with subcanopy elements including Turpentine, Flax-leaved Paperbark (*Melaleuca linariifolia*), Black She-oak (*Allocasuarina littoralis*), and Old Man Banksia (*Banksia serrata*).
 - (b) Avoidance and mitigation of indirect impacts to GHFF habitat in the retained reserve, including though the installation of tree protection zones around 'large' (diameter at breast height of >40 cm) GHFF trees within 10 m of the reserve boundary prior to development works. The intent to install tree protection zones is also detailed in the proponent's Fauna and Flora Management Plan and Environmental Management Plan which were provided to me as attachments to the approval decision brief.
 - (c) Planting and maintenance of GHFF food trees (including Coast Banksia, Grey Ironbark, Swamp Mahogany, and Spotted Gum) within the action area.

- 180) I noted that the proposed action would be undertaken in stages. I considered that staging would prevent mass immediate loss of vegetation for the entire site and allow time for plantings to occur. I also considered it would allow for further bushfire recovery in surrounding areas.
- 181) At the time of my proposed decision, I proposed imposing conditions relevant to the GHFF including clearing no more than 1.25 ha of GHFF habitat, planting at least 437 GHFF food trees, and staging the development.
- 182) I noted the proponent's response to the proposed decision, in which they outlined an avoidance and conservation strategy for an additional portion of the development footprint. The conservation strategy was for Stage 3, the area where the majority of Littoral Rainforest on site was found to occur. In my final decision, I decided to impose conditions to avoid Stage 3, which had implications for the conditions I proposed to impose in my proposed decision mentioned in paragraph 182). Specifically, the number of GHFF food trees required to be planted was reduced to 388 and the timing for staging was also amended to reflect the removal of Stage 3 from the development footprint.
- 183) I considered that avoidance and conservation of Littoral Rainforest, which contains GHFF foraging species (e.g. Lilly Pilly, Bangalay), would result in additional avoidance to GHFF habitat and foraging resources.

Compensatory measures

- 184) I considered that the proposed action will result in the clearance of habitat critical for the survival of the GHFF being approximately 1.25 ha of potential winter and spring GHFF foraging habitat in the form of Grey Ironbark, Turpentine and Coast Banksia and that this clearance will result in a residual significant impact. As such, in accordance with the GHFF Recovery Plan *"[w]here approvals are given for actions with residual impacts to the Grey-headed Flying-fox, environmental offsets may provide opportunities to increase habitat critical to the species survival..."* I concluded offsets should be required for the clearance of 1.25 ha of winter and spring foraging habitat to ensure that the proposed action does not have an unacceptable impact on the GHFF.
- 185) I considered that either of the two following methods would be appropriate to offset impacts:
- (a) retirement of biodiversity credits under the NSW Biodiversity Offsets Scheme (which has been endorsed by the Australian Government under the *EPBC Act Condition Setting Policy*), calculated using the NSW Biodiversity Assessment Methodology; or
 - (b) approval and implementation of an Offset Management Plan that meets the requirements of the *EPBC Act Environmental Offsets Policy*.

Proposed outcomes and conditions

- 186) I noted that the department proposed conditions to avoid, mitigate and offset impacts to GHFF, including conditions:
- (a) limiting the proposed action to the action area
 - (b) limiting the clearance of habitat critical to the survival of GHFF to no more than 1.25 ha
 - (c) preventing clearance in the proposed conservation area (reserve)
 - (d) preventing clearance of Stage 3

- (e) requiring the proponent to implement relevant conditions of the NSW approval (including those relating to clearance staging, tree removal, and implementation and approval of a Vegetation Management Plan and Environmental Management Plan)
 - (f) stipulating the earliest date of commencement of clearing for each stage of the development, enabling surrounding habitat to further recover
 - (g) requiring planting of GHFF food trees in the action area
 - (h) to offset the clearance of 1.25 ha habitat critical to the survival of the GHFF by retiring biodiversity credits in accordance with the NSW Biodiversity Offsets Scheme or through the implementation of an Offset Management Plan which meets the requirements of the EPBC Act Environmental Offsets Policy.
- 187) I accepted the department's recommendation to impose these conditions. I considered that it is necessary and convenient to do so, to ensure that the impacts to GHFF from the action are appropriately avoided, minimised, and offset.

Conclusion

- 188) Based on the above information and consistent with the GHFF Recovery Plan and approval conditions, I concluded that if approved subject to the recommended conditions, the proposed action will not have an unacceptable impact on Grey-headed Flying-fox.

Swift Parrot (*Lathamus discolor*) – Critically Endangered

- 189) I noted that the *National Recovery Plan for the Swift Parrot (Lathamus discolor)* (Swift Parrot Recovery Plan), was updated on 30 April 2024 following the proposed decision.

Description

- 190) I noted the department's advice that the Swift Parrot is a migratory bird that breeds in Tasmania and migrates to mainland Australia during autumn and winter. Whilst on the mainland, the Swift Parrot disperses widely, foraging on flowers and lerps in *Eucalyptus* spp., mainly in Victoria and New South Wales.
- 191) I noted that according to the Swift Parrot Recovery Plan, in New South Wales, Swift Parrots forage in forests and woodlands throughout the coastal and western slopes regions each year. Coastal regions tend to support larger numbers of birds when inland habitats are subjected to drought.
- 192) I noted that the Swift Parrot Recovery Plan states that habitat critical to the survival of the species is areas that includes:
- (a) breeding and foraging habitat in Tasmania
 - (b) foraging habitat on the Australian mainland, including preferred foraging species within known and likely foraging habitat containing preferred Eucalypt species and Spotted Gum.
- 193) I noted that primary threats to the survival of the Swift Parrot include:
- (a) predation of nestlings and incubating females by Sugar Gliders
 - (b) ongoing loss or degradation of breeding and foraging habitat
 - (c) land clearing for agricultural, urban development and forest harvesting

- (d) competition for foraging and nesting resources
- (e) mortality from collisions with human-made objects
- (f) impacts from climate change.

Proposed action area – surveys

- 194) I noted that according to the PD, the Swift Parrot was not recorded in the proposed action area during systematic or opportunistic surveys. The PD states:
- (a) A total of 15.3 person-hours of systematic bird census surveys targeting this species were undertaken over a period of seven days. Systematic bird surveys utilised a 2 ha, 20-minute search method undertaken at dawn (0700 – 1030) and dusk (1500 – 1715).
 - (b) Opportunistic surveys were conducted on site over a period of at least 16 days.
 - (c) A supplementary diurnal bird census was undertaken during daylight hours (between 0900 – 1600) on two separate days. This census was undertaken for a period of 5 minutes at two points at least 50 m from the site boundary along six transects.
 - (d) Surveys were undertaken between May June 2020, which coincides with the period of non-breeding winter dispersal of the species into southeast Australia.

Proposed action area – records

- 195) I noted the department's advice that there is one record of the Swift Parrot on the NSW Government BioNet site within an approximate 10 km x 10 km area of the proposed action. According to Bionet, the species was sighted in late March 2017, immediately adjacent to the south-west corner of the proposed action area. The record notes a single bird was recorded with a flock of Rainbow Lorikeets (*Trichoglossus moluccanus*).

Proposed action area – habitat

- 196) I noted that the Swift Parrot Recovery Plan details key tree species that provide important foraging habitat for Swift Parrots. Key species include *Eucalyptus robusta* (Swamp Mahogany), *Eucalyptus tereticornis* (Forest Red Gum), *Eucalyptus pilularis* (Blackbutt) and *Corymbia maculata* (Spotted Gum).
- 197) I noted that the PD states that Swamp Mahogany was not detected in surveys undertaken in 2006 and 2020. I acknowledged that according to the PD, surveys in 2019 did record the tree species, however the PD notes the record may be a misidentification of *Eucalyptus botryoides* (Bangalay). Notwithstanding the potential misidentification, the PD states that 0.92 ha of Swamp Mahogany occurs on site, sparsely in the sub-canopy of the NSW Bangalay Paperbark Woodland Endangered Ecological Community. I also noted that the PD states Forest Red Gum and Spotted Gum do not occur on site.
- 198) I acknowledged that Blackbutt (*E. pilularis*), which is present in the proposed action area is also listed as a key tree species in the Swift Parrot Recovery Plan. The department considered, and I agreed, that due to flowering and phenological characteristics, Blackbutt is unlikely to provide foraging habitat for the Swift Parrot.

Impacts

199) I noted that at the referral decision stage it was considered that further assessment was required to determine whether the proposed action would have a significant impact on the Swift Parrot. Of the nine significant impact criteria for critically endangered and endangered species listed in the Significant Impact Guidelines, the department considered the following relevant to consider:

- (a) Reduce the area of occupancy of the species.
- (b) Adversely affect habitat critical to the survival of the species.

Reduce the area of occupancy of the species

200) I considered the results of relevant surveys and database records and concluded that it is unlikely the Swift Parrot occupies the proposed action area. I noted that none of the key tree species identified in the Swift Parrot Recovery Plan which are likely to provide foraging habitat for the Swift Parrot (based on their flowering and phenological characteristics) occur within the disturbance area, and only a small amount (0.92 ha) of Swamp Mahogany occurs in the proposed conservation area. I therefore concluded that the proposed action area is unlikely to possess the habitat required to support the occupancy of the species.

Adversely affect habitat critical to the survival of the species

- 201) I noted again, that, according to the Swift Parrot Recovery Plan, habitat critical to the survival of the species includes breeding and foraging habitat in Tasmania, and all preferred foraging species within known and likely foraging habitat on the mainland. Species which occur on site and are listed as preferred foraging species include Swamp Mahogany, Forest Red Gum, Blackbutt, and Spotted Gum.
- 202) I noted the department's advice that the Swift Parrot migrates to mainland Australia in autumn and disperses across forests and woodlands in winter.
- 203) I noted the department's advice that there are 18 recognised Key Biodiversity Areas (**KBA**) important for Swift Parrot conservation and to support the long-term persistence of the species. The Ulladulla to Merimbula KBA (**UMKBA**) is the nearest KBA and is approximately 10 km south of the proposed action area. The UMKBA includes forests dominated by Ironbark and Bloodwood species which are likely to support Swift Parrots in years when Spotted Gums are not flowering.
- 204) I noted that while the Blackbutt is listed as foraging habitat for the species, due to the phenological characteristics of the species at the proposed action area, i.e. summer flowering, I considered it is unlikely that the Blackbutt onsite provides suitable foraging or dispersal habitat for the Swift Parrot.
- 205) Given the species nests in Tasmania and migrates to Australia during autumn and winter (after the Blackbutt trees have flowered at the site), the lack of survey detection, and the paucity of existing records within or near the proposed action area, I considered that the proposed action area is unlikely to be used as foraging or dispersal habitat.
- 206) Based on the above, I considered the Swift Parrot is unlikely to occupy the site in consistent and great numbers, and the habitat is unlikely to be habitat critical to the survival of the species.

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Therefore, in accordance with the Significant Impact Guidelines, I did not consider that the proposed action will have a significant impact on the Swift Parrot.

Avoidance and mitigation measures

207) I noted that the PD does not include avoidance and mitigation measures specific to the Swift Parrot, however, I acknowledged that some of the avoidance and mitigation measures relevant to GHFF may be relevant to the Swift Parrot. For example, the species may benefit from the proposed plantings of Swamp Mahogany. Regardless of these avoidance and mitigation measures, the department considered, and I agreed, that the Swift Parrot is unlikely to be significantly impacted.

Compensatory measures

208) As I considered that the proposed action is unlikely to have a significant impact on the Swift Parrot, I also considered that no compensatory measures are required.

Proposed outcomes and conditions

209) As I considered that the proposed action is unlikely to have a significant impact on the Swift Parrot, I also considered that no conditions are required.

Conclusion for Swift Parrot

210) Based on the lack of survey detection, low number of BioNet records, and the absence of regionally important Swift Parrot tree species within the disturbance area, I considered that significant impacts to the Swift Parrot are unlikely and therefore avoidance, mitigation and offset measures are not required for this species.

Greater Glider (*Petauroides volans*) – Endangered (Vulnerable at the time of the controlled action decision)

Description

- 211) I noted that according to the *Conservation Advice for Petauroides volans (greater glider (southern and central))* (Greater Glider Conservation Advice), the species has a broad distribution across eastern Australia. The species' extent of occurrence is unlikely to have changed significantly since European settlement, however, the area of occupancy has decreased substantially, mostly due to land clearing, and is likely continuing to decline due to further clearing, fragmentation, bushfire, climate change, and some forestry activities. Greater Gliders are highly sensitive to forest clearance, fragmentation, and bushfire.
- 212) I also noted that according to the Greater Glider Conservation Advice, Greater Gliders are largely restricted to eucalypt forests and woodlands, typically found in highest abundance in taller, montane, moist eucalypt forests on fertile soils. Home ranges are relatively small (1-4 ha), occurring at densities of 0.2 to 3.0 individuals per hectare in NSW.
- 213) I acknowledged the key threats to the Greater Glider as listed in the Greater Glider Conservation advice include habitat clearing and fragmentation, inappropriate fire regimes, timber harvesting, entanglement in barbed wire fencing, climate change, overabundant native species (including hyper predation, and competition for den resources), and predation from introduced species.
- 214) I noted that the Greater Glider is included on the *Revised provisional list of animals requiring urgent management intervention following the 2019-2020 bushfires*.

Proposed action area – surveys

- 215) I noted that, according to the PD, the Greater Glider was not recorded during spotlighting surveys undertaken within and adjacent to the proposed action area. The PD states:
- (a) Survey effort for Greater Glider within and adjacent to the proposed action area amounts to 114 person hours over 10 nights (dispersed across a six-week period), covering a 20 ha area.
 - (b) The PD references a 2005 study, *Estimating and dealing with detectability in occupancy surveys for forest owls and arboreal marsupials*⁷, in assessing survey adequacy:
 - i) Four surveys were conducted in favourable survey conditions - calm, moonless early night-time hours, with moderate, above average temperatures.
 - ii) One survey was considered to have poor detection conditions (followed light rainfall, and prior to a cold front coupled with high winds).
 - iii) According to the study (*Wintle, et al., 2005*), under the best detection conditions, the probability of detecting a Greater Glider if present rises to >80% after two surveys and >95% after four surveys.
 - (c) Supplementary surveys were also undertaken. The PD concludes that the overall survey effort for the site has a probability of detecting Greater Gliders of >97%.
- 216) I considered the survey results and report by Gaia Research Pty Ltd (referenced at paragraph 17) which the department commissioned to gain contemporary data on the distribution and density of the species in the region, including Conjola and Morton National Parks. I noted that twenty-five 500 m transects/sites were surveyed for Greater Glider by spotlighting on 15 and 16 March 2021. A total of two Greater Gliders were observed at only one of the 25 sites, both in Conjola National Park, approximately 10 km from the proposed action area.

Proposed action area – records

- 217) I noted the department's advice that there are 35 records of Greater Glider on the NSW Government BioNet site within an approximate 10 km x 10 km area of the proposed action, including within the proposed action area. The records date as far back as 1993, with the most recent record, which is from Curvers Road on the northern boundary of the proposed action area, being from 2017.

Proposed action area – habitat

- 218) I noted the department's advice that the Greater Glider is primarily folivorous, with a diet mostly comprising eucalypt leaves supplemented by buds and flowers from a restricted range of
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⁷ The proponent references detectability conditions according to *Wintle, B.A., Kavanagh, R.P., McCarthy, M.A., and Burgman, M.A. (2005). Estimating and dealing with detectability in occupancy surveys for forest owls and arboreal marsupials. Journal of Wildlife Management 69: 905-917.*

eucalypt species. Preferred feed species vary regionally. I noted that the PD states that the proposed action area contains foraging habitat for Greater Gliders in the form of leaves of Bangalay (*Eucalyptus botryoides*) and other eucalypt species.

- 219) I noted the department's advice that the species is reliant on tree hollows for denning during the day, which are a key limiting resource. The species has a preference for large old trees with hollows >10 cm in diameter; however, I noted that an independent expert consulted by the department stated that conservatively, hollows as small as 7 cm entrance size could be considered denning habitat for the Greater Glider. Live trees are preferred over dead when available. Multiple dens are used by an individual. In five studies across its geographic range, the Greater Glider was found to utilise 25 different tree species for denning.
- 220) I noted that according to the PD, the proposed action area contains 51 hollow bearing trees (HBTs) with a total of 56 tree hollows. Thirty-four of those HBTs contain hollows with a >7 cm aperture. The PD further categorises these hollows as 'likely', 'possible', and 'unlikely' habitat on the basis of whether the hollow could contain interior dimensions large enough to accommodate a Greater Glider and whether the position of the hollow (height in tree, vertical opening) would be suitable:
- (a) Likely – 19 hollows
 - (b) Possible – 9 hollows
 - (c) Unlikely – 10 hollows.
- 221) I acknowledged that the PD states that all hollows on site, even those classed as 'likely', would be unlikely to be utilised by Greater Gliders as none of the hollows on site conform with what has been reported in the scientific literature reviewed for the PD as preferred den sites (i.e., large (>15 cm diameter) hollows in large (>100 cm DBH) old (>150 years) trees).
- 222) I noted that the Gaia Research Report provides regionally specific insight into landscape scale habitat preferences and pressures already facing Greater Gliders in the Conjola region, where the species appears to have declined substantially in distribution and abundance since 1998:
- (a) The decline may have occurred before the 2019-2020 bushfires, as the population nearby in Booderee National Park and elsewhere in the Jervis Bay area declined before 2007.
 - (b) The proposed action area likely previously supported a small population of Greater Glider, as evidenced by older records from within the site. On its own, the site is too small to sustain a viable population. However, it is well connected to 96 ha of Crown land to the west, with a weak link though rural land to the north to Conjola National Park.
 - (c) Gaia Research surveys indicate the closest known population to the proposed action area is approximately 10 km, however the current status and distribution of the Conjola population does not suggest viability in the long-term. If the Greater Glider no longer persists on the proposed action area, as surveys suggest, the probability of animals recolonising this patch is remote, as repeated surveys in the Conjola region indicate that the Conjola population has crashed.
- 223) I noted that although the proposed action area itself was not affected by the 2019-2020 bushfires, the department's BREADS tool identifies that 44 % of Greater Glider habitat in the

Jervis IBRA subregion (where the proposed action is located) was burnt during the 2019-2020 bushfires.

Impacts

- 224) I noted that at the referral decision stage, the department considered that further assessment was required to determine whether the proposed action would have a significant impact on the Greater Glider. Of the nine significant impact criteria for Vulnerable species (see the Significant Impact Guidelines), I considered the following relevant:
- a) adversely affect habitat critical to the survival of the species
 - b) reduce the area of occupancy of an important population.

Adversely affect habitat critical to the survival of the species

- 225) I noted that the Greater Glider Conservation Advice states that an area may constitute habitat critical to survival of the species if it meets any one of the five criteria discussed below, irrespective of the current abundance or density of Greater Gliders, or the perceived quality of the site.
- a) **Large contiguous areas of eucalypt forest, which contain mature hollow-bearing trees and a diverse range of the species' preferred food species in a particular region.**
 - i) I noted that Figure 5.1 of the PD (main document) shows that the vegetation within the proposed action area is part of a large contiguous patch of vegetation where the canopy remained unburnt during the 2019-2020 bushfires. Vegetation survey plots undertaken by the department indicated the presence of four plant community types according to the NSW Plant Classification hierarchy, three of which are dominated by *Eucalyptus* species, particularly Bangalay (*E. botryoides*) and Blackbutt (*E. pilularis*).
 - ii) As I noted in paragraphs 219)-220) above, I considered that the proposed action area does contain hollow bearing trees. I noted however, the age class of the canopy trees is relatively young (<100 years), due to historic clearing, confirmed by the department's site visit. I considered that whilst these hollows may be suitable, based on conservative metrics, the literature suggests these hollows are not preferred habitat.
 - iii) I noted that while the Greater Glider Conservation Advice advises that regionally specific *Eucalyptus* species constitute critical habitat, these regionally preferred species are not listed in detail. The Greater Glider Conservation Advice notes Manna Gum (*E. viminalis*) as an example important feed species for south-eastern NSW, which is not present within the proposed action area. I noted that Greater Glider has however been detected in Bangalay and Blackbutt dominated rainforest and forest

(see Lindenmayer et al., 2008⁸), with an apparent preference for Blackbutt as a food source (see Vinson et al., 2020⁹). I noted that the Gaia Research Report notes that Blackbutt is associated with Greater Gliders in the Conjola area. Concentrations of foliar nutrients and toxins appear to be a key factor in determining food species choice.

Conclusion on criterion

- iv) While the eucalypt forest within the proposed action area contains some of these habitat characteristics, I considered that overall, the younger age class of the trees, paucity of records, and uncertainty concerning preferred forage trees make it unlikely that the vegetation within the proposed action area would constitute habitat critical to the survival of the species under this criterion.

b) Smaller or fragmented habitat patches connected to larger patches of habitat, that can facilitate dispersal of the species and/or that enable recolonisation.

- i) I noted that as discussed at paragraph 222)(c) above, the proposed action area is well connected to crown land to the west of the site and is also weakly connected to the Conjola National Park (through Crown land then freehold land) in the north, where Greater Gliders were recorded in 2021.
- ii) I noted that the Gaia Research Report states that there are several disruptions to connectivity in the area including roads, power easements and patchy forest cover; however, it also acknowledges that in certain areas, factors such as tree canopy height and distance between canopies, would permit dispersal of the Greater Glider given their gliding abilities.
- iii) Regarding recolonisation, I noted the Gaia Research Report concludes that if the Greater Glider no longer persists at the proposed action area (as is the indication from surveys), the probability of animals recolonising this patch is remote as repeated surveys in the Conjola region indicate that the Conjola population has crashed.

Conclusion on criterion

- iv) I considered that while the proposed action area contains areas of connectivity that could in theory facilitate dispersal of the Greater Glider, connectivity is patchy and is generally not secure as trees can be removed for road widening, agricultural activities, and asset protection as a result of the adjacent land being zoned crown and freehold. In addition, I noted the surveys suggest the Conjola population of

⁸ Lindenmayer, D.B., MacGregor, C., Welsh, A., Donnelly C., Crane, M., Michael, D., Montague-Drake, R., Cunningham, R.B., Brown, D., Fortescue, M., Dexter N., Hudson, M., and Gill, A.M. 'Contrasting mammal responses to vegetation type and fire' (2008) 35 *Wildlife Research*, 395-208.

⁹ Vinson, S.G., Johnson, A.P., and Mikac, K.M. 'Current estimates and vegetation preferences of an endangered population of the vulnerable greater glider at Seven Mile Beach National Park' (2020) 46 *Austral Ecology*, 303-314.

Greater Glider is depressed and restricted to a relatively small area and therefore unlikely to recover and even more unlikely to recolonise the proposed action area (Gaia Research Report; 2021¹⁰). I therefore considered that the vegetation within the proposed action area would be unlikely to constitute habitat critical to the survival of the species under this criterion.

c) Cool microclimate forest/woodland areas (e.g., protected gullies, sheltered high elevation areas, coastal lowland areas, southern slopes).

- i) I noted the department's site visit in January 2024 confirmed that the proposed action area is located in a warm temperate climate zone but does contain cool microclimate forest in the form of a patch of Littoral Rainforest located on a sheltered southern slope in the north-east corner of the project area. I considered a small area of the proposed action area may therefore meet this criterion.

d) Areas identified as refuges under future climate changes scenarios.

- i) I noted that the Greater Glider Conservation Advice states that habitat likely to be climate change refuges include sites buffered against desiccating conditions (e.g., sheltered and/or on south-facing aspects) is important. The referral identifies the proposed action area as being gently sloping land with a southerly aspect. The proposed action area may therefore meet this criterion.

e) Short-term or long-term post-fire refuges (i.e., unburnt habitat within or adjacent to recently burnt landscapes) that allow the species to persist, recover and recolonise burnt areas.

- i) I noted that Figure 5.1 of the PD shows that the vegetation within the proposed action area is part of a large contiguous patch of vegetation where the canopy remained unburnt during the 2019-2020 bushfires. As above, the proposed action area does contain one patch of cool microclimate forest, which may act as short-term or long-term post fire refuge as it consists of unburnt habitat within or adjacent to recently burnt vegetation.
- ii) However, while Greater Gliders have been demonstrated to use the habitat within and adjacent the proposed action area in the past, they have not been recorded in or near the site since, or in the years immediately preceding the 2019-2020 fires, as evidenced by surveys undertaken by the proponent, and by Gaia Research. Further, as previously discussed, if the Greater Glider no longer persists at the proposed action area, the probability of animals recolonising this patch is remote, as the Conjola population has likely crashed.

¹⁰ Gaia Research Pty Ltd 2021. Targeted surveys for the Greater Glider *Petauroides volans* in the Conjola area, Nowra. Report prepared for the Department of Agriculture, Water and the Environment.

Conclusion on Adversely affect habitat critical to the survival of the species

226) I considered that the proposed action area may meet some of the criteria for habitat critical to the survival of the Greater Glider as defined in the Greater Glider Conservation Advice. However, I considered that evidence suggests the species is not present in the proposed action area and the probability of the species recolonising the area is remote. I therefore considered that the proposed action is unlikely to adversely affect habitat critical to the survival of the Greater Glider.

Reduce the area of occupancy of an important population.

227) I noted that the Significant Impact Guidelines define an 'important population' as a population that is necessary for a species' long-term survival and recovery. This may include populations identified as such in recovery plans, and/or that are:

- a) key source populations either for breeding or dispersal,
- b) populations that are necessary for maintaining genetic diversity, and/or,
- c) populations that are near the limit of the species range.

228) I noted the Greater Glider Conservation Advice states that, given its Endangered status, all populations are important for the conservation of the species across its range, and no specific populations are identified. While listed as Vulnerable at the time of the controlled action decision, the above criteria are also relevant for Vulnerable species.

229) As I noted in paragraph 222) above, the survey evidence indicates that the Greater Glider no longer persists in the Manyana area, including the proposed action area. I considered that the nearest known population in Conjola National Park arguably is an important population, given the species significant decline throughout the rest of the region and its apparent persistence in the National Park. However, as I noted previously, recolonisation of the proposed action area from this population is unlikely. I therefore considered that it is not likely that the proposed action will reduce the area of occupancy of an important population of Greater Gliders.

Overall Conclusion on Significance of Impacts

230) Based on the above, and in accordance with the Significant Impact Guidelines, I considered that the proposed action is unlikely to result in a significant impact to the Greater Glider (listed as Vulnerable at the time of the controlled action decision), because there is not a real chance or possibility it will adversely affect habitat critical to the survival of the species, or reduce the area of occupancy of an important population of the species.

Avoidance and mitigation measures

231) I noted that although the PD does not include avoidance and mitigation measures specific to the Greater Glider, some of the avoidance and mitigation measures relevant to GHFF may be relevant to the Greater Glider. For example, the retained Reserve vegetation has a dominant canopy of *Eucalyptus pilularis* and *E. botryoides*. However, regardless of these avoidance and mitigation measures, I considered that the Greater Glider is unlikely to be significantly impacted.

Compensatory measures

232) I considered that the proposed action is unlikely to have a significant impact on the Greater Glider, and therefore no compensatory measures are required.

Proposed outcomes and conditions

- 233) I considered that the proposed action is unlikely to have a significant impact on the Greater Glider, therefore no conditions are required or recommended.

Conclusion for Greater Glider

- 234) Based on the above, and in accordance with the Significant Impact Guidelines, I considered that based on the species' overall ongoing decline in the region, survey evidence suggesting that the Greater Glider no longer occupies the proposed action area, and numerous barriers to recolonisation of the species from the known currently persisting population 10 km to the north, significant impacts to the Greater Glider from the proposed action were unlikely and therefore, avoidance, mitigation and offset measures are not required for this species.

Illawarra-Shoalhaven Subtropical Rainforest of the Sydney Basin Bioregion – Critically Endangered

- 235) I noted that while reviewing the data gathered by the department and the proponent, the consultant ecologist considered that the vegetation on site may fit elements of the ISSR's EPBC Act Listing Advice which is included in the *Conservation Advice (incorporating listing advice) for the Illawarra-Shoalhaven subtropical rainforest of the Sydney Basin Bioregion (ISSR Conservation Advice)*. I noted that the consultant ecologist in their report, ultimately determined the vegetation on site was a better fit for Littoral Rainforest (the two communities often have overlapping characteristics).
- 236) I noted that the ISSR Conservation Advice states the ecological community occurs south of Sydney in the Sydney Basin IBRA, within the Illawarra, Jervis and Sydney Cataract IBRA subregions. ISSR is typically associated with fertile soils with greater water-holding capacity. I noted that, as outlined in both the consultant ecologist's report and the department's site visit report, the patch of vegetation occurs on highly fertile, water retaining soils.
- 237) I noted that in addition to the geological features, the proponent's consultant considered that vegetation in the proposed action area technically fitted the Listing Advice criteria for the Illawarra-Shoalhaven subtropical rainforest threatened ecological community. I noted that the consultant ecologist reviewed the plot data and data gathered during the department's site visit and assessed the presence of the ecological community using the statutory listing advice.
- 238) I noted that the ISSR Conservation Advice states that the community can naturally occupy small areas of suitable habitat within other vegetation types. This is consistent with the proponent consultant's conclusion that there is approximately 0.10 – 0.15 ha of potential ISSR within the proposed action area that is predominantly Littoral Rainforest.
- 239) I noted that notwithstanding the analysis above, the consultant ecologist determined that the patch in question is a better fit with Littoral Rainforest, due to its maritime exposure, and due to the species mix which is more aligned with Littoral Rainforest than ISSR. Specifically, the dominance of Lilly Pilly and Sweet Pittosporum (*Pittosporum undulatum*), which is more indicative of Littoral Rainforest at the proposed action area's latitude, rather than ISSR. Based on this analysis, and considering the department's survey and analysis, I considered that ISSR is unlikely to be present.

Magenta Lilly Pilly (*Syzygium paniculatum*) – Vulnerable

- 240) I noted that on 19 June 2024, the department received a letter from MMEA stating that a Magenta Lilly Pilly (Vulnerable) had potentially been identified on site. According to the letter, due to the similarities between the listed species (*Syzygium paniculatum*) and the Lilly Pilly (*Syzygium (Acmena) smithii*), the individuals gathered from the site were reported to be sent for genetic testing.
- 241) I noted that the letter referenced that two independent ecologists have identified the species, however there was no survey data included or evidence provided. There was also no information regarding the qualifications of the independent ecologists who undertook the analysis.
- 242) I noted that on 28 June 2024, a report from MMEA was received by the department. I noted that the report concludes that ‘there is a strong possibility that the specimens examined are Magenta Lily Pilly (MLP) and while due to the absence of flowers of (sic) fruit there is enough evidence to assume presence under the Precautionary principle’.
- 243) I noted that the species has not been identified in any of the previous survey work. Nonetheless, I noted the department assessed the potential impact from the proposed action on the species.
- 244) I noted that according to the *Conservation Advice for Syzygium paniculatum (magenta lilly pilly) (Magenta Lilly Pilly Conservation Advice)*, the species is a small to medium-sized rainforest tree which grows to 18 metres tall and produces white flower clusters and magenta coloured fruit. The species is endemic to NSW and occurs within habitat with a restricted distribution between Conjola National Park in southern NSW and Taree in the north. The species occurs on sandy soil in littoral or subtropical rainforest in coastal areas and is mainly recorded on flat to gently sloping sites on floodplains, creek banks and stabilised sand dunes.
- 245) I noted that the total population is estimated to be approximately 1500 plants, within five identified metapopulations: Jervis Bay, Coalcliff, Botany Bay, Central Coast and Karuah-Manning. Within the five metapopulations, there are 44 known subpopulations.
- 246) I noted that according to the *National Recovery Plan, Magenta Lilly Pilly Syzygium paniculatum (Magenta Lilly Pilly Recovery Plan, 2012)*, ‘all confirmed naturally occurring populations of MLP are considered to be important and, therefore, all habitat in which these populations occur is considered to be critical to the survival of the species’.
- 247) I noted the Jervis Bay metapopulation comprises six known subpopulations, with the closest subpopulation known to occur within the Conjola National Park, within the Nerrindillah Creek Valley. The shortest distance between the Nerrindillah Creek Valley and the proposed action area is approximately 3.3 km.
- 248) I noted that the species was not recorded on site during the surveys undertaken by the department and the proponent’s ecologist, and there is no known population immediately adjacent to the site. I noted that as the report from MMEA submitted that there is a strong possibility that the species does occur, the department undertook an assessment of significance of impacts from the proposed action on the species, using the *Significant Impact Guidelines 1.1*.

- 249) I agreed with the department's assessment which concluded that even if the MLP was found to be present on site, it would be unlikely that the proposed action would constitute a significant impact on the Magenta Lilly Pilly.

Other listed threatened species and ecological communities

- 250) I noted that the department's Protected Matter Search Tool (PMST) Report dated 13 February 2024 identified 93 threatened species and six threatened ecological communities which may occur within a 5 km buffer of the proposed action area. I noted that the report includes additional listed threatened species and ecological communities to those identified in the PMST Report dated 22 June 2020, that was generated at the time of the referral decision.
- 251) I noted a comparison of these reports provided by the department which identified species and ecological communities listed or that had updated listings to a category representing a higher degree of endangerment under the EPBC Act after the EPBC Act controlled action decision for the proposed action. I noted that in accordance with section 158A of the EPBC Act, the approval decision was not affected by the changes in listing of the threatened species and ecological communities in the vicinity of the proposed action where they occurred after the section 75 controlled action decision. I noted that the comparison also included species that were listed at the time of the EPBC Act controlled action decision, but that were not included on the 22 June 2020 PMST Report.
- 252) I noted that the proponent's PD does not identify significant impacts to any other EPBC Act listed species or communities. I noted the department undertook an assessment of potential impacts to all listed threatened species and ecological communities that appeared in the 13 February 2024 PMST Report. I agreed with the department's conclusion that it is unlikely that any individuals of species or ecological communities other than the Littoral Rainforest and the GHFF will be significantly impacted by the proposed action.

Overall conclusion (Listed threatened species and ecological communities)

- 253) I concluded that if the recommended conditions of approval were imposed, the proposed action would not be inconsistent with the *Recovery Plan for the Critically Endangered Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community* or the *National Recovery Plan for the Grey-headed Flying-fox Pteropus poliocephalus*.
- 254) I considered that the likely impacts of the proposed action on the Littoral Rainforest and GHFF will be acceptable, provided the action is undertaken in accordance with the recommended conditions.
- 255) I did not consider that the proposed action will have a significant impact on the MLP, Illawarra-Shoalhaven Subtropical Rainforest of the Sydney Basin Bioregion, Swift Parrot or Greater Glider, or any other relevant listed threatened species or community.
- 256) Having considered all matters required to be considered under the EPBC Act, I concluded the proposed action be approved, subject to the recommended conditions.

Social and economic matters

- 257) I noted that under section 136(1)(b) of the EPBC Act, I must consider economic and social matters in deciding whether or not to approve an action and what conditions to attach to the approval.

- 258) I noted that the proposed action has generated significant public concern. I noted that key relevant economic and social themes raised include (but are not limited to) those listed below which were summarised in the proponent's response to submissions document (**RTS**):
- a) Community impact: The RTS describes impacts as centred around a community which has suffered through the 2019-2020 bushfires and is now fighting to preserve the nearby bushland and is also resistant to further urbanisation of their village.
 - b) Intergenerational impact: The RTS states this theme includes submissions that specifically mention the term 'intergenerational equity', or otherwise refer to the importance of retaining the bush for future generations.
 - c) Housing: According to the RTS, this theme covers a range of concerns, including claims of no demonstrated need for additional housing, the current high vacancy rate in Manyana and over-use of existing housing stock for holiday homes, resulting in the development not contributing year-round to the life and vibrancy of the village.
 - d) Mental health impacts: The RTS states this theme includes submissions expressing concern for the impact of the proposal on the mental health and emotional state of locals, particularly in the context of the impact of the 2019-2020 bushfire.
 - e) Insult to firefighters: According to the RTS, the summary of this theme is that following the heroic efforts of firefighters during the 2019-2020 bushfires, resulting in the bushland on the subject land being preserved, the removal of the vegetation for the proposed development would be considered insulting to firefighters.
 - f) Development out-of-character: The RTS states this theme refers to the scale of the proposed development in the context of Manyana village. It also includes comments critical of the style of housing that is proposed for the estate.
 - g) Lack of infrastructure: According to the RTS, this theme includes reference to the road network (one way in and one way out), sewerage, public transport, shops, schools and medical facilities.
 - h) Impact on tourism: The RTS states this theme predominantly conveyed the message that tourists do not visit Manyana because of a housing development, rather because of its village charm and natural beauty. If the village charm and natural beauty of the locality are diminished by a housing development, tourists will no longer come.
 - i) Symbol of hope: The RTS summarises this theme as, in the aftermath of the 2019-2020 bushfires, the preservation of this bushland is portrayed as a symbol of hope for the future for the local community.
 - j) Inappropriate location: According to the RTS, a number of submissions indicated that the location of the proposed development was inappropriate and was more suited to the larger suburban areas of the Shoalhaven, or else land already cleared, or areas that were burnt out.
- 259) I noted that the original PD which was published for public comment included a socio-economic impact analysis prepared by PPM Consulting in 2021. I noted that in response to issues raised through the public comment period regarding the original socio-economic report, the proponent commissioned the University of Sydney (**UTS**) to prepare a new report.

- 260) I noted the main findings of the UTS report as summarised in section 6.1 of the report include, but are not limited to:
- a) The development will not only create jobs for the local areas in Shoalhaven, but also create jobs for up-stream or down-stream development-related industries, i.e., building material and services industries. The developed housing will also increase domestic visitors, daily travellers, and tourism due to the improved built environment after the development and the pull factor from active economic activities.
 - b) The development will not only increase the local population and the number of households, but also improve cultural and ethnic diversity, as well as enhance cohesiveness in the community. In particular, intergenerational equity is the main issue that exists in the community. Without the development, intergenerational inequity costs will be borne by the current younger generations in terms of housing supply.
 - c) While environmental protection is one of the important elements in the ecologically sustainable development (ESD) assessment, the social and economic impacts of the development are equally critical in undertaking the ESD assessment, perhaps even more critical. Thus, it is concluded that environmental protection of the development at the expense of economic and social benefits to the local community, is not a legitimate integration of ESD principles.
- 261) I considered economic and social matters in recommending the approval of the proposed action. In particular, I noted:
- a) The public have raised concerns about the proposed action, including in relation to potential impacts to economic and social matters.
 - b) The proponent has commissioned two social and economic impact assessments, for the proposed action. These reports found the proposed action will have positive social and economic benefits including:
 - i) A total estimated rise in output of \$63.1 million on the Shoalhaven economy.
 - ii) A total estimated increase of 217 jobs located in the Shoalhaven economy.
 - iii) Further job creation for the up-or downstream development-related industries, i.e., building material and services industries.
 - iv) Additional housing – the evidence suggests that there is a high demand for housing in Manyana.
 - v) An increase in domestic visitors, daily travellers and tourism due to the improved built environment after the development and pull factor from active economic activities.
 - vi) Improvements to cultural and ethnic diversity, as well as enhancement of cohesiveness in the community. In particular, intergenerational equity is the main issue that exists in the community. Without the development, intergenerational inequity costs will be borne by the current younger generations in terms of housing supply.
 - c) I noted the Pacific Planning report which was published with the original preliminary documentation notes that the proposed action area has been earmarked for residential development since 1964 and approved for the proposed development since 2008. I noted Shoalhaven City Council's strategic documents support the development site, which is

zoned R2 Low Density Residential. Council has already invested in services infrastructure to enable the development to proceed. I also noted, however, Shoalhaven City Council has also written to the Minister, advising Council has been advocating for the site to be acquired for conservation purposes and that this has been a matter of negotiation between Council and the NSW State Government.

- d) I noted that many of the public comments referenced the 2019-2020 bushfires and called for a period of recovery after the bushfires.
- 262) I considered there are economic benefits which are expected to flow to the broader community because of the project. There are also social benefits, with an expected increase in available housing at Manyana, with flow-on benefits for future generations.
- 263) I recognised the importance of the negative social implications raised in public submissions, including the impacts on the mental health of elements of the Manyana community should the development proceed, the desire of the community to retain the bushland for conservation, and the efforts the local community went to in preserving the development site during the 2019-2020 bushfires. I acknowledged these themes are a significant aspect of the public submissions received and are therefore highly relevant to my decision making with respect to paragraph 136(1)(b) of the EPBC Act.

EPBC Act does not regulate land zoning under State/Council law

- 264) I noted that the subject land has been zoned for residential development since mid-last century and the land has been lawfully acquired by the proponent. State and Council laws govern land tenure and acquisition in this circumstance and the type of activity which occurs on that land is determined by those laws. Furthermore, the proponent lawfully received state planning approval for the development in 2008.
- 265) I noted that matters of land zoning and tenure are regulated by the NSW Government and Shoalhaven City Council. I considered evidence of this is provided in a letter from the Shoalhaven City Council dated 9 February 2024, which outlines Council's ongoing engagement with the relevant NSW Ministers and government authorities regarding acquisition of the land for conservation purposes.

Impacts on Part 3 protected matters are acceptable

- 266) I noted the EPBC Act regulates significant impacts on matters protected under Part 3 of the EPBC Act.
- a) As outlined in this statement, I considered the impacts on the matters protected by Part 3 of the EPBC Act are acceptable, subject to the recommended conditions.
 - b) I considered the impacts on Part 3 protected matters have been properly characterised and appropriate avoidance, mitigation and offsetting measures, consistent with statutory documents, have been recommended as conditions of approval.
 - c) I noted the department undertook an independent environmental survey of the site to validate the findings of the PD's environmental assessment.
 - d) I noted that the department recommended conditions of approval that included staging, meaning there would be additional time for the surrounding bushland to further recover.

- e) I concluded that the magnitude of impacts from the proposed action on EPBC Act Part 3 protected matters are acceptable and manageable.

Decision on Part 3 protected matters in the context of social considerations

- 267) I acknowledged the depth of the social impacts of the proposed action outlined in many of the public comments. I also acknowledged there are social benefits which are likely to arise because of the proposed action. In making my decision, I had regard to the social impacts of the proposed action, including the effects of a possible approval on the Manyana community. Having had regard to the social implications of the proposed action, I considered the impacts on the matters regulated under Part 3 of the EPBC Act are acceptable.
- 268) I noted that many of the social concerns raised through the public are the responsibility of the NSW State Government and the Shoalhaven City Council (land zoning and tenure decisions). In deciding whether or not to approve the taking of the proposed action and what conditions to attach to the approval, I considered the economic and social matters raised during the proposed action's assessment, so far as they are not inconsistent with the other requirements of Subdivision B of Part 9 of the EPBC Act. In this context, I concluded that the proposed action will have acceptable impacts on EPBC Act Part 3 protected matters.

Proponent comments on proposed conditions related to social and economic impacts

- 269) I noted that in response to my proposed decision made on 20 March 2024, the proponent provided additional comments. The proponent commented on the proposed conditions outlining how they have negative social and economic impacts. The proponent referred to the UTS Report reiterating comments from the report. Additionally, on 24 May 2024 the proponent provided further comments on the negative social and economic outcomes arising from the proposed conditions including that:
- a) The proposed conditions render the development consent granted by the NSW Planning Minister in 2008 ... and the subdivision works certificate issues by Shoalhaven City Council in 2019 inutile.
 - b) The proposed conditions ... will result in the inability to deliver critically important new housing, perpetuating the social and economic problems caused by a significant lack of supply.
 - c) The housing project is a site already zoned for residential development, and moreover, benefits from a development consent and subdivision works certification for the new housing.
 - d) Local, State and Federal Governments have acknowledged that Australia is experiencing a housing shortage.
 - e) The decision will entrench economic inequality between homeowners and those who do not own homes.
 - f) The housing crisis is tangibly impacting people on the South Coast of NSW, and efforts being made to respond to it are:
 - i) NSW Government is improving supply, for example committing \$35 million to a build to rent project for 60 units.

- ii) Shoalhaven Council has launched a new campaign “Year to Thrive together campaign to help people doing it tough”, as a result of “the impact of housing shortages and increasing costs continu[ing] to compound in the Shoalhaven”.
 - iii) A Mayoral Letter “It made an appeal to owners of vacant properties to consider making their properties available to long-term renters and providers of Affordable Rental Housing”.
 - g) The housing project is shovel-ready, subject only to obtaining approval under the EPBC Act. However, the proposed conditions result in a constructive refusal of the activity. Unlike much of the other activity being undertaken by the Federal and State Government to incentivise new zonings, approvals, and the physical building of new dwellings, all of the work has already been done for this site.
 - h) The development is suited to owner occupiers, rather than investors and purchasers of holiday homes. Stage 1 of the development was sold out in weeks.
 - i) Ozy Homes is willing to contribute 10% affordable housing within each stage of the project to assist towards relieving the current housing crisis. Preliminary discussions with affordable housing providers have been undertaken, however agreements cannot be entered into until the homes are at least close to completion.
 - j) Small to medium land developers in Australia face grave difficulties unable to spread risk over a large portfolio of landholdings. Due to the internal rates of return, these companies require scale, meaning smaller housing projects run by small to medium housing developers will not proceed when these projects cumulatively contribute significantly to the supply across each State and Territory.
- 270) I noted that in response to the proponent’s comments and discussions held with the proponent related to social and economic impacts, the conditions of approval were revised to enable clearing of 0.04 ha of Littoral Rainforest in Stage 4 and to provide for the avoidance of Stage 3 of the proposed action, and the development and implementation of an Offset Management Plan to protect the remnant Littoral Rainforest in perpetuity.
- a) I noted that avoiding Stage 3 will result in the removal of 29 lots from the development and that the department estimated that the development will be able to provide for 153 lots, based on the proponent’s 2008 development consent which is for a total of 182 residential lots. I considered the addition of 153 lots to the local housing supply will still contribute towards available housing stock in Manyana and address housing inequality in the locality, while also achieving ecologically sustainable outcomes.
- 271) I noted that the additional site survey conducted by the department was undertaken partially in response to public comments on the PD. The subsequent identification of Littoral Rainforest on site, its avoidance, mitigation, offsetting and management, including the removal of Stage 3 from the proposed action has resulted in additional environmental protection of matters protected by Part 3 of the EPBC Act. I considered the social environmental conservation benefit resulting from the protection of Stage 3 will be the addition of a protected area (of previously unidentified Littoral Rainforest) to the quantum of reserves and protected vegetation within the local community.

Factors to be taken into account

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

272) In deciding whether or not to approve the taking of an action and the conditions to attach to an approval, section 136(2)(a) of the EPBC Act provides I am required to take into account the principles of ecologically sustainable development (**ESD**). The principles of ESD, as defined in Part 1, section 3A of the EPBC Act, are:

- (a) Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations.
- (b) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the Precautionary Principle; also section 391 of the EPBC Act).
- (c) The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.
- (e) Improved valuation, pricing and incentive mechanisms should be promoted.

273) In addition, section 391 of the EPBC Act provides that I must take into account the precautionary principle in deciding whether or not to approve the taking of an action. The precautionary principle requires that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

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

- 274) I noted the brief, the proposed decision, and the assessment documentation provided, contained information on the long-term and short-term economic, environmental, social and equitable considerations that are relevant to the decision.
- a) I noted that relevant short-term considerations, include but are not limited to, the impacts to vegetation and habitat for matters protected by a provision of Part 3 of the EPBC Act. I noted that these impacts will be avoided, mitigated, offset and managed. I noted that the proposed action now avoids an additional area of Littoral Rainforest at a cost to the proponent, however, I considered the proposed action can still proceed. The area of Littoral Rainforest will be protected and legally secured. I also noted that long-term impacts to the area will be mitigated and managed. Information is presented on the views of local residents who wish to see the entire area protected. Information has also been presented on the needs for additional housing. Extensive surveying has now been undertaken on the presence of habitat for matters which are regulated under the EPBC Act, and this has been presented for the decision maker.

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 (the Precautionary Principle; also section 391 of the EPBC Act).

- 275) In making my decision under section 133, I am required to take account of the precautionary principle (section 391), to the extent that I can do so consistently with the other provisions of the EPBC Act. In making my decision under section 133, in considering matters relevant to the matters protected by the controlling provisions for the proposed action, and economic and social matters, I am required to take into account the principles of ecologically sustainable development, which include the precautionary principle (section 3A(b) of the EPBC Act). The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.
- 276) I took account of the precautionary principle by considering whether there are threats of serious or irreversible environmental damage with respect to the relevant matters protected by the EPBC Act and considering whether there is a lack of scientific certainty.
- a) The department considered, and I agreed, that there is a threat of serious or irreversible environmental damage, but there is not a lack of full scientific certainty about the likely nature and/or extent of those threats. In making this determination, I noted:
 - i) There is scientific certainty that the proposed action will impact the area of Littoral Rainforest and GHFF habitat identified on site.
 - ii) I noted that the proponent maintains that Littoral Rainforest is not present at the site.
 - iii) I took into consideration the additional information provided by the proponent's ecologists since the initial proposed action decision. The department considered, and I agreed, that, based on the Littoral Rainforest Listing Advice, the patch meets the required condition thresholds for Littoral Rainforest. This is based on the department's site visit surveys, independent expert analysis and review, and confirmation of the presence of Littoral Rainforest from the department's internal Ecological Communities Section.
 - iv) In addition, I considered additional analysis undertaken by the department in response to the proponent's ecologists' comments provided on 5 April 2024 and 19 April 2024 which confirm the presence of Littoral Rainforest.
 - v) The department considered, and I agreed, there is sufficient scientific evidence that the vegetation on site meets the listing criteria for Littoral Rainforest.
 - vi) The recommended decision and proposed conditions incorporate (rather than postpone) measures to prevent the degradation of the environment.
 - b) I noted that there has been considerable survey effort and analysis undertaken on the environmental impacts of the proposed action. In addition to the surveys and assessments undertaken by the proponent the department has:
 - i) Engaged an independent survey of impacts to the Greater Glider.
 - ii) Undertaken its own survey.
 - iii) Engaged an independent expert on Littoral Rainforest.
- 277) For these reasons, and taking into account all relevant information, I considered that the precautionary principle does not apply, because, while there is a threat of serious or irreversible

environmental damage, there is not a lack of full scientific certainty about the likely nature and/or extent of those threats.

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.

278) I noted that the department had considered the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for this project, and I agreed that their advice reflected that consideration. Additional areas of Littoral Rainforest habitat have been identified through the department's site visit, and Stage 3 of the proposed action will not proceed and will be protected so it can be maintained and enhanced through an Offset Management Plan, ensuring the habitat will be present for the benefit of future generations.

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

279) I noted that the department had considered the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for the proposed action, and I agreed that their advice and the recommended conditions of approval reflect that consideration. Evidence of this is the extensive engagement with the proponent following the identification of Littoral Rainforest and the resulting conditions of approval which provide for the conservation and maintenance of its ecological integrity, which has been a fundamental consideration in formulating the final conditions of approval.

Improved valuation, pricing and incentive mechanisms should be promoted.

280) I noted that the department's advice includes reference to, and consideration of, a range of information on the economic costs, benefits and impacts of the project. Where impacts cannot be avoided, for example, to 0.04 ha of Littoral Rainforest, the department has recommended conditions that require offsetting mechanisms.

Precautionary Principle – section 391

281) I considered that the precautionary principle does not apply, because, while there is a threat of serious or irreversible environmental damage, there is not a lack of full scientific certainty about the likely nature and/or extent of those threats. My consideration is further set out at paragraphs 275)-276) above.

Preliminary documentation – section 136(2)(bc)

282) In accordance with section 136(2)(bc)(i), the documents given to the minister under section 95B(1) were provided to me as an attachment to the approval decision brief, which I read and took into account.

283) In accordance with section 136(2)(bc)(ii), the recommendation report relating to the action given to the minister in accordance with section 95C was provided to me as an attachment to the approval decision brief, which I read and took into account.

Other information – section 136(2)(e)

284) I noted that there are no relevant strategic assessments to my decision.

Proponent comments on proposed decision and conditions

285) I noted that there has been considerable correspondence from the proponent since the time of the proposed decision on 20 March 2024, which was provided to me as attachments to the approval decision brief. I noted the department prepared detailed responses to matters raised by the proponent (particularly the ecological matters) which was provided to me for consideration. I noted that the department wrote to the proponent on 14 August 2024 addressing their key concerns, in addition, I noted further consideration of key matters raised by the proponent and departmental responses in the paragraphs below. Correspondence between the proponent and the department is set out at 88)-108).

Identification of Littoral Rainforest

286) I noted the department identified the presence of the Littoral Rainforest during the site visit in January 2024. The department provided the January 2024 site visit report to the proponent, who upon taking additional surveys of the site, disagreed with the department's findings of the presence of the Littoral Rainforest.

287) The department provided me with a figure that shows the transect plots that the proponent's ecologists subsequently undertook to determine the vegetation structure within the north-east patch of potential Littoral Rainforest vegetation. I noted the department's advice that a certain percentage of the transect plots in the south-west corner occur outside of the area the department considers to be rainforest.

288) The department noted the proponent offered in the letter to remove Stage 3 from the development footprint to conserve the Littoral Rainforest. The department considered, and I agreed that additional protection and management measures were required to mitigate indirect impacts to the remnant Littoral Rainforest. As a result, I conditioned the development and implementation of an Offset Management Plan to manage and protect the Littoral Rainforest in Stage 3 in perpetuity. The department considered, and I agreed, that the protection and management of the retained vegetation would appropriately conserve and protect the retained vegetation in perpetuity.

The independence of the consultant ecologist in undertaking the Littoral Rainforest review due to their potential conflicts of interest and apprehended bias, including linkages with lobbyists against the development.

289) Regarding the independence of the consultant ecologist, prior to their engagement, I noted that they had completed a conflict-of-interest declaration regarding an approach for advice from the MMEA. In May and June 2021, the consultant ecologist advised they had been contacted by the MMEA, regarding a different project in Manyana - the North Manyana Subdivision (EPBC 2021/8948).

- a) The consultant ecologist noted that the inquiry from MMEA was primarily fauna-related. They advised they provided high-level advice to MMEA about biodiversity stewardship credits.
- b) The consultant ecologist provided advice regarding biobanking in NSW and options that the NSW Government provides to secure significant koala habitat. They noted this was the extent of their engagement with MMEA. They advised no information was provided to MMEA about Littoral Rainforest.

- 290) I noted, the department received additional information from the proponent regarding work the consultant ecologist had undertaken for the World Wildlife Fund (WWF), regarding their campaign, *'Defending the unburnt six'*. Defending the unburnt six is a campaign between WWF Australia and the Environmental Defenders Office (EDO) to protect six priority areas of unburnt forest in six landscapes following the 2019/2020 bushfires. I noted that the South Coast is one of the six landscapes and incorporates the proposed action area.
- 291) The proponent advised the consultant ecologist was credited with providing advice in the March 2024 report *"Bushfires, Bureaucracy and Barriers: How poorly implemented critical habitat frameworks risk failing the survival and recovery of threatened species and ecological communities"*. Subsequently, I noted the department sought clarification from the consultant ecologist on this:
- a) On 16 July 2024, the consultant ecologist informed the department that their involvement in the Report was limited to an unfunded phone call and email correspondence regarding the NSW Biodiversity Conservation Act process of declaring *"Areas of Outstanding Biodiversity Value"* (AoBV).
 - b) The consultant ecologist was contacted by the EDO as they are a recognised expert on two *Callistemon* species which they nominated for listing previously. The consultant ecologist advised they provided several paragraphs of advice on the report, none of which they advised are related to rainforest or any projects in Manyana.
 - c) The consultant ecologist informed the department their advice was limited to threatened flora species and the mention of the Fitzroy Fall Spiny Crayfish as a potential AoBV candidate species. The consultant ecologist advised their contribution to the report was limited to technical and administrative issues associated with the NSW AoBV nominations, and some advice regarding listings and how they could be improved.
- 292) The department noted in the briefing material that the consultant ecologist's advice to the EDO was not relevant to the Manyana project, their advice related to NSW processes for listing AoBV species and areas. This does not form part of the EPBC assessment process. Additionally, the consultant ecologist had informed the department that they had a limited understanding of the Manyana site prior to providing this advice to the EDO.
- 293) I noted the department's advice that the consultant ecologist is a threatened flora expert in NSW, and it is not uncommon for consultant experts to provide services to proponents, governments and interested community parties at different stages in their careers. The department noted, when the proponent and the proponent's ecologist were initially informed the consultant ecologist had been engaged, the proponent's ecologist advised that they knew the consultant ecologist and regarded them as a 'good botanist'. The department had sought advice from the department's Ecological Communities Section (which uses specialist ecological consultants to support the Minister's Threatened Species Scientific Committee in making listing decisions) about suitably qualified experts and the consultant ecologist was recommended as an expert who is very familiar with ecological communities of the Sydney Basin Bioregion and the EPBC Act listing processes and supporting documentation (Conservation Advices, Listing Advices and Recovery Plans). The department noted, the consultant ecologist had also previously provided professional services to the department's Ecological Communities Section and was

considered suitably qualified. I noted the department subsequently advised the proponent of this information.

- 294) For these reasons, I did not agree with the proponent's concerns as to the ecologist's independence on the issue on which they were asked to advise.

Insufficient time for consideration of the updated conditions of approval, in accordance with section 131AA of the EPBC Act.

- 295) I noted that initial consultation under section 131AA occurred from 22 March 2024 to 5 June 2024.
- 296) The minimum required 10 business days for comment on the proposed conditions of approval was extended on four separate occasions to allow the proponent additional time to undertake additional surveys and respond while the department engaged a consultant ecologist to review all relevant data and determine the presence of the Littoral Rainforest on the site.
- 297) I noted that while the department considered that the timeframe to receive comments under section 131AA had appropriately been undertaken by the department, on 18 July 2024, the department wrote to the proponent and provided an additional 10 business days to provide comments on the proposed conditions of approval. The final timeframe for providing comments was extended to 1 August 2024.
- 298) The department noted, and I agreed, that there has been extensive consultation regarding the proposed conditions of approval with the proponent. The proposed conditions were initially provided on 22 March 2024, subsequent revisions of the conditions were provided to the proponent, with the penultimate version provided on 5 July 2024 and the final version provided on 14 August 2024. Final comments were received from the proponent on 26 August 2024.

Relevant advice - section 136(2)(fa)

- 299) I noted that the proposed action does not involve unconventional gas or large coal mining development. Accordingly, no advice notice relating to the action was requested or given to the Minister under section 131AB.

Information in a notice - section 136(2)(g)

- 300) I noted that no notice relating to the action was requested or given to the Minister under subsection 132A(3).

Other matters for decision making

Person's environmental history – section 136(4)

- 301) Pursuant to s136(4) of the EPBC Act, when deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, I may consider whether the person is a suitable person to be granted an approval, having regard to:

- the person's history in relation to environmental matters; and
- if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

- 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.
- 302) I noted that on 23 November 2023, the department’s Compliance and Enforcement Branch (CEB), conducted an environmental history check on the proponent in accordance with section 136(4) of the EPBC Act. The check found no adverse history identified relating to contravention of national environmental law by the proponent.
- 303) I noted that CEB stated that they cannot advise on whether there has been a contravention of state laws associated with the proponent; and that at the time the environmental history of the proponent was investigated, the CEB were unable to check the historical compliance databases which held records up until September 2021.
- 304) CEB undertook an additional history check, and on 24 July 2024, confirmed that there was no adverse history relating to the contravention of national environmental law for the proponent.
- 305) I noted the proponent has indicated in both the referral and PD that there have never been any proceedings against Manyana Coast Pty Ltd under a Commonwealth, State or Territory law for the protection of the environment, or the conservation and sustainable use of natural resources.
- 306) I noted that the PD notes that Federal Court proceedings relating to this project were brought against a different company, Ozy Homes Pty Ltd, by MMEA in May 2020. According to the PD, MMEA sought a declaration that the project is likely to have a significant impact on listed threatened species protected under sections 18 and 18A in Part 3 of the EPBC Act and seeking an injunction from carrying out the project unless and until the project is approved under Part 9 of the EPBC Act. The PD states MMEA discontinued the proceedings on 5 June 2020, and no adverse finding against Ozy Homes Pty Ltd was made.

Threatened species and endangered communities – section 139

- 307) Section 139(1) of the EPBC Act provides that in deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A, the taking of an action, and what conditions to attach to such an approval, I must not act inconsistently with Australia’s obligations under:
- the Biodiversity Convention; or
 - the Apia Convention; or
 - CITES; or
 - a recovery plan or threat abatement plan made or adopted under sections 269A and 270B, respectively.
- 308) Further, section 139(2) provides that if 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, in deciding whether to approve the taking of the action, I must have regard to any approved conservation advice for the species or community.

Biodiversity Convention

- 309) I considered 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.

- 310) I noted the department's advice that the recommendations are not considered to be inconsistent with the Biodiversity Convention, which promotes environmental impact assessment (such as this process) to avoid and minimise adverse impacts on biological diversity. I gave particular consideration to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.
- 311) I noted the department's advice that the Biodiversity Convention has been considered in, and is not inconsistent with, the recommended approval which requires avoidance, mitigation, and management measures for listed threatened species and communities. The recommended approval does not involve the use of genetic resources and is therefore not anticipated to result in any benefits from the utilisation of a genetic resource.

Apia Convention

- 312) 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.
- 313) The Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, Australia's obligations under the Convention have been taken into consideration. I considered the department's recommendations were not inconsistent with the Convention which has the general aims of conservation of biodiversity.

International trade in endangered species

- 314) 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.
- 315) I considered the department's recommendations were not inconsistent with CITES as the proposed action does not involve international trade of wild animals and plants.

Recovery Plans

- 316) The Recovery Plans relevant to the proposed action and assessment were:
- (a) Department of the Environment and Energy (2019). *National Recovery Plan for the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community*. Canberra: Commonwealth of Australia.
 - (b) Department of Climate Change, Energy, the Environment and Water (2024). *National Recovery Plan for the Swift Parrot (Lathamus discolor)*. Department of Climate Change, Energy, the Environment and Water, Canberra.
 - (c) Department of Agriculture, Water and the Environment (2021). *National Recovery Plan for the Grey-headed Flying-fox Pteropus poliocephalus*. Canberra: Commonwealth of Australia.

(d) Office of Environment and Heritage (2012). *National Recovery Plan Magenta Lilly Pilly Syzygium paniculatum*. Office of Environment and Heritage NSW, Sydney.

317) The above listed Recovery Plans were provided as attachments to my approval decision brief.

National Recovery Plan for the Littoral Rainforest

318) I noted that the recovery plan for Littoral Rainforest came into force in 2019. It identifies a range of threats currently impacting upon the ecological community, the majority of which can be considered human-mediated as they are either a direct result of human activity or an indirect consequence of human actions. These threats include urban development, tourism and visitor disturbance, climate change, weed invasion, fire, agriculture, feral animals, mining and industrial development, exotic pathogens, and other natural disturbances.

319) The overarching objective of the Littoral Rainforest Recovery Plan is to provide for the management and research actions necessary to stop the decline, and support the recovery, of Littoral Rainforest so that its chances of long-term survival are maximised. The Littoral Rainforest Recovery Plan states, the primary goal should be to avoid all impacts to patches of Littoral Rainforest that meet the condition thresholds in the ecological community's Listing Advice. This includes not undertaking activities within close proximity of the ecological community.

320) I noted that the department first positively identified Littoral Rainforest on site in January 2024. The area of Littoral Rainforest was subsequently refined by the consultant ecologist to an area of 1.01 ha and the proponent was informed of this in May 2024 and advised that protection of the area would be conditioned accordingly. I noted that on 24 May 2024 the proponent requested more time to consider the implications of the identification of Littoral Rainforest and raised concerns that this was a new threatened ecological community which had not been previously raised throughout the project's EPBC Act assessment, which had commenced in 2020. The proponent maintained that Littoral Rainforest is not present on site and advised that the department's proposed conditions were fundamentally unworkable and that if the finding is that Littoral Rainforest is present, that offsets be imposed, consistent with the Littoral Rainforest's Recovery Plan, because impacts cannot be avoided at this late stage in the project's EPBC Act assessment.

321) I noted that the proponent advised that the Recovery Plan has been considered in the proponent's plan to avoid Littoral Rainforest, but that the Recovery Plan also acknowledges that sometimes it will not be possible to avoid impacts, and where a proponent cannot plan to avoid, that impacts be minimised or offsets applied. The proponent contended that offsets are legitimately a last resort in the present circumstances.

322) I noted that on 15 July 2024 the proponent responded to the department with alternative ameliorative and offsetting measures by offering the entirety of Stage 3 for vegetation enhancement and protection, which would result in a superior sustainable ecological outcome when compared with the simple avoidance measures which had been proposed by the department. The department noted that the proposed protection of Stage 3 would result in clearance of 0.04 ha of Littoral Rainforest, being those areas which occur in Stage 4.

- 323) I noted that there are ecological benefits resulting from protection of Stage 3 and offsets from the clearing of Stage 4. Additional measures that can be applied where an offset is required include:
- a) The department can require an offset site management plan for Stage 3 that will provide for the proactive management and habitat quality improvements to the 0.97 ha of Littoral Rainforest within Stage 3.
 - b) The ability for the department to condition for the legal securement of Stage 3 as an offset site which will require enduring legal protection for the site against activities incompatible with conservation.
- 324) Furthermore, I considered the area of Littoral Rainforest presently on site is threatened by indirect impacts as revealed in both the department’s survey and the proponent’s ecologist’s subsequent advice, which noted evidence of rubbish dumping and resulting weed incursion into native vegetation. These impacts are an identified threat in the Recovery Plan and through an Offset Management Plan, the department will be able to ensure proactive management from these indirect impacts.
- 325) I noted the proponent had also subsequently advised a bushfire Asset Protection Zone (**APZ**) is likely to be required around the retained native vegetation in Stage 3. The Offset Management Plan condition also provides for the quantification and compensation of any impacts resulting from the requirement for an APZ under NSW legislation and guidelines. I noted the department’s advice that the minimum distance for the APZ would be between 11 m and 30 m depending on what the effective slope is. Following the guidance in the NSW Government’s information from the Planning for Bush Fire Protection 2019 website, the department considered, and I agreed the APZ distance from the edge of Stage 1 will likely be 11 m because Stage 3 is upslope of the development and the site has been identified as rainforest (see Table A1.12.2 from the NSW Guidelines below).

Table A1.12.2

Minimum distances for APZs – residential development, FFDI 100 areas ($\leq 29\text{kW/m}^2$, 1090K)

KEITH VEGETATION FORMATION	EFFECTIVE SLOPE				
	Up slopes and flat	>0°-5°	>5°-10°	>10°-15°	>15°-20°
	Distance (m) from the asset to the predominant vegetation formation				
Rainforest	11	14	18	23	30
Forest (wet and dry sclerophyll) including Coastal Swamp Forest, Pine Plantations and Sub-Alpine Woodland	24	29	36	45	56
Grassy and Semi-Arid Woodland (including Mallee)	12	16	20	25	32
Forested Wetland (excluding Coastal Swamp Forest)	10	12	16	20	26
Tall Heath	16	18	20	22	25
Short Heath	9	10	12	13	15
Arid-Shrublands (acacia and chenopod)	6	7	8	9	10
Freshwater Wetlands	5	6	6	7	8
Grassland	10	12	13	15	17

- 326) I noted that the Littoral Rainforest Recovery Plan references potential hydrological changes due to developments as a threat to Littoral Rainforest. I considered the department’s advice that the Littoral Rainforest patch is located within an elevated coastal knoll within the north-eastern section of the site. I agreed with the department’s consideration that the positioning of the Littoral Rainforest uphill from the development site will largely mitigate the risk of run-off or associated hydrological changes from construction and increased impervious surfaces. The

Offset Management Plan will enable proactive management of this, and other residual impact sources.

- 327) I noted the Recovery Plan states that, critical to the success of these objectives is the implementation of active management through natural regeneration and restoration using best practice standards and systems to prevent further degradation of the remaining patches of Littoral Rainforest within the fragmented landscape, and to promote recovery within those degraded patches. The Recovery Plan, notes, without active management, detrimental activities like coastal development and vegetation clearing, weed invasion, feral grazing, and recreational impacts will continue. Active management includes the use of assisted natural regeneration and revegetation techniques to increase the extent and condition of vegetation in the ecological community. I considered that the department’s recommended conditions of approval for the active management of Littoral Rainforest in Stage 3 are consistent with the Recovery Plan.
- 328) The department considered, and I agreed, that the proposed action, if undertaken in accordance with the recommended conditions of approval will be consistent with the Littoral Rainforest Recovery Plan for the following reasons.

Recovery Plan Objectives	How the Decision Addresses the Recovery Plan
The management actions necessary to stop the decline of the ecological community across its distribution are well understood and being implemented.	<p>The protection of Littoral Rainforest in Stage 3 (Condition 2, d-f) will enable proactive management of Littoral Rainforest and stop its decline from current rubbish dumping through an Offset Management Plan (Condition 13).</p> <p>The Offset Management Plan also provides for habitat quality improvement.</p> <p>These measures, implemented through the conditions of approval will stop the decline of the ecological community through its avoidance, protection and improvement.</p>
The known extent (area) of Littoral Rainforest has been maintained or extended.	<p>The assessment has resulted in the identification of a previously unidentified area of Littoral Rainforest. The decision and conditions of approval provide for the protection of Stage 3 which is 96.040 % of the extent within the proposed action area.</p> <p>Protection of Stage 3 will maintain the newly identified extent. Habitat improvement through the Offset Management Plan is also consistent with this objective.</p>
The condition of the ecological community has been improved across its distribution.	The Offset Management Plan provides for habitat quality improvement.

	<p>These measures, implemented through the conditions of approval, will improve the condition of the ecological community across its distribution.</p>
<p>The chances of the long-term persistence of Littoral Rainforest in nature have been maximised.</p>	<p>The protection of Littoral Rainforest in Stage 3 (Condition 2, d-f) will enable persistence of Littoral Rainforest in nature. The Offset Management Plan (Condition 13) will increase the chances of the long-term persistence in nature.</p> <p>These measures, implemented through the conditions of approval, will maximise the chances of the long-term persistence of Littoral Rainforest in nature.</p>
Recovery Plan Key Strategies	How Decision Addresses the Recovery Plan
<p>Implement planning, regulatory policies and actions to protect Littoral Rainforest.</p> <ul style="list-style-type: none"> • Long term protection will be required to ensure the persistence of Littoral Rainforest into the future. • Protect the remaining distribution of Littoral Rainforest and its surrounds from coastal development and land use change, including urban development. • Avoid potential impacts and mitigate potential threats - Offset significant impacts. 	<p>The avoidance and protection of Littoral Rainforest in Stage 3 (Condition 2, d-f) will enable proactive management of Littoral Rainforest to stop its decline from current rubbish dumping through an Offset Management Plan (Condition 13).</p> <p>This area of Littoral Rainforest will be protected in the long-term through the legal securement of the site (Condition 3). The department can require Stage 3's legal securement because the site is also being used as an offset for the clearing of 0.04 ha of Littoral Rainforest which the proponent has advised is unavoidable, and yet, the department considers would still be a significant impact.</p> <p>Condition 13, b-c) requires an Offset Management Plan to provide for measures to prevent new and ongoing threats to the area of Littoral Rainforest in Stage 3.</p> <p>These measures will avoid the highest quality core area of Littoral Rainforest which has been identified in Stage 3 and will protect Littoral Rainforest from the coastal development through its long-term avoidance. Significant impacts will be offset.</p>
<p>Implement management strategies and actions to reduce threats to Littoral Rainforest.</p>	<p>The Offset Management Plan provides for habitat quality improvement.</p> <p>Condition 13, b-c) requires an Offset Management Plan to provide for measures to prevent new and</p>

<p>Reduce threats to Littoral Rainforest posed by:</p> <ul style="list-style-type: none"> • invasive weeds which are further exacerbated by natural and human-induced disturbances • pathogens and disease • damage and degradation by recreational and other use (vehicles, camping) • hydrological change (e.g. to drainage and runoff from adjacent areas) • changes in fire regime (particularly increased frequency). 	<p>ongoing threats to the area of Littoral Rainforest in Stage 3.</p> <p>Establishment of an APZ will also serve as a buffer zone to protect the area of Littoral Rainforest within Stage 3 from increased fire frequency. The APZ will reduce the likelihood that a fire might become established around the boundary and then threaten the area of protected Littoral Rainforest in Stage 3.</p>
<p>Improve and extend Littoral Rainforest through active rehabilitation and restoration activities to restore vegetation structure and control invasive plant species.</p> <ul style="list-style-type: none"> • Develop and implement stewardship mechanisms for private land tenures. • Develop and implement best practice guidelines for restoration. • improving resilience within managed patches of the ecological community. 	<p>The Offset Management Plan provides for habitat quality improvement in Stage 3.</p> <p>Littoral Rainforest will be protected in the long-term through the legal securement of Stage 3 (Condition 3). The department can require Stage 3's legal securement because the site is also being used as an offset for the clearing of 0.04 ha of Littoral Rainforest in Stage 4.</p> <p>The Offset Management Plan provides for the ongoing management and habitat improvement of Stage 3 which will be protected through legal securement.</p> <p>Condition 13, b-c) requires an Offset Management Plan to provide for measures to prevent threats from waste dumping to the area of Littoral Rainforest in Stage 3. This will improve the resilience within the Stage 3 area of the Littoral Rainforest.</p>
<p>Engage with the broader public to increase awareness and community involvement in management and rehabilitation.</p> <ul style="list-style-type: none"> • Raise awareness about the presence and importance of Littoral Rainforest at local and regional scales. 	<p>Condition 13, b-c) requires an Offset Management Plan to provide for measures to prevent threats from waste dumping and local vehicle entry to the area of Littoral Rainforest in Stage 3.</p> <p>These measures will also serve to raise public awareness of the presence and importance of the Stage 3 area.</p>

<p>Improve knowledge on the distribution and condition of Littoral Rainforest and monitor and report on the status of the ecological community.</p> <ul style="list-style-type: none"> • Fine-scale mapping of Littoral Rainforest, across the extent of the ecological community. • Monitor and evaluate patches at regular (maximum 5 yearly) intervals. 	<p>The project’s assessment has resulted in the identification of a previously unidentified area of Littoral Rainforest.</p> <p>The Offset Management Plan requires reporting and review mechanisms to inform the department annually regarding compliance with the management and environmental outcome commitments, and attainment and maintenance of the ecological benefits specified in the Offset Management Plan.</p>
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Consistency with Buffers

329) I noted that section 3.7 of the Recovery Plan discusses buffer zones, in summary, it states:

- (a) A buffer zone is an area adjacent to a patch that is important for protecting the integrity of the ecological community. As the risk of damage to an ecological community is usually greater for actions close to a patch, the purpose of the buffer zone is to minimise this risk by guiding planners and land managers to be aware when the ecological community is nearby and take extra care around the edge of patches.
- (b) The buffer zone helps protect the root zone of trees at the edge of the patch, and other components of the ecological community, from damage that may result from nearby activities.
- (c) The buffer zone is not part of the ecological community; so, whilst having a buffer zone is strongly recommended, it is not formally protected as a Matter of National Environmental Significance.
- (d) The recommended minimum buffer zone is 100 m from the outer edge of a patch, unless a scientific justifiable alternative buffer can be identified. This typically accounts for the maximum height of the vegetation and likely influences on the root zone. A larger buffer zone needs to be applied to protect patches of very high conservation value, or if patches are downslope of drainage lines or a source of eutrophication. Buffer zones should be large enough to ensure that biodiversity, structural integrity and ecosystem functioning are not adversely affected within the Littoral Rainforest patch to which the buffer is being applied.

330) The department considered and I agreed that the proposed action is consistent with the buffer provisions of the Recovery Plan. Based on the vegetation present within the area of Littoral Rainforest and based on existing research literature that the root zone of tree species is approximately a 1:1 ratio between tree height and the root zone, the department considered a buffer zone should be a 1:1 ratio with the maximum height of the tallest trees within the patch (i.e. 25 metres). I noted that, in accordance with this analysis and following consultation with the proponent on a 30 metre buffer, the proponent proposed the avoidance of the entire area of Stage 3. The proponent had also argued that impacts to Littoral Rainforest were unavoidable.

331) I noted that the final conditions of approval now require the avoidance of Stage 3. I noted, this provides for an average buffer distance from the Littoral Rainforest patch to the boundary of Stage 3 of 22 metres, with the greatest distance of approximately 58 metres. The department

considered, and I agreed, that an average buffer distance of 22 metres was consistent with the Recovery Plan, noting the maximum height of the tallest trees within the patch is 25 metres.

- 332) I noted that under the conditions of approval, there are now three points where Littoral Rainforest directly abuts the edge of Stage 4, however, I considered the conditions provide for management of indirect impacts through the Offset Management Plan. The department considered, and I agreed, the main existing threats identified to the Littoral Rainforest in Stage 3 are posed by rubbish dumping, weed invasion and informal tracks, and it is important these threats are managed as soon as possible through the Offset Management Plan to prevent degradation. Furthermore, I noted that the conditions provide for an APZ which will also serve to buffer Littoral Rainforest from bushfire threats. I noted the department's advice that, based on field observations, the final conditions of approval provide for appropriate buffering for protecting the integrity of the ecological community and the Offset Management Plan addresses the risk of damage to the ecological community from actions close to the patch. The clear delineation of the Littoral Rainforest and the avoidance of Stage 3 with an average buffer distance of 22 metres will minimise this risk to the ecological community. I considered the approval of the proposed action with conditions is consistent with the buffer zone requirements of the Littoral Rainforest Recovery Plan.

Consistency with Offsetting

- 333) I noted that section 6.2.2 of the Recovery Plan discusses offsetting, in summary, it states:
- (a) Plan projects to avoid the need to offset, by avoiding significant impacts to the ecological community. In circumstances where impacts cannot be totally avoided, then they should be minimised by retaining and avoiding damage to high quality patches, which should be managed to retain their benchmark state; and protecting important habitat features, such as large mature trees or stags with hollows as these take many decades to develop and cannot be quickly replaced.
 - (b) Where impacts are unavoidable, offsets should be used as a last resort to compensate for the adverse impacts of the action deemed unavoidable.
 - (c) Any proposals considering offsets for this ecological community should aim to:
 - i) minimise the need to offset the ecological community by designing development around the ecological community and applying buffer zones;
 - ii) retain medium and higher quality patches of the ecological community, rather than offset them (particularly with lower quality offset sites);
 - iii) focus on retaining remnants of the ecological community with mature trees;
 - iv) manage and protect offset areas in perpetuity in areas dedicated for conservation purposes - avoid risks that may reduce their size, condition and ecological function in the future;
 - v) select offset sites as close as possible to the impact site, to allow for local and regional variation in the ecological community, but also consider future sea-level rise and coastal erosion;
 - vi) increase the area and improve ecological function of existing patches, for example by enhancing landscape connectivity, habitat diversity and condition;

- vii) focus on the restoration of good and moderate quality patches of the ecological community to achieve high quality condition;
 - viii) extend protection to otherwise unprotected sites (e.g. sites that are currently too small or degraded to meet the condition thresholds for national protection, but can reasonably be restored to a better, more intact condition); and,
 - ix) monitor offset areas and the outcomes they deliver over the long-term, to manage them adaptively and improve understanding of the best ways to manage offsets to deliver biodiversity benefits.
- 334) The department considered, and I agreed that the proposed action is consistent with the offsetting provisions of the Recovery Plan
- (a) The development will avoid Stage 3 where 96.040 % of the Littoral Rainforest on site occurs, which the department considers to be the highest quality area, because Stage 3 includes the core of the habitat as identified in the department's survey transects and in the independent expert's mapping. The proposed action will impact 0.04 ha of Littoral Rainforest in Stage 4 which is on the edge of the Littoral Rainforest patch and has a higher perimeter to core ratio, which would mean these areas would be subject to increased edge effects.
 - (b) The conditions of approval require offsets for any impacts to Littoral Rainforest. The conditions require the proponent to prepare an Offset Management Plan.
 - (c) The Offset Management Plan requires a program to monitor the offset area and includes provisions to trigger for adaptive management to ensure outcomes are delivered over the long-term and to manage outcomes adaptively.
- 335) I noted that in considering the threats, objectives, strategies, actions, and performance criteria described in the Littoral Rainforest Recovery Plan, the department has recommended conditions of approval consistent with the Littoral Rainforest Recovery Plan's offsetting provisions. This will ensure that there are no unacceptable impacts to the ecological community; and the proposed action is therefore not inconsistent with the Littoral Rainforest Recovery Plan.

National Recovery Plan for the Swift Parrot (*Lathamus discolor*)

- 336) I noted that the new National Recovery Plan for the Swift Parrot (Swift Parrot Recovery Plan) came into force on 30 April 2024. The Swift Parrot Recovery Plan states the main threats on the mainland are habitat loss from land clearing for agriculture and urban development, and to a lesser extent forest harvesting. Other identified threats include competition for foraging and nesting resources, mortality from collisions with human-made objects and impacts from climate change.
- 337) The Recovery Plan objectives are, by 2032:
- Maintain or improve Swift Parrot habitat.
 - Reduce anthropogenic threats.
 - Measure and sustain a positive population trend.
- 338) Strategies to achieve the Recovery Plan objectives include:
- Maintain known Swift Parrot breeding and foraging habitat.

- Reduce impacts from Sugar Gliders at Swift Parrot breeding sites.
- Monitor and manage other sources of mortality.
- Develop and apply techniques to measure changes in population trajectory to measure success of recovery actions.
- Improve understanding of foraging and breeding habitat use at a landscape scale to measure the success of recovery actions.
- Engage community and stakeholders in Swift Parrot conservation.
- Coordinate, review and report on recovery progress.

339) I considered the specific actions listed within the Recovery Plan. I also considered that, due to the location of the proposed action area and the phenological characteristics of the vegetation, the site is unlikely to provide or constitute habitat for the Swift Parrot.

340) In the context of the Recovery Plan, and in accordance with the Significant Impact Guidelines, I considered that, based on the lack of survey detection, low number of BioNet records (at the time of the proposed decision, there was one record within an approximate 10 km x 10 km area of the proposed action), and the absence of regionally important Swift Parrot tree species within the disturbance area, significant impacts to the Swift Parrot are unlikely and therefore, avoidance, mitigation and offset measures are not required for this species.

341) Subsequently, I considered that the proposed action is not inconsistent with the National Recovery Plan for the Swift Parrot.

National Recovery Plan for the Grey-headed Flying-fox (*Pteropus poliocephalus*)

342) I noted that the recovery plan for the Grey-headed Flying-fox came into force in 2021. It identifies that the primary known threat to the survival of the species is loss and degradation of foraging and roosting habitat. Conflict with people is also recognised as a moderate threat. The GHFF Recovery Plan acknowledges the level of threat caused by electrocution on power lines and entanglement in netting and barbed-wire fences and climate change is unknown.

343) The overall objectives of the GHFF Recovery Plan are:

- To improve the GHFF national population trend by reducing the impact of the threats on the species through habitat identification, protection, restoration and monitoring.
- To assist communities and GHFF to coexist through better education, stakeholder engagement, research, policy and continued support to fruit growers.

344) Specific recovery objectives are listed in the GHFF Recovery Plan as being:

- Identify, protect and increase native foraging habitat that is critical to the survival of the GHFF.
- Identify, protect and increase roosting habitat of GHFF camps.
- Determine trends in the GHFF population so as to monitor the species' national distribution, habitat use and conservation status.

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- Build community capacity to coexist with flying-foxes and minimise the impacts on urban settlements from new and existing camps while avoiding interventions to move on or relocate entire camps.
 - Increase public awareness and understanding of GHFF and the recovery program and involve the community in the recovery program where appropriate.
 - Improve the management of GHFF camps in areas where interaction with humans is likely.
 - Significantly reduce levels of licenced harm to GHFF associated with commercial horticulture.
 - Support research activities that will improve the conservation status and management of GHFF.
 - Reduce the impact on GHFF of electrocution on power lines, and entanglement in netting and on barbed-wire.
- 345) I noted that the department considered the specific actions listed within this recovery plan in making their recommendation. I noted that while the proposed action would result in a loss of habitat critical to the survival of GHFF, impacts are limited to 1.25 ha of low quality potential winter and spring GHFF foraging habitat in the form of Grey Ironbark, Turpentine and Coast Banksia. The department considered, and I agreed, these impacts are minor in the national context (the department's distribution mapping estimates the total known and likely range of the species across continental Australia is 27,559,115 ha). In addition, I noted the GHFF Recovery Plan acknowledges that offsets (such as those recommended), may provide opportunities to increase habitat critical to the species' survival where residual significant impacts are likely to occur.
- 346) I therefore considered that the proposed avoidance and mitigation measures and recommended conditions, including requirements to plant GHFF food trees, stage vegetation clearance, and offset residual significant impacts, ensure that the proposed action is not inconsistent with the recovery plan for GHFF.

National Recovery Plan for Magenta Lilly Pilly (*Syzygium paniculatum*)

- 347) I noted that the Magenta Lilly Pilly National Recovery Plan was released in June 2012 by the then New South Wales Office of Environment and Heritage, the plan was adopted under subsection 269A(7) of the *Environment Protection and Biodiversity Conservation Act 1999* in July 2012.
- 348) The Magenta Lilly Pilly Recovery Plan states that the major threats include habitat clearing and fragmentation, low genetic diversity, inappropriate grazing regimes, introduced pests (flora, fauna and pathogens), inappropriate fire regimes and climate change.
- 349) The overall objectives of the Magenta Lilly Pilly Recovery Plan are to protect known subpopulations of the species from decline and ensure that wild populations of the species remain viable in the long term.
- 350) Specific objectives of the recovery plan include:
- Coordination of survey efforts to ensure efficient and effective implementation of recovery efforts.

- Targeted surveys to establish the full extent of the distribution of the species.
- Researching the biology and ecology of the species.
- Minimising the decline of the species through in situ habitat protection and management.
- Reducing the impact of Myrtle Rust on individuals and their habitat.
- Maintaining an ex-situ collection of the species in appropriate botanic gardens.
- Raising awareness of the conservation significance of the species and involving community participation in its recovery.

351) As previously discussed, the department considered, and I agreed, that the proposed action is unlikely to significantly impact the Magenta Lilly Pilly. I had consideration of the specific actions listed within the Recovery Plan. I noted the proposed action area is not located within any of the 44 listed subpopulations. Additionally, there has been substantial survey effort on the site since 2006, without this species being identified. I therefore considered that the proposed action is not inconsistent with the Magenta Lilly Pilly Recovery Plan.

Threat Abatement Plans

352) The Threat Abatement Plans relevant to the proposed action are:

- (a) Department of Sustainability, Environment, Water, Population and Communities (2011). *Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads*. Canberra, ACT: Commonwealth of Australia.
- (b) Department of the Environment (2015). *Threat abatement plan for predation by feral cats*. Canberra, ACT: Commonwealth of Australia.

353) These Threat Abatement Plans were provided to me as attachments to the approval decision brief and are discussed below.

Threat abatement plan for predation by feral cats

354) I noted the department's advice that the proposed action has the potential to facilitate the spread, or lead to a higher abundance of feral animals, including cats, through the clearance and modification of habitat.

355) The threat abatement plan (**TAP**) for predation by feral cats came into force in 2015. According to the Feral cat TAP, feral cats can have direct negative impacts on native fauna and the Swift Parrot is listed in the plan as a species that may be adversely affected by feral cats.

356) The goal of the Feral cat TAP is to minimise the impact of feral cats on biodiversity in Australia and its territories by:

- Protecting affected threatened species.
- Preventing further species and ecological communities from becoming threatened.

357) I considered the specific actions and performance indicators listed within the Feral cat TAP. I noted that the actions have a strong focus on encouraging and facilitating practical interventions and providing control options for feral cats, and that the implementation of management actions is generally the responsibility of governments and researchers. I also noted that the Swift Parrot is unlikely to occupy the proposed action area, and the habitat is unlikely to be

habitat critical to the survival of the species; therefore, significant impacts to the species are unlikely. For these reasons, I considered that approval of the proposed action will not be inconsistent with the Feral cat TAP.

Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads

- 358) I noted that the TAP for the biological effects, including lethal toxic ingestion caused by cane toads came into force in 2011. The Cane toad TAP is listed as relevant to the Littoral Rainforest on the department's Species Profile and Threats database.
- 359) I noted the department's advice that the Littoral Rainforest Recovery Plan does not reference the Cane Toad (*Bufo marinus*) as a threat to the community. The Recovery Plan only states the following of the species: "Cane toads can poison native predators such as snakes and quolls and can compete with native animals for shelter".
- 360) I further noted the *Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads* states the species' southern dispersal includes areas considered to be marginal habitat in arid south-west Queensland and cooler climates and higher altitudes of northern New South Wales.
- 361) I considered that as the surveys on site have not detected the Cane Toad, it is unlikely that the Cane Toad will be present in the proposed action area or present a threat to the Littoral Rainforest.
- 362) Based on the above, I concluded the species is unlikely to be present in the proposed action area or present a threat to the Littoral Rainforest; I therefore considered approval of the proposed action would not be inconsistent with the Cane toad TAP.

Conservation Advices

- 363) The Approved Conservation Advices relevant to the proposed action and assessment are:
- (a) Department of the Environment (2015). *Approved Conservation Advice for the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community*. Canberra: Department of the Environment.
 - (b) Threatened Species Scientific Committee (2016). *Conservation Advice Lathamus discolor swift parrot*. Canberra: Department of the Environment.
 - (c) Department of Climate Change, Energy, the Environment and Water (2022). *Conservation Advice for Petauroides volans (greater glider (southern and central))*. Canberra: Department of Climate Change, Energy, the Environment and Water.
 - (d) Department of the Environment and Energy (2019). *Conservation Advice (incorporating listing advice) for the Illawarra-Shoalhaven subtropical rainforest of the Sydney Basin Bioregion*. Canberra: Department of the Environment and Energy.
 - (e) Department of Climate Change, Energy, the Environment and Water (2023). *Conservation Advice for Syzygium paniculatum (magenta lilly pilly)*. Canberra: Department of Climate Change, Energy, the Environment and Water.
- 364) These conservation advices were provided to me as attachments to the approval decision brief and are discussed below.

Approved Conservation Advice for the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community

365) I noted that the Conservation Advice for the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community (Littoral Rainforest Conservation Advice) came into force in 2015, prior to the Littoral Rainforest Recovery Plan.

366) I had regard to the conservation advice, specifically the Guidance on Listing Advice section of the conservation advice. I noted the department has relied on the information in the conservation advice to positively determine the presence of Littoral Rainforest within the proposed action area, specifically, the section of the conservation advice, which states on page 1:

When making a determination as to whether the nationally listed Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community is present at a particular site, the 'Description' (including the 'General Features' and 'Key Diagnostic Characteristics') and 'Condition Thresholds' of the listed ecological community as outlined in the Listing Advice (pp.1- 4, TSSC 2008afi) must be used as the primary factor for determination rather than any other classification system.

367) Similar to the Littoral Rainforest Recovery Plan, the conservation advice sets out actions to stop the decline or support the recovery of the ecological community, including at regional and local scales. Local priority actions identified in the plan include:

- Monitor known sites to identify key threats or progress of recovery.
- Modify access routes to prevent vehicular and pedestrian access.
- Ensure the proper placing of access points and orientation of track access to the beach to ensure that protected vegetation continues to be buffered from prevailing salt laden winds.
- Undertake survey work in suitable habitat or potential habitat to locate any additional remnants.
- Minimise adverse impacts from changed land use at known sites.
- Protect remnants of the listed ecological community on private land through the development of conservation agreements and covenants.
- Preserve remnants of the listed ecological community on private and leased land through the development of reserves (if possible) and/or zoning for environmental purposes.
- Identify and undertake weed management of known sites to reduce or remove transformer weeds.
- Identify and remove weeds in the local area, which could become a threat to the ecological community.
- Manage known sites in reserve areas and on private property to exclude feral deer.
- Control feral animals by appropriate means.
- Implement hazard reduction zones in the vicinity of remnants of the listed ecological community and fire suppression which includes keeping stand margins in as weed-free a condition as possible.

368) I had regard to the actions to stop the decline or support the recovery of the ecological community outlined in the Littoral Rainforest Conservation Advice. In having regard to these matters, I imposed conditions of approval to avoid, offset and manage Littoral Rainforest. I noted many of the priority actions outlined above are provided for in the proposed approval decision and conditions, including, restricting vehicle access, protection of Stage 3, management of the area and an APZ which will suppress fires. I considered that the conditions will ensure that the impacts to the ecological community are acceptable; and the proposed action is therefore not inconsistent with the Littoral Rainforest Conservation Advice.

Conservation Advice *Lathamus discolor* Swift Parrot

- 369) I noted that the Conservation Advice for the Swift Parrot (Swift Parrot Conservation Advice) came into force in 2016.
- 370) The Swift Parrot Conservation Advice identifies many of the same threats as the Swift Parrot Recovery Plan.
- 371) The primary conservation action for the Swift Parrot according to the Swift Parrot Conservation Advice is to prevent further habitat destruction from land clearance, grazing and forestry activities in high quality Swift Parrot summer nesting and breeding habitat. The Swift Parrot breeds in Tasmania and migrates to mainland Australia during autumn and winter; there is therefore no summer nesting and breeding habitat in the proposed action area. On this basis, I considered the proposed action is not inconsistent with this conservation action.
- 372) I noted that the Swift Parrot Conservation Advice also lists a range of priorities relating to conservation and management, survey and monitoring, and information and research. I had considered these priorities in making this determination. I noted that the implementation of programs to deliver many of these priorities would generally fall outside the responsibility of individual proponents. I also noted that the Swift Parrot is unlikely to occupy the proposed action area, and the habitat is unlikely to be habitat critical to the survival of the species; therefore, significant impacts to the species are unlikely. For these reasons, I considered that approval of the proposed action would not be inconsistent with the Swift Parrot Conservation Advice.

Conservation Advice for *Petauroides volans* (greater glider (southern and central))

- 373) I noted that the Conservation Advice for the Greater Glider (Greater Glider Conservation Advice) came into force in 2022.
- 374) According to the Greater Glider Conservation Advice, key threats to the species are frequent and intense bushfires, inappropriate prescribed burning, climate change, land clearing and timber harvesting.
- 375) The Greater Glider Conservation Advice identifies the primary conservation objective for the species as being to increase the population size as well as the extent, quality and connectivity of habitat required to maintain the population within the next three generations. The advice also lists a range of conservation and management priorities, including those listed below, which the department considers are of most relevance to the proposed action:
- In the aftermath of bushfires, protect any unburnt habitat (within or adjacent to recently burnt landscapes) in order to support population recovery.

- Protect and maintain sufficient areas of suitable habitat, including denning and foraging resources and habitat connectivity, to sustain viable subpopulations throughout the species' range.
- Protect hollow-bearing trees on private property, roadside reserves, and along the edges of roads/tracks.
- Restore habitat connectivity, including:
 - where habitat has been substantially fragmented, disturbed or modified
 - between small habitat patches and larger areas of contiguous forest.

376) I noted that while the proposed action area contains unburnt habitat adjacent to burnt habitat, potentially suitable hollow-bearing trees, and limited connectivity; based on the species' overall ongoing decline in the region, survey evidence suggesting that the Greater Glider no longer occupies the proposed action area, literature suggesting the parameters of the majority of tree-hollows are not preferred, and numerous barriers to recolonisation of the species from the known currently persisting population 10 km to the north, I considered that the proposed action area is unlikely to be able to support population recovery or be able to sustain a viable population. For these reasons, I considered that approval of the action is not inconsistent with the conservation and management priorities listed above.

377) I noted additional conservation and management priorities including those relevant to habitat loss, disturbance, and modification (including fire); climate change; invasive species (including threats from predation, grazing, trampling); and ex-situ recovery actions are also identified in the Greater Glider Conservation Advice. There are also priorities relevant to stakeholder and community engagement, survey and monitoring, and information and research identified in the advice. I considered these priorities and that the implementation of programs to deliver many of these priorities would generally fall outside the responsibility of individual proponents. On the basis of the above, I considered that approval of the proposed action will not be inconsistent with the Great Glider Conservation Advice.

Conservation Advice (incorporating listing advice) for Illawarra-Shoalhaven subtropical rainforest of the Sydney Basin Bioregion

378) The Illawarra-Shoalhaven subtropical rainforest was identified as potentially present by the department's consultant ecologist in the independent survey. While the department considered, and I agreed, that the Illawarra-Shoalhaven subtropical rainforest was not present in the proposed action area, the Conservation Advice has been addressed for completeness.

379) The conservation objectives are to prevent further loss and degradation of the ecological community and help recover its biodiversity, function and extent, by protecting it from significant impacts, and by guiding implementation of management and recovery. There are four broad themes of priority actions which form part of an iterative approach to management that includes research, planning, management, monitoring and review.

380) The key threats to the ecological community include clearance of native vegetation and impacts associated with fragmentation, impacts from introduced species (weeds and feral animals), altered hydrology and climate change.

381) Key actions identified in the ISSR conservation advice include, but are not limited to:

- (a) conserving remaining patches by preventing and avoiding further clearance, fragmentation or detrimental modification
 - (b) retaining other native vegetation remnants, near patches of the ecological community, where they are important for connectivity, diversity of habitat or act as buffer zones
 - (c) applying the mitigation hierarchy to avoid further clearance and fragmentation
 - (d) managing weeds and pets, including excluding grazing herbivores
 - (e) educating and encouraging landholders to protect existing patches of ISSR
 - (f) undertaking or supporting and enhancing survey programs to improve mapping of sites where the community is known or likely to occur using systematic survey data.
- 382) I noted that the consultant ecologist identified the potential presence of ISSR, however, decided that the vegetation on site was more strongly associated with Littoral Rainforest. I agreed with this conclusion, nonetheless, I have had regard to the actions in the Conservation Advice to stop the decline and support the recovery of the ecological community. The department considered, and I agreed, that there are no significant impacts to the ISSR ecological community; and the proposed action is therefore not inconsistent with the ISSR Conservation Advice.

Conservation Advice for *Syzygium paniculatum* (Magenta Lilly Pilly)

- 383) The Conservation Advice for the Magenta Lilly Pilly (**MLP**) came into force in 2023.
- 384) The conservation objectives for the MLP are to protect known habitat from clearing, disturbance and fire, reducing threats at priority management sites and establishing translocated populations.
- 385) The Magenta Lilly Pilly Conservation Advice states that the key threats are habitat clearing and fragmentation, grazing, and weed/pest invasion. Additionally, the species may be adversely impacted by low genetic diversity, too frequent fire and disease. The threats are consistent between the MLP statutory documents (conservation advice and recovery plan).
- 386) As discussed previously, I noted that the proposed action area is not within any of the 44 known populations identified in the species' 2023 conservation advice. Additionally, the species was not identified in the surveys undertaken by the proponent and the department.
- 387) Notwithstanding this, the department assessed the potential impact of the action against the relevant statutory document. I had regard to the Conservation Advice during this assessment and considered that the approval of the action will not be inconsistent with the Magenta Lilly Pilly Conservation Advice.

Bioregional Plans – section 176(5)

- 388) Pursuant to s 176(5) of the EPBC Act, in making my decision I am required to have regard to any relevant bioregional plan.
- 389) I considered that there were no bioregional plans relevant to the decision whether or not to approve the proposed action as the action is not located within or near an area designated by a bioregional plan.

Conditions of approval – section 134

Department's recommended conditions

- 390) Section 134(1) of the EPBC Act allows for conditions to be attached to the approval of the action if I am 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).
- 391) Section 134(2) of the EPBC Act allows for conditions to be attached to the approval of the action if I am 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.
- 392) The department considered and I agreed, that it is necessary or convenient to apply approval conditions to the proposed action for protecting matters protected by a provision of Part 3 for which the approval has effect under sections 134(1) and 134(2) of the EPBC Act. The key conditions relating to protected matters have also been discussed under the relevant controlling provision. The department recommended the following conditions:
- Condition 1 restricts the clearance of vegetation to the designated proposed action area. This will ensure impacts are restricted to the EPBC Act protected matters which have been assessed as part of the proposed action.
 - Condition 2 restricts the areas within the proposed action area that can be cleared.
 - Clearing cannot occur within the reserve area required under the NSW approval.
 - The clearance of Grey-headed Flying-fox habitat is limited to no more than 1.25 ha.
 - The clearance of Littoral Rainforest outside of Stage 3 is to be limited to 0.04 ha within Stage 4.
 - Clearing cannot occur in Stage 3 except for establishment of an Asset Protection Zone (**APZ**), which is restricted to the minimum area required under NSW Legislation (see definition of APZ) and which will need to be quantified (and offset) in the Offset Management Plan. The Offset Management Plan will also account for any indirect impacts to Littoral Rainforest.
 - Condition 3 requires Stage 3 to be legally secured under relevant New South Wales legislation to provide enduring protection for the site against activities incompatible with conservation.
 - Conditions 4, 7 and 8 require compensatory planting and maintenance of Grey-headed Flying-fox food trees.
 - Condition 5 requires compliance with relevant NSW approval conditions.

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- Condition 6 requires clearance be undertaken in stages and in accordance with a schedule. The schedule will result in the gradual removal of potential habitat for the Grey-headed Flying-fox, thus spreading the loss of habitat trees over a longer timeframe which will enable compensatory plantings to take effect and provide the species time to find alternative habitat in the surrounding unburnt and recovering vegetation in the region.
- Conditions 9 and 10 require offsetting for the unavoidable clearance of 1.25 ha of Grey-headed Flying-fox habitat.
- Conditions 11 and 12 require offsetting for the unavoidable clearance of 0.04 ha of Littoral Rainforest within Stage 4.
- Condition 13 requires an Offset Management Plan be developed, approved and implemented for the duration of the approval for Stage 3. The Offset Management Plan must be developed in accordance with the requirements specified in Attachment D of the conditions, including but not limited to:
 - Development in accordance with relevant policies and guidelines.
 - Information on any residual impacts to Stage 3.
 - Habitat quality improvements to be achieved in Stage 3.
 - Commitments to achieve improved ecological benefits in Stage 3.
 - Monitoring, reporting and triggers for adaptive management.
- Conditions 14 and 15 require a Grey-headed Flying-fox Offset Management Plan be prepared in the event that the approval holder does not retire credits in accordance with the Commonwealth endorsed NSW Biodiversity Offsets Scheme. The Offset Management Plan must be developed in accordance with the requirements specified in Attachment D of the conditions, including but not limited to:
 - Development in accordance with relevant policies and guidelines.
 - Information on any residual impacts to Stage 3.
 - Habitat quality improvements to be achieved in Stage 3.
 - Commitments to achieve improved ecological benefits in Stage 3.
 - Monitoring, reporting and triggers for adaptive management.
- Part B – Administrative Conditions provide for:
 - the revision of management plans (e.g. Offset Management Plans),
 - the requirement to inform the department should there be changes to the NSW approval that may relate to EPBC protected matters,
 - informing the department when the action commences,
 - maintaining records of compliance with conditions of approval for audit,
 - annual compliance reporting, and provisions for reporting non-compliance,
 - independent audit of compliance with conditions of approval every three years,

- notifying the department when the action has been completed.
- Part C – Definitions
 - There are definitions for important concepts such as the:
 - Action area,
 - APZ,
 - Clearing and commencing the action,
 - Construction,
 - Relevant EPBC Act protected species,
 - Legal securement,
 - NSW approval,
 - Development area stages.
- Attachments
 - Attachments include maps of important elements, including, the Action area, the area of Littoral Rainforest to be protected in Stage 3 and permitted to be cleared in Stage 4, and development stages.
 - Attachment C lists the Offset Management Plan requirements, including but not limited to:
 - Development in accordance with relevant policies and guidelines.
 - Information on any residual impacts to Stage 3.
 - Habitat quality improvements to be achieved in Stage 3.
 - Commitments to achieve improved ecological benefits in Stage 3.
 - Monitoring, reporting and triggers for adaptive management.

393) I considered these conditions are necessary and convenient for protecting, repairing and/or mitigating impacts to the significantly impacted critically endangered Littoral Rainforest and Coastal Vine Thickets of Eastern Australia ecological community and the significantly impacted Vulnerable Grey-headed Flying-fox, which are both protected under Part 3 of the EPBC Act.

Additional considerations for conditions

- 394) Subsection 134(4) of the EPBC Act states that, in deciding whether to attach a condition to an approval, I 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
 - (b) information provided by the person proposing to take the action or by the designated proponent of the action; and

- (c) 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.
- 395) The proposed action has been assessed and approved by the NSW Government, subject to the conditions specified in the Major Projects Approval for the project. I considered the relevant conditions imposed or likely to be imposed by the State of NSW and attached these to the approval.
- 396) The department provided me with information provided by the proponent as attachments to the approval decision brief. I considered the comments on the proposed conditions of approval by the proponent and the proponent's ecologists in deciding what conditions to attach to the approval.
- 397) Regarding the cost effectiveness of conditions, I noted that the proponent has advised that the avoidance and offsetting within Stage 3 will present considerable uncertainty and be at a heavy cost to the proponent. The proponent has not quantified this cost in correspondence with the department, however, it is reasonable to estimate the cost of avoiding and offsetting within Stage 3 based on the number of housing lots which Stage 3 contains.
- (a) Based on the information provided by the proponent, Stage 3 has 29 development lots. The total housing development is for 182 lots. The removal of Stage 3 therefore results in a reduction of 16%. It would be reasonable to estimate that the cost to the proponent would therefore be approximately commensurate with this percentage. In addition, there is the requirement for the proponent to prepare an Offset Management Plan for Stage 3 and for Stage 3 to be legally secured which will also represent some costs to the proponent.
- (b) I noted there will be a cost to the proponent from the conditions requiring avoidance and offsetting for Stage 3. I considered, however, that due to the critically endangered nature of Littoral Rainforest, and for the decision to be not inconsistent with the Littoral Rainforest's Recovery Plan, avoidance and offsetting for Littoral Rainforest is necessary and convenient for the protection of Littoral Rainforest from the proposed action. Furthermore, the Offset Management Plan and legal securement of Stage 3 is also necessary and convenient for the ongoing protection and management of the Littoral Rainforest at the site.
- (c) I considered that the relevant conditions are as far as practicable a cost - effective means for the Commonwealth and a person taking the action to achieve the object of the conditions.
- 398) In addition, I noted that, in line with the *EPBC Act Condition-setting Policy*, the approval granted by the NSW Government was considered in the conditions. The department also considered the *Environment Protection and Biodiversity Conservation Act 1999 Condition-setting Policy, 2020* when preparing the conditions of approval. Evidence of this are the conditions which give the proponent the option to retire offsets using the endorsed NSW Biodiversity Offsets Scheme (see Appendix A of the Policy).

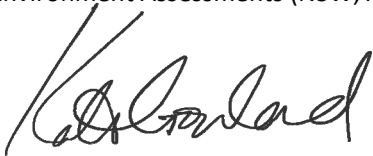
Reasons for decision

- 399) Pursuant to section 136(5) of the EPBC Act, in deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, I noted that I must not consider any matters that I am not required or permitted to consider by Division 1, Part 9 of the EPBC Act. In

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making my decision to approve the proposed action, and the conditions to attach to that approval, I did not consider any matters that I was not required or permitted to consider.

- 400) In deciding whether or not to approve the taking of the proposed action, I took into account (among other matters) the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.
- 401) In light of my findings above, I decided to approve, subject to conditions, the taking of the proposed action for the purposes of sections 18 and 18A (listed threatened species and communities) of the EPBC Act.
- 402) My approval will have effect until 31 July 2042.

Name and position	Kate Gowland Branch Head Environment Assessments (NSW, ACT)
Signature	
Date of decision	26 March 2025

ANNEXURE A

Section 130 of the (EPBC Act) relevantly provides:

Basic rule

- 1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- 1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

Notice of extension of time

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

Section 131 of the EPBC Act relevantly provides:

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

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

Section 131AA of the EPBC Act relevantly provides:

- 1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
 - (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
 - i) the decision the Minister proposes to make; and
 - ii) if the Minister proposes to approve the taking of the action – any conditions the Minister proposes to attach to the approval; and

- (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- 2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
- (a) a copy of whichever of the following documents applies to the action:
 - i) an assessment report;
 - ii) a finalised recommendation report given to the Minister under subsection 93(5);
 - iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
 - (b) any information relating to economic and social matters that the Minister has considered; and
 - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
 - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- 3) The Minister is not required to provide under subsection (2):
- (a) information that is in the public domain; or
 - (b) a copy of so much of a document as in the public domain; or
 - (c) in the case of information referred to in paragraph (2)(b) or (c) – any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- 6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

Section 131A of the EPBC Act relevantly provides:

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may publish on the Internet:

- (a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and
- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

Section 133 of the EPBC Act relevantly provides:

Approval

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

Content of approval

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

Persons who may take action covered by approval

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

Notice of approval

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

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.

Section 134 of the EPBC Act relevantly provides:

Condition to inform persons taking action of conditions attached to approval

1A) An approval of the taking of an action by a person (the first person) is subject to the condition that, if the first person authorises, permits, or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:

- (a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
- (b) that the other person complies with any such condition.

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

Generally

- 1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
 - (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

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

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

- 3) The conditions that may be attached to an approval include:
 - aa) conditions requiring specified activities to be undertaken for:
 - i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and
 - ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
 - a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:

- i) to comply with this Act and the regulations; and
 - ii) not to contravene a condition attached to the approval; and
 - iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
- (b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
 - (c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
 - (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and
 - (e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval – conditions requiring:
 - i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and
 - ii) implementation of the plan so approved; and
 - (f) conditions requiring specified environmental monitoring or testing to be carried out; and
 - (g) conditions requiring compliance with a specified industry standard or code of practice; and
 - (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

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

Certain conditions require consent of holder of approval

3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:

- a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
- (b) a condition referred to in paragraph (3)(ab).

3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:

- a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
- (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

(3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:

- a) as in force at a particular time; or
 - (b) as is in force or existing from time to time;
- even if the instrument does not yet exist at the time the approval takes effect.

Considerations in deciding on condition

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

Effect of conditions requiring compliance with conditions specified in another instrument

4A) If:

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

Validity of decision

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

Section 136 of the EPBC Act relevantly provides:

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:

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- (a) the principles of ecologically sustainable development; and
- (b) the assessment report (if any) relating to the action; and
- ba) if Division 3A of Part 8 (assessment on referral information) applies to the action – the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
- bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - ii) the recommendation report relating to the action given to the Minister under section 95C; and
- (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - ii) the recommendation report relating to the action given to the Minister under section 100; and
- ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action – the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan, or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3) – the information in the notice.

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

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- (c) if the person is a body corporate that is a subsidiary of another body or company (the parent body) – the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

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

Section 139 of the EPBC Act relevantly provides in part:

- 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.

ANNEXURE B

Attachment A: Additional Assessment Considerations Report

Attachment B: Proponent and department correspondence, comprising:

- B1: 20 March 2024 Proponent comments on proposed conditions
- B2: 21 March 2024 Proponent requesting extension
- B3: 26 March 2024 Department notifying proponent of extension
- B4: 1 April 2024 Proponent requesting extension
- B5: 3 April 2024 Department acknowledging letter and preparing response
- B6: 4 April 2024 Department emailing proponent
- B7: 4 April 2024 Department letter extending time
- B8: 5 April 2024 Proponent cover email providing preliminary submissions
- B9: 5 April 2024 Proponent preliminary submission
- B10: 5 April 2024 Proponent's ecologist's comments on proposed approval
- B11: 5 April 2024 Department receipt of the proponent's ecologist's report
- B12: 10 April 2024 Department providing Littoral Rainforest listing advice
- B13: 18 April 2024 Proponent's ecologist's analysis against listing advice cover email
- B14: 19 April 2024 Proponent's ecologist's analysis against listing advice report
- B15: 19 April 2024 Appendix A to listing advice report
- B16: 19 April 2024 Department acknowledging information
- B17: 23 April 2024 Department email stating independent expert site visit
- B18: 29 April 2024 Department email extending decision timeframe
- B19: 29 April 2024 Letter from department extending decision timeframe
- B20: 9 May 2024 Department notifying Proponent of site visit
- B21: 14 May 2024 The proponent's ecologist's acknowledging consultant ecologist and request to discuss if findings vary
- B22: 21 May 2024 Department providing expert report
- B23: 28 May 2024 Department response to proponent providing comments
- B24: 24 May 2024 Proponent comment on proposed decision
- B25: 31 May 2024 Department providing Littoral Rainforest shapefile
- B26: 4 June 2024 Proponent providing civil and landscape masterplans
- B27: 4 June 2024 Civil Masterplan
- B28: 4 June 2024 Landscape Masterplan
- B29: 4 June 2024 Department allowing information post deadline

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- B30: 4 June 2024 Email from Proponent regarding buffer zones
- B31: 4 June 2024 Buffer zone analysis from the proponent's ecologists
- B32: 4 June 2024 Edge Effects & Buffer Report
- B33: 15 July 2024 Proponent email regarding comments on updated proposed conditions
- B34: 15 July 2024 Proponent comments on proposed conditions
- B35: 18 July 2024 Department cover email extension of time
- B36: 18 July 2024 Extension of time letter
- B37: 18 July 2024 Updated proposed conditions
- B38: 26 July 2024 Proponent email with comments on proposed conditions
- B39: 26 July 2024 Proponent comments on proposed conditions
- B40: 31 July 2024 Additional comments on proposed conditions
- B41: 31 July 2024 Updated comments on Littoral Rainforest
- B42: 4 August 2024 Meeting agenda and comments from proponent
- B43: 7 August 2024 Proponent cover email update on proposed conditions
- B44: 7 August 2024 Proponent comments on proposed conditions
- B45: 16 August 2024 Proponent clarifying revised condition
- B46: 1 August 2024 Department request for meeting
- B47: 22 August 2024 Extension of time letter
- B48: 22 August 2024 Department providing meeting minutes from 19 August 2024
- B49: 26 August 2024 Proponents cover email providing proponent comment on conditions from 14 August 2024
- B50: 26 August 2024 Proponent providing comment on conditions from 14 August 2024

Attachment C: Decision notice, comprising:

- C1: Decision notice
- C2: Decision notice - track change between proposed and final

Attachment D: Letters, comprising:

- D1: Letter to proponent/ person proposing action
- D2: Letter to Minister for Indigenous Australians
- D3: Letter to NSW

Attachment E: Proposed decision brief, comprising:

- E1: Proposed decision brief
- E2: Proposed decision recommendation report
- E3: Proposed decision electronic briefing package, comprising:

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Attachment A: Recommendation report

Attachment B: Final Preliminary Documentation and response to submissions, comprising:

- B1: Final Preliminary Documentation (PD) (including appendices* (*different to attachments))
- B2: PD Attachment A: GHFF Food bottleneck (August) camp occupancy
- B3: PD Attachment B: Landscape plans
- B4: PD Attachment C: Design guidelines
- B5: PD Attachment D: EPBC Act referral
- B6: PD Attachment E: Environmental Management Plan
- B7: PD Attachment F: Flora and Fauna Management Plan
- B8: PD Attachment G: Response to letter from DEE 2018-04-17
- B9: PD Attachment H: Response to letter from DEE 2018-07-27
- B10: PD Attachment I: MNES assessment
- B11: PD Attachment J: Response to letter from DAWE 2020-07-28
- B12: PD Attachment K: BES 2006 Flora and fauna assessment
- B13: PD Attachment L: Determination of major project (2008)
- B14: PD Attachment M: Cowman and Stoddart 2006 Environmental assessment report
- B15: PD Attachment N: Storm Consulting 2007 Water cycle management report
- B16: PD Attachment O: Construction Management Plan
- B17: PD Attachment P: PPM Consulting 2021 Socio-economic impact analysis
- B18: PD Attachment Q: Qualifications of staff involved in PD
- B19: PD Attachment R: Environmental history of proponent
- B20: PD Attachment S: Response to submissions
- B21: Appendix A to RTS - Submissions register
- B22: Appendix B.1 to RTS - Stage 1 SWC documents approved by SCC
- B23: Appendix B.2 to RTS - University of Technology Sydney Socioeconomic report
- B24: Appendix B.3 to RTS - Development Consent

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B25: PD Attachment T: Likelihood table

B26: PD Attachment U: Protected Matters Search Tool report

B27: Letter to the Minister for Environment and Water - Response to submissions
expert ecological submissions

Attachment C: Letters, comprising:

C1: Letter to proponent

C2: Letter to Minister for Indigenous Australians

C3: Letter to NSW Minister

Attachment D: Proposed decision notice

Attachment E: Statutory documents, comprising:

E1: Littoral Rainforest Recovery Plan

E2: Littoral Rainforest Listing Advice

E3: Littoral Rainforest Listing Advice Listing Advice (Attachment)

E4: Littoral Rainforest Conservation Advice

E5: Cane Toads Threat Abatement Plan

E6: GHFF Recovery Plan

E7: Swift Parrot Recovery Plan

E8: Swift Parrot Recovery Plan - Background document

E9: Greater Glider Conservation Advice

E10: Feral Cats Threat Abatement Plan

E11: Feral Cats Threat Abatement Plan - Background document

E12: Swift Parrot Conservation Advice

Attachment F: Consultation, comprising:

F1: Public comment binder - NOT FOR PUBLICATION

F2: Species Information and Policy Section - Species listing advice (06/03/2024)

F3: Compliance and Enforcement Branch - Environmental history check (23/11/2023)

F4: EPBC Support and Assurance Section - Comments on proposed conditions
(26/02/2024)

F5: EPBC Support and Assurance Section - Comments on proposed conditions
(04/03/2024)

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F6: Ministerial correspondence

F7: Ministerial correspondence

F8: Ministerial correspondence

F9: Ministerial correspondence

F10: Ministerial correspondence

F11: Ministerial correspondence

F12: Ministerial correspondence

F13: Ministerial correspondence

F14: Ministerial correspondence

F15: Ministerial correspondence

F16: Ministerial correspondence

Attachment G: Supporting information, comprising:

G1: Referral decision electronic briefing package, comprising:

Referral decision brief - CA.docx

Referral and attachments:

A: Referral.pdf

A1: Figure 1 Disturbance and Avoidance

A2: NSW Development Consent (2008)

A3: Environmental Assessment Report (2006)

A4: BES Flora and Fauna Assessment (2006)

A5: Ecoplanning MNES Assessment (2020)

A6: Ecoplanning response to EPBC Act letter (April 2018)

A7: Ecoplanning response to EPBC Act letter (July 2018)

A8: Water Cycle Management report

Additional information to the referral:

B1: Environmental Management Plan, Ecoplanning, 2 July 2020

B2: Flora and Fauna Management Plan, Ecoplanning, 2 July 2020

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B3: Additional information relating to potential impacts on MNES arising from the proposed action, Ecoplanning, 28 July 2020

B4: Cultural Heritage Management Plan, South East Archaeology Pty Ltd, 28 July 2020

B5: Information detailing the proponent's engagement with the Local Aboriginal Land Council, South East Archaeology Pty Ltd, 28 July 2020

Environmental Defenders Office Documents:

C1: EDO letter (June 2020)

C2: Greater Glider report

C3: Map of Greater Glider sightings and bushfires extent

C4: Map of Manyana, burnt areas

C5: BioNet Greater Glider sightings

C6 EPBC Act listed species in the Manyana area

C7: EDO letter (July 2020)

C8: Greater Glider report

C9: List Professor's publications

C10: Letter from Professor

C11: OMVI Ecological report

C12: Birdlife Shoalhaven submission

C13: Map of Greater Glider sightings and bushfires extent

C14: Map of Manyana, burnt areas

C15: BioNet Greater Glider sightings

D: NSW NPWS Post-fire Arboreal Surveys of National Parks in the Shoalhaven Area (2020)

E: Independent expert report on Greater Glider

Development and Bushfire context:

F1: Manyana development context

F2: Manyana bushfire Impacts

Departmental species information and guidance:

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G1: ERT report (22 June 2020)

G2: *Commonwealth Significant Impact Guidelines 1.1- Matters of National Environmental Significance* (2013)

G3: Threatened Species Scientific Committee. *Commonwealth Listing Advice on Pteropus poliocephalus (Grey-headed Flying-fox)* (2001).

G4: *Commonwealth Draft Recovery Plan for the Grey-headed Flying-fox Pteropus poliocephalus* (2017)

G5: *Commonwealth Referral guideline for management actions in Grey-headed and Spectacled flying-fox camps* (2015)

G6: Wildlife and Threatened Species Bushfire Recovery Expert Panel *Rapid analysis of impacts of the 2019-20 fires on animal species, and prioritisation of species for management response* (2020)

G7: Wildlife and Threatened Species Bushfire Recovery Expert Panel Provisional list of animals requiring urgent management intervention mammals' species analysis (2020)

G8: Threatened Species Scientific Committee *Conservation Advice Petauroides volans greater glider* (2016)

H: Public comments

I: Ministerial comments

J: Decision notice

Letters

K1: Letter to proponent

K2: Letter to NSW

K3: Letter to Shoalhaven City Council

G2: Workshop notes (19/02/2021)

G3: Targeted surveys for the Greater Glider - Report prepared by Gaia Research (May 2021)

G4: Department's site visit report

G5: Priority TECs for recovery activity

G6: EPBC Act Condition Setting Policy

G7: Significant Impact Guidelines

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- G8: EPBC Act Environmental Offsets Policy
- G9: Provisional list of animals requiring urgent management intervention
- G10: Survey guidelines for Australia's threatened bats
- G11: Eby and Law, 2008 paper - Ranking the feeding habitats of GHFF (main report)
- G12: Eby and Law, 2008 paper - Ranking the feeding habitats of GHFF (chapter 10)
- G13: Lindenmayer et al., 2008 paper - Contrasting mammal responses to vegetation type and fire
- G14: Vinson et al., 2020 paper - Current estimates and vegetation preferences Greater Glider
- G15: PMST report with 5 km buffer generated on 13 February 2024
- G16: PMST report with 5 km buffer generated on 22 June 2020
- G17: Department's review of the 22 June 2020 PMST report
- G18: Department's impacts analysis table

- E4: Proposed decision notice
- E5: Proposed decision letter to proponent
- E6: Proposed decision letter to Minister for Indigenous Australians
- E7: Proposed decision letter to NSW Minister for Planning and Public Spaces

Attachment F: Expert advice, comprising:

- F1: Consultant ecologist's Report
- F2: Consultant ecologist's EDO involvement

Attachment G: Statutory documents, comprising:

- G1: 2024 Swift Parrot Recovery Plan
- G2: Illawarra-Shoalhaven Subtropical Rainforest
- G3: Magenta Lilly Pilly Recovery Plan
- G4: Magenta Lilly Pilly Conservation Advice
- G5: Greater Glider Conservation Advice
- G6: Swift Parrot Conservation Advice
- G7: Littoral Rainforest Conservation Advice
- G8: Littoral Rainforest Listing Advice
- G9: Littoral Rainforest Listing attachment
- G10: Littoral Rainforest Recovery Plan

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- G11: GHFF Recovery Plan
- G12: Swift Parrot Recovery Plan Background document
- G13: Swift Parrot Recovery Plan
- G14: Threat Abatement Plan Cane Toad
- G15: Threat Abatement Plan Feral Cat
- G16: Threat Abatement Plan Feral Cats Swift Parrot Background document

Attachment H: Ministerial correspondence, comprising:

- H1: MC24-010904
- H2: OMVI Flora and Fauna report
- H3: Letter to Minister regarding presence of Magenta Lilly Pilly
- H4: Email to Minister requesting publication of proposed decision
- H5: Letter from Senator Hanson-Young
- H6: MC24-004135
- H7: MC24-004123
- H8: MC24-004118
- H9: MC24-004132
- H10: MC24-004124
- H11: MC24-004149
- H12: MC24-004162
- H13: MC24-004108
- H14: MC24-004801
- H15: MC24-004106
- H16: MC24-004102
- H17: Correspondence from resident 12 August 2024
- H18: MC24-017909

Attachment I: Department assessment and response documents, comprising:

- I1: Magenta Lilly Pilly - Department Assessment of Significance
- I2: Department response to proponent's comments from 24 May 2024
- I3: Department response to proponent's comments from 4 June 2024 onwards
- I4: Department analysis and response to 5 and 19 April 2024 Letters

Attachment J: Additional information, comprising:

- J1: Regional Development Australia Charter
- J2: Regional Investment Framework

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J3: Administrative responsibilities of Treasurer and Minister for Regional Development

J4: Department's site visit report from January 2024

J5: PMST report 16 September 2024 with 5 km buffer

Attachment K: Line area advice, comprising:

K1: Conditions team providing advice on comment from proponent

K2: ECs team Clarification on listing advice interpretation

K3: ECs team confirmation of Littoral Rainforest

K4: Protected Species and Communities Branch - Statutory document check

K5: Compliance and Enforcement Branch - Environmental history check

K6: EPBC Support and Assurance Section email with comments on conditions

K7: EPBC Support and Assurance Section - Marked up decision notice

Attachment L: Updated condition sets throughout consultation, comprising:

L1: 5 July 2024 Email dept to proponent updated conditions

L2: 5 July 2024 Letter to proponent

L3: 5 July 2024 Updated proposed condition set

L4: 14 August 2024 letter from department to proponent

L5: 14 August 2024 Draft conditions of approval provided to proponent

Attachment M: Meeting minutes comprising:

M1: Meeting minutes from 5 August 2024

M2: Meeting minutes from 19 August 2024

Attachment N: Comments from Ministers, comprising:

N1: Comments from NIAA

N2: Summary of comments from NIAA