

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

1. I, Kate Gowland, Branch Head, Environment Assessments (NSW/ACT), delegate of the Minister for the Environment and Water (**Minister**), provide the following statement of reasons for my decision dated 24 September 2024 to approve, under subsection 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), Ashton Coal Operations Pty Limited (the **proponent**) conducting underground longwall mining of coal seams at the Ravensworth Mine Complex, developing associated infrastructure and transferring coal, water and gas to the Ashton Coal Project (EPBC 2022/09208) (**proposed action**).

**LEGISLATION**

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

**BACKGROUND**

3. The Ravensworth Underground Mine (**RUM**) and Ashton Underground Mine are neighbouring underground coal mines, located in the Singleton Local Government Area, in the Hunter Valley region, NSW.
4. The RUM is operated by Glencore, and was originally granted approval under *NSW Environmental Planning and Assessment Act 1979* (**EP&A Act**) on 20 November 1996 as an underground longwall mine the Lemington, Pikes Gully, Liddell (Upper and Middle) and Barret Seams at a rate of up to 7 million tonnes per annum (Mtpa) of run-of-mine (ROM) coal until 31 December 2032. Nine modifications have been made to the approval under the EP&A Act between 2001 and 2013. None of the modifications required referral to the department for assessment under the EPBC Act as they were primarily changes to the layout and mining method which would not impact matters of national environmental significance (MNES), and all occurred prior to the introduction of the controlling provision for water resources in relation to unconventional gas or large coal mining development.
5. The RUM has been in care and maintenance since October 2014, following the completion of Longwalls 1 to 9 (of 16) in the Pikes Gully Seam. No further longwall extraction has occurred since.
6. The Ashton Underground Mine is operated by the proponent. It is a multi-seam longwall operation that began operating in 2004 and remains in operation today and has already longwall mined the target coal seams of this proposed action.
7. In 2020, an opportunity was identified for the proponent to access and extract some of the RUM's remaining (approved but unmined) metallurgical quality coal resources (i.e. semi soft coking coal) via the adjacent Ashton Underground Mine.
8. On 6 July 2022, approval was granted under the EP&A Act (via parallel modifications to the existing development consents) to enable the proponent to operate a portion of the RUM (**development consent**). The modifications included:
  - a. RUM Development Consent DA 104/96 **Modification 10**; and
  - b. Ashton Coal Complex Development Consent DA 309-11-2001-i Modification 11.

**Referral and the proposed action**

9. On 13 May 2022, the Department of Climate Change, Energy, Environment and Water (**department**) received a valid referral from the proponent (**referral**).

10. The proposed action involves underground mining up to 19.4 Mt of Run-Of-Mine (**ROM**) coal from the Pikes Gully and Middle Liddell Seams using longwall mining until approximately the end of 2032. Other activities of the proposed action include:
- a. establishment and use of gas, ventilation and water management infrastructure including shafts, bores, pumps and pipelines (required to ventilate and dewater the longwall operation);
  - b. management of water and gas that accumulates in the underground workings during longwall operations within the proposed action area;
  - c. transfer of ROM coal from longwall (secondary) extraction of the RUM Pikes Gully and Middle Liddell Seams in the proposed action area to the neighbouring Ashton Coal Project via connected underground workings; and
  - d. transfer of water and gas generated during secondary extraction from the proposed action area to the neighbouring Ashton Coal Project.
11. I noted that the proposed action includes a subset of the activities that formed Modification 10 (which I referred to at [8] above).
12. Public comments were invited on the referral for the proposed action from 12 May 2022 to 26 May 2022, however no comments were received. A number of Commonwealth Ministers and a state Minister were also invited to comment, with comments being received from Geoscience Australia, the National Indigenous Australians Agency (**NIAA**) and the New South Wales Department of Planning and Environment (**DPE**).

#### **Controlled Action Decision**

13. On 27 September 2022, a delegate of the Minister determined under section 75 of the EPBC Act that the proposed action was a controlled action due to likely significant impacts on listed threatened species and communities (sections 18 & 18A) and a water resource in relation to coal seam gas or large coal mining developments (sections 24D & 24E). It was also decided that the proposed action would be assessed by way of Preliminary Documentation.

#### **Assessment**

14. On 4 November 2022, the department provided the referral documentation to the Independent Expert Scientific Committee (**IESC**) for advice on the impacts of the proposed action on water resources. On 14 December 2022, the IESC provided its advice (which I refer to in my reasons in greater detail below).
15. On 17 April 2024, the department assessed the proponent's draft Preliminary Documentation as adequate. The Preliminary Documentation was published for comment between 10 May 2024 and 24 May 2024.
16. On 27 May 2024, consistent with s 95B(3), the proponent advised the department that no public comments had been received. The proponent also made the Preliminary Documentation available for public access between 7 June 2024 and 21 June 2024.
17. In accordance with s 95C, the department prepared a Recommendation Report. The department recommended that the proposed action be approved, with conditions.

#### **Proposed decision**

18. On 5 September 2024, I made a proposed decision to approve the proposed action, with conditions. That same day, I caused, consistent with s 131AA of the EPBC Act, letters to be sent to the proponent and the Minister for Resources and Minister for Northern Australia, the Hon. Madeleine King MP.

19. I also notified a delegate of the NSW Minister for Planning and Public Spaces, the Hon. Paul Scully MP of my decision.

*Proponent Comments*

20. On 6 September 2024, the proponent provided a comment on the draft conditions of approval, namely a request to update the definition of 'commence the action/commences the action' to include a list of excluded activities which do not form part of the proposed action, to allow the proponent to undertake those activities without triggering commencement of the action.

*Ministerial Comments*

21. On 18 September 2024, comments were received from Geoscience Australia. In summary, their comments noted:
- a. consideration of the proposed underground mining independently of the Ravensworth open cut mine may not fully capture the effect of cumulative impacts to groundwater systems, especially when considering the proximity to other large-scale mining operations;
  - b. the monitoring and mitigation of impacts to Groundwater Dependent Ecosystems (GDEs) are covered by the conditions, however there can be considerable time lags before mine-related impacts to water resources are realised as impacts to GDEs (i.e., decades or longer in some cases);
  - c. the timing of reporting non-compliance with conditions is different between the proposed conditions of approval (within 2 business days) and the conditions on the development consent (within 7 business days), and it may prove useful to align the reporting timeframes

**Approval decision**

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

**EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED**

23. My decision under subsection 130(1) and section 133 of the EPBC Act to approve the taking of the proposed action is based on consideration of the final approval decision brief prepared by the department dated 20 September 2024, and all of its attachments (**decision brief**). A full list of the attachments to the decision brief is set out at **Annexure B** to this statement.
24. I agreed with the department that the documents set out in Annexure B provided sufficient information for me to decide whether or not to approve the proposed action.

**FINDINGS ON MATERIAL QUESTIONS OF FACT**

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

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

26. The controlled action decision determined sections 18 and 18A to be controlling provisions for the proposed action on the basis that the proposed action was likely to result in a significant impact on the following EPBC Act listed species and communities:
- a. Central Hunter Valley eucalypt forest and woodland - critically endangered
  - b. Hunter Valley Weeping Myall (*Acacia pendula*) woodland - critically endangered

*Central Hunter Valley eucalypt forest and woodland - critically endangered*

Ecological Community Information

27. The Central Hunter Valley eucalypt forest and woodland Threatened Ecological Community (**TEC**) occurs in the south-east of the proposed action area and is surrounded by the Narama Pit to the west, rehabilitated overburden emplacement to the north, Narama Dam to the south and cleared paddocks and Lemington Road to the east and south-east. The TEC has been isolated from other surrounding vegetation due to historic and current mining operations and agricultural developments.
28. The Preliminary Documentation states that 42.8 ha of native woodland occurs within the proposed action area, which aligns with the EPBC-listed Central Hunter Valley eucalypt forest and woodland TEC. A further 2.2 ha of derived native grassland associated with the TEC is also present, making a total of 45 ha of the TEC within the proposed action area.
29. The Preliminary Documentation also states that established access tracks, laydown areas and powerline corridors traverse the Central Hunter Valley eucalypt forest and woodland TEC and, due to its isolated location, it is unlikely to provide key habitat connectivity.

Impacts

30. The Approved Conservation Advice (including listing advice) for the Central Hunter Valley eucalypt forest and woodland TEC describes a key impact as '*vegetation clearing and landscape fragmentation. Mining, agriculture and horticulture have been and continue to be the main drivers of clearing; remaining areas of the community are highly fragmented, isolated and much less resilient to on-going impacts.*'
31. The Preliminary Documentation states:

*No direct clearance of the Central Hunter Valley eucalypt forest and woodland TEC is proposed as part of the Proposed Action.*

*There is approximately 42.8 ha of Central Hunter Valley eucalypt forest and woodland TEC (and a further 2.2 ha of derived native grassland) within the Proposed Action area that would be subject to indirect impacts (subsidence) as a result of longwall mining (Figure 4).*

*Extraction of coal by longwall mining methods would result in the vertical and horizontal movement of the land surface (i.e. subsidence effects). SCT (2021) predicted subsidence effects resulting from the Proposed Action in Ravensworth Underground Mine Subsidence Review...*

*Subsidence effects have the potential to impact vegetation overlying an underground mining area. Based on [the proponent's] multi-seam underground mining experience at the Ashton Underground Mine as well as experience at other Hunter Valley underground mine (e.g. Wambo Underground Mine), the primary impact mechanisms for overlying vegetation are likely to be ponding and shallow surface cracking.*

...

*A comparison of the pre-subsidence (i.e. current landform) and predicted post-subsidence landform was undertaken by Hunter Eco (2023) to assess changes to flow patterns and potential ponding over the Proposed Action area that may impact vegetation. Based on the likely new drainage across the post-subsidence landform, there is expected to be limited ponding resulting from the Proposed Action (Appendix B).*

...

*SCT (2021) concluded that differential horizontal dilation is expected to occur at the transition between flat terrain and steeply sloping terrain (e.g. near the highwalls of the Narama Pit and Ravensworth Void 5 Ash Dam; Figure 4). Cracks are therefore expected along, and slightly back from, the crest of open cut voids, which may be the case along the western extent of the Central Hunter Valley eucalypt forest and woodland TEC where it is adjacent to the Narama Pit. Some of these cracks may be more than 1 m wide, however, these larger cracks are likely to occur close to the pit crest within the cleared access tracks and*

*laydown areas associated with the Ravensworth Operations Project. Smaller surface cracks would likely occur within the Central Hunter Valley eucalypt forest and woodland TEC. While these small cracks may have very localised impacts, they would be unlikely to significantly impact the wider population of the Hunter Valley eucalypt forest and woodland TEC.*

...

32. I accepted that there would be no direct impacts to the Central Hunter Valley eucalypt forest and woodland TEC through clearing, however I considered that there were potential indirect impacts by way of subsidence effects arising from the proposed action.

Avoidance and Mitigation Measures

33. The Preliminary Documentation states that the techniques used to remediate surface cracking associated with longwall subsidence at the adjacent Ashton Underground Mine would be employed to remediate surface cracking associated with the proposed action, and that these would be described in an updated Biodiversity Management Plan.

34. The Preliminary Documentation noted:

*As a comparison, the predicted levels of subsidence, tilt and strain over remnant woodland vegetation at the neighbouring Ashton Underground Mine were similar or greater than those predicted for the Proposed Action. [the proponent] has mined three coal seams beneath this wooded area while maintaining compliance with the “negligible impact to threatened species, populations, habitat or ecological communities” Subsidence Performance Measure prescribed in Development Consent DA 301-11-2001-i (Appendix A). The Wambo Underground Mine has also undermined Central Hunter Valley eucalypt forest and woodland TEC with no significant impact observed despite the presence of the subsidence effects including observed cracking of the surrounding soil.*

35. Relevantly, I noted that, consistent with the existing Ashton Biodiversity Management Plan, the Biodiversity Management Plan proposed for the proposed action would include:
- subsidence performance measures which prescribe that underground mining must have negligible impact on threatened species, threatened populations, or endangered ecological communities;
  - remediation of surface cracking where it is determined to adversely impact on threatened vegetation; and
  - trigger action response plans in the event that a performance indicator is exceeded, such as a decline in tree health/condition being observed through monitoring.

36. I noted, in relation to the condition I have described at [35.a], the conditions of the development consent provided that:

*If the Applicant exceeds the performance measures in Table 1 and the Planning Secretary determines that:*

- it is not reasonable or feasible to remediate the impact or environmental consequence; or*
- remediation measures implemented by the Applicant have failed to satisfactorily remediate the impact or environmental consequence;*

*then the Applicant must provide a suitable offset to compensate for the impact or environmental consequence, to the satisfaction of the Planning Secretary.*

37. I also noted that the conditions of the development consent included that an Extraction Plan be prepared and implemented which must:

*... include the following in consultation with the Resources Regulator:*

- a Subsidence Monitoring Program to:*

- o *provide data to assist with the management of the risks associated with subsidence;*
- o *validate the subsidence predictions;*
- o *analyse the relationship between the predicted and resulting subsidence effects and predicted and resulting impacts under the plan and any ensuing environmental consequences; and*
- o *inform the contingency plan and adaptive management process;*

38. The conditions of the development consent also specify that the proponent must comply with the rehabilitation objectives, which include that ecosystem function is restored, including maintaining or establishing self-sustaining eco-systems comprised of a local native plant species.

39. The department considered, and I accepted, that the conditions of the development consent that I have identified above (at [33]-[38]) will be effective in managing the potential impacts on the Central Hunter Valley eucalypt forest and woodland TEC as a result of the proposed action, if the required management plans are updated to include the proposed action.

#### Conditions

40. To ensure that the department retains oversight over the proposed action so that the Central Hunter Valley eucalypt forest and woodland TEC would be protected, and that damage would be rehabilitated, I considered that it was necessary to impose conditions on the approval requiring the proponent to comply with those conditions I have identified above (at [33]-[38]).

#### Conclusion

41. I agreed with the department that, if undertaken in accordance with the conditions of the development consent (which would be required to be complied with by conditions attached to this approval), the proposed action is unlikely to result in unacceptable impacts on the Central Hunter Valley eucalypt forest and woodland TEC.

*Hunter Valley Weeping Myall (Acacia pendula) woodland - critically endangered*

#### Ecological community Information

42. The Preliminary Documentation states that a 3 ha area of mixed plantation (rehabilitation) is present within the proposed action area and includes approximately 20 widely spaced Weeping Myall trees. This area is part of the overburden rehabilitation area for previous mining operations. The Preliminary Documentation continues by stating that these Weeping Myall trees are part of a prior plantation on previously cleared land.

43. The Recovery Plan states as follows

*Hunter Valley Weeping Myall is currently known from only 43 naturally occurring populations, where a population is a group of sites within 1km of each other. These 43 populations consist of 102 sites or sub-populations, with the total area of all sites estimated to be less than 15 hectares. A further 9 locations consisting of 12 sites have been identified as possible Hunter Valley Weeping Myall populations, but have not yet been confirmed.*

*A further 25 sites are considered to be Hunter Valley Weeping Myall plantings. Three of these sites (two at Ravensworth and one at Thomas Mitchell Drive south of Muswellbrook) show evidence of recruitment, however it has not been determined whether juvenile plants are suckers or regeneration from seed...*

44. I noted that the Preliminary Documentation stated:

*Weeping Myall in the mixed species mine rehabilitation area consisted of approximately 20 widely spaced mature trees approximately 3 to 5 metres (m) tall with distinct weeping foliage, along with a similar number of scattered younger plants. The scattered distribution of the younger plants suggests recruitment from*



*seed dispersal with no indication of the dense vegetative suckering characteristic of what is considered naturally occurring Weeping Myall remnants in the Hunter Valley.*

...

*Umwelt (2010) noted that "Planted weeping Myall are currently not considered to form part of the listed endangered population unless there is evidence of natural regeneration." Notwithstanding, Umwelt (2010) still designated the presence of Weeping Myall as conforming with the NSW endangered population Weeping Myall (Acacia pendula) in the Hunter Catchment. The reasoning for this designation was that "Since natural recruitment may be occurring within the planted area, the stand is cautiously considered to conform to the description of the Weeping Myall (Acacia pendula) in the Hunter Catchment Endangered Population".*

*Nowhere in past or current NSW or Commonwealth Scientific Committee determinations regarding Weeping Myall in the Hunter Catchment does this condition apply. In fact, the reverse condition prevails in that none of the recognised remnant Weeping Myall occurrences produce seed (Bell et al 2007), only spreading by vegetative suckering. Furthermore, the Commonwealth listing advice for the critically endangered community Hunter Valley Weeping Myall (Acacia pendula) Woodland (Department of the Environment, 2014) specifically excludes planted Weeping Myall, the presence of which is considered to confuse identification of what are considered to be genuine remnant occurrences.*

...

*The IUCN (2013) guideline referred to in OEH (2013) is conditional on naturally occurring and introduced (i.e., planted) threatened plants being the same taxon. In the case of Weeping Myall the two forms in the Hunter Valley have not been confirmed to be the same taxon.*

*The Commonwealth listing advice for the critically endangered community Hunter Valley Weeping Myall (Acacia pendula) Woodland (Department of the Environment, 2014) Section 1.2 states that:*

*It is thought that Hunter Valley stands are a relic from the last glaciation when the Hunter Valley is likely to have been dominated by 'western semi-arid' flora.*

*There is nothing relictual about a group of recently planted individuals that could not have been sourced from any of the potentially relic Hunter Valley populations that cannot be propagated.*

45. The department agreed that the trees identified did not conform to the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC. However, adopting a conservative and cautious approach, the proponent and the department considered it appropriate to assess the impacts of the proposed action on TEC as if those identified Weeping Myall trees within the plantation area were the TEC.

#### Impacts

46. The Preliminary Documentation stated:

*No direct clearance of the approximately 20 Weeping Myall trees is proposed as part of the Proposed Action.*

*The potential indirect impacts due to subsidence effects, as described for the Central Hunter Valley eucalypt forest and woodland TEC (Section 4.2.2) would also apply to the approximately 20 Weeping Myall trees (Figure 4). Only part of the rehabilitation area containing the Weeping Myall trees is located directly above the longwall panels. The western area of the plantation is located beyond the end of the longwall panels and therefore likely to experience reduced subsidence effects.*

47. I agreed with the description of these impacts.

#### Avoidance and mitigation

48. The Preliminary Documentation states that management of subsidence effects of the proposed action on the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC include:

- a. Implementation of the Biodiversity Management Plan (as updated for the proposed action), including subsidence performance measures, remediation of surface cracking, and trigger action response plans in the event that a performance indicator is exceeded. I also noted that the Biodiversity Management Plan would be updated to include annual vegetation monitoring for Weeping Myall trees within the proposed action area for the duration of the proposed action, and measures to prevent the introduction or spread of *Phytophthora cinnamomi* into the area of Hunter Valley Weeping Myall Woodland;
  - b. Implementation of the Extraction Plan required under the development consent, which must include a Subsidence Monitoring Program (see [37] above); and
  - c. Provision of a suitable offset to compensate for impacts that occur if the performance measures are exceeded (see [36] above).
49. Like the Central Hunter Valley eucalypt forest and woodland TEC, the conditions of the development consent which specify that the proponent must comply with the rehabilitation objectives, which include that ecosystem function is restored, including maintaining or establishing self-sustaining eco-systems comprised of a local native plant species, equally apply to the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC.
50. The department considered, and I accepted, that the conditions of the development consent that I have identified above (at [48]-[49]) will be effective in managing the potential impacts on the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC as a result of the proposed action, if updated to include the proposed action.

#### Conditions

51. For the same reasons as I have given for the Central Hunter Valley eucalypt forest and woodland TEC, namely: to ensure that the department retains oversight over the proposed action so that the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC would be protected, and that damage would be rehabilitated, I considered that it was necessary to impose conditions on the approval requiring the proponent to comply with the conditions I have identified above (at [48]-[49]).

#### Conclusion

52. Noting that the trees identified did not conform to the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC but that a conservative and cautious approach had been adopted, I agreed with the department that, if undertaken in accordance with the conditions of the development consent (which would be required to be complied with by conditions attached to this approval), the proposed action is unlikely to result in unacceptable impacts on the Hunter Valley Weeping Myall (*Acacia pendula*) woodland TEC. I was also satisfied that approval of the proposed action, with conditions, would not be inconsistent with the Recovery Plan or applicable Threat Abatement Plan.

#### *Conclusion on Listed Threatened Species and Communities*

53. I agreed that the proposed action, if approved subject to conditions, would not have an unacceptable impact on the two TECs.

#### **Water resources, in relation to unconventional gas or large coal mining development (s24D and s24E)**

54. The proposed action area is located within the Hunter River catchment and the Bowmans Creek sub-catchment. The Hunter River is located south of the proposed action area and flows to the east. Bowmans Creek is located approximately 300 m to the east of the proposed action longwall panels and was realigned by the proponent in two locations prior to it being undermined by the AUM operations. Bowmans Creek flows southwards into the Hunter River. Other nearby creeks include Glennies Creek, located more than 2 km to the east of the proposed action and the re-aligned



Bayswater Creek located between the Ravensworth Narama Pit and Ravensworth North Pit, west of the proposed action.

55. The two main water bearing systems within the proposed action area are the Permian coal measures and the unconsolidated alluvial sediments associated with the Hunter River and Bowmans Creek.
56. The Bowmans Creek Alluvium is directly east of the proposed action longwall panels and is typically between 7 to 15 m thick in the local area. The depth to water through the Bowmans Creek alluvium is variable, but is in the range of 4 to 10 m directly east of the proposed action (representing a saturated thickness of up to 10 m in the deepest parts of the alluvium).
57. Historical mining in the area has depressurised the deeper Permian formation, reducing the flow of groundwater from the Permian strata to the alluvial sediments relative to pre-mining conditions. Groundwater levels within the alluvial system is maintained through rainfall recharge.
58. The Preliminary Documentation states:

*The majority of the Proposed Action area has been disturbed by mining operations and surface water flows within the Proposed Action area are managed by the existing surface water management system for the Ravensworth Operations Project. The majority of surface water flows over the area of remnant (or regrowth) vegetation in the south-east of the Proposed Action area flow southwards into the Narama Dam, which is part of the Ravensworth Operations Project water management system.*

#### *IESC Advice*

59. I noted that s 131AB of the EPBC Act required that advice from the IESC be obtained, and considered. On 14 December 2022, the IESC provided its advice. The IESC advised:

*The IESC considers that the proposal documentation is inadequate as it is largely limited to the difference in impacts associated with the mine layout that was approved for the RUM in 1996. It does not provide sufficient evidence or detail to reliably evaluate the quality of the work or to provide confidence in the conclusions drawn about the potential impacts of the project. From the limited information provided, key potential impacts are:*

- *groundwater drawdown, contributing to cumulative drawdown in the region that may adversely affect groundwater-dependent ecosystems (GDEs);*
- *altered surface-water hydrology due to subsidence up to 5.9 m and cracking potentially greater than 1 m predicted above the mining area. The use of multi-seam mining and the presence of overlying backfill is likely to contribute to a high degree of localised variability across the site; and*
- *further decreases in groundwater and surface water quality should there be subsidence-induced seepage or embankment failure associated with the onsite storage dams*

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

- *Further evaluation is needed on potential impacts on runoff, recharge and flooding processes associated with altered surface water-groundwater connectivity pathways from subsidence associated with the project.*
- *To increase confidence in the groundwater model, further work is required which should include, at a minimum, a revised model boundary, clarity on boundary conditions and hydrogeological data used in the model, greater detail on the incorporation of historical and approved future mining projects and a sensitivity and uncertainty analysis.*
- *Information on the water and sediment quality of the onsite storage dams is required to help inform an analysis of the potential impacts of potential leaks and spills from these dams.*

- *The proponent should provide an ecohydrological conceptual model that illustrates likely impact pathways and ecological responses, focussing on potential cumulative changes to groundwater quantity and quality and surface flows in the project area and downstream.*
- *More detailed Trigger Action Response Plans (TARPs) are needed, including specific remedial actions for dieback of riparian vegetation in response to altered groundwater levels or quality, in addition to an early warning management system for the management of subsidence-related impact*

60. The proponent's response to the IESC advice was provided in the Preliminary Documentation. I considered the department's summary, and accepted that it accurately summarised the key parts of the response, as follows:
- a. The underground mining area of the proposed action is largely located beneath the Ravensworth Operations and AGL Energy Limited (AGL)'s Void 5 open cut mining operations. As such, the majority of the proposed action area has already been disturbed and is subject to ongoing mining and rehabilitation activities, with water captured and retained within existing open cut voids or mine water storages. Areas of natural ground and rehabilitation in the east and south-east of the proposed action drain to the Narama Dam or to sediment dams prior to discharging off-site to Bowmans Creek.
  - b. A comparison of the pre-subsidence digital elevation model (DEM) and predicted post-subsidence DEM found that flow patterns would remain similar post-mining, with flow exiting the area and entering Bowmans Creek at the same points as for pre-mining conditions.
  - c. Subsidence may also result in ponding and increased residence time of runoff providing further recharge opportunities. However, based on the pre-mining and predicted post-mining drainage paths, this is not expected to be a significant contributor to recharge across the proposed action area and surrounds.
  - d. Enhanced recharge to deeper strata may temporarily become available where subsidence results in connective surface cracking. However, this opportunity is expected to be limited and only temporary due to surface remediation works and as deeper fractured rock areas 'heal' through infill of fines and changes in rock stress as settlement continues over time.
  - e. The proposed action has been designed to avoid impacting the Narama Dam and dam wall, as far as practical. The dam wall (southern side of dam) is located more than 250 m from the longwall panels. At this distance, the geotechnical assessment concluded that longwall mining would not be expected to cause any significant subsidence movements in the vicinity of the dam wall.
  - f. The 'Subsidence Review' undertaken in 2021 indicates that subsidence impacts of the proposed action would be consistent with the findings of earlier subsidence assessments for the mining layout approved under previous variations of the development consent. The proposed action would comply with the existing performance measures in the development consent, and these performance measures include environmental outcomes for watercourses (i.e. no greater subsidence impact or environmental consequence to Bowmans Creek and its alluvium than predicted in the such assessments).
  - g. Vegetation within the proposed action area is mapped as having low potential for groundwater interaction. However, it is accepted that Bowmans Creek and the Hunter River have the potential to support GDEs. River Red Gums (*Eucalyptus camaldulensis*) are the only confirmed terrestrial GDE present, with small stands present along Bowmans Creek. The trees are in a healthy condition with no evidence of dieback from historic or existing mining operations. These GDEs are likely to access shallow alluvial groundwater, supported by baseflow from creeks. There are

also three stands of River Red Gums in the riparian zone of Bowmans Creek. The predicted drawdown in this area is less than 0.1 m on completion of the proposed action.

- h. The Preliminary Documentation assessed potential impacts of the proposed action on the Hunter River, Bowmans Creek and their connected alluvium using a numerical groundwater model. The groundwater model was updated in response to the IESC advice, and peer reviewed in 2024. In summary the groundwater assessment concluded:
  - historical mining has not impacted water levels in the Hunter River and Bowmans Creek alluvium;
  - the proposed action would result in less than 0.2 m of drawdown in the Bowmans Creek alluvium and less in the Hunter River and Glennies Creek; and
  - reduction in baseflow to the Hunter River, Bowmans Creek and Glennies Creek due to the proposed action would be negligible.
- i. The groundwater model also modelled potential cumulative impacts of the proposed action together with historical and approved mining at the RUM, Ravensworth Mine Complex, the AUM and other neighbouring mining operations. The proposed action would have a negligible contribution to cumulative impacts.
- j. Any potential impacts to surface water, groundwater or GDEs will be managed through existing management plans which form part of the development consent, and which will be updated to incorporate the proposed action.

61. I noted that the department obtained assistance from the Office of Water Science (**OWS**) on assessing the potential impacts of the proposed action, and the adequacy of the proponent's response in addressing the IESC's concerns. On 10 July 2024, the OWS advised that updates to the groundwater model addressed some of the IESC's concerns and demonstrated that due to the project's location (between two underground mines and targeting already-depressurised seams), specific project-related drawdown is likely to be minimal, however some information was still lacking:

- a. River Red Gum was the only known GDE present, however no consideration was given to impacts on riparian vegetation that may also access groundwater (including facultatively), given the depth to groundwater along Bowmans Creek. The groundwater dependence of riparian vegetation should be considered, particularly as riparian zones may provide habitat for EPBC listed species.
- b. A cumulative impact assessment should consider impacts to GDEs from pathways such as reduced baseflow, alluvial drawdown, and altered streamflow quality from releases.
- c. The uncertainty analysis indicates that areas where drawdown could exceed 0.1 m intersect identified River Red Gum stands. The potential for drawdown in these areas or for other GDE should be considered as a precaution.
- d. Potential impacts from subsidence to key infrastructure such as the Narama Dam, Void 5 Dam, fly ash emplacement and water pipelines should be considered.
- e. Changes to the water balance due to subsidence should be considered, including the potential for seepage from tailings and ash dams to groundwater to be exacerbated by subsidence.
- f. Subsidence impacts should be identified to aid in identification and remediation of changes to the existing landscape.

*Impacts*

62. Following consideration of the Preliminary Documentation information, the IESC advice, the proponent's response to the IESC advice and the further OWS advice (which I have summarised above), the department considered, and I agreed, that potential impacts from the proposed action were:
- a. impacts to surface water resources as a result of subsidence; and
  - b. impacts on the groundwater regime due to further drawdown.

*Mitigation and Management Measures*

63. Through the NSW development consent 104/96, the proponent is required to manage impacts to surface and groundwater, and potential subsidence impacts, through the preparation and implementation of a number of management plans and programs, including:
- a. an Extraction Plan, which must include:
    - detailed performance indicators for each of the performance measures (which are that there is to be no greater impact than has been assessed in the relevant environmental assessment);
    - revised predictions of the subsidence impacts and environmental consequences since the development consent approval given in June 2013;
    - a contingency plan that provides for adaptive management where monitoring indicates that there has been an exceedance of any performance measures;
    - a Subsidence Monitoring Program; and
    - a Built Features Management Plan which includes measures to manage the potential impacts and consequences of subsidence on any built features (including dams).
  - b. a Water Management Plan, which has been prepared in consultation with the New South Wales Department of Planning and Environment - Water Division, with such plan to provide for the management of the potential impacts and/or environmental consequences on surface water resources, groundwater resources and flooding, and which must include (among other things):
    - Surface and groundwater impact assessment criteria, including trigger levels for investigating any potentially adverse impacts on water resources;
    - Surface Water Management Plan to monitor and assess impacts on surface water;
    - Groundwater Management Plan to monitor and assess impacts on groundwater; and
    - Surface and Ground Water Response Plan, which must include a response protocol for any exceedances of the surface water and groundwater assessment criteria; measures to prevent, minimise or offset groundwater leakage from alluvial aquifers caused by the development, particularly when mining within 150 metres of any such alluvials and measures to mitigate and/or offset any adverse impacts on groundwater dependent ecosystems or riparian vegetation.
64. I further noted that the development consent had the following requirements:
- a. that the proposed action causes no greater subsidence impact or environmental consequences than predicted in the Environmental Assessments to Bowmans Creek and its alluvium;
  - b. that there be negligible environmental consequences to the Hunter River and its alluvium;

- c. the proponent must provide a suitable offset to compensate for the impact that occurs if (a) and/or (b) above is exceeded, and it is not reasonable or feasible to remediate the impact, or the remediation measures have failed; and
  - d. Rehabilitation of the site, with watercourses subject to subsidence impacts required to be hydraulically and geomorphologically stable, with riparian vegetation that is the same or better than prior to mining.
65. The department noted that these plans and conditions are already being implemented for the existing RUM and/or AUM, and mining has occurred much closer to sensitive receptors at those locations than will occur at the proposed action. Relevantly, I noted that the mining at the existing RUM and/or AUM (which is closer to sensitive receptors) has maintained compliance with the performance measures and indicators and trigger levels specified in the plans. This gave me confidence in the effectiveness of these measures.
66. The department considered that the matters raised by the IESC advice and the OWS advice would be addressed through the plans required under the development consent. I noted that the OWS advice did not consider the conditions of the development consent.
67. I noted that the department considered that impacts to GDEs were adequately considered, and that there is unlikely to be unacceptable impacts on GDEs if the proposed conditions (which are discussed at [69]-[70] below) are attached. I agreed with this, noting that the conditions had strict performance measures.
68. Having regard to the Preliminary Documentation, the IESC advice, the proponent's response to the IESC advice, the further OWS advice, the compliance with performance measures at RUM and AUM, and the conditions attached to the development consent, I considered that the measures detailed at [63]-[64] above were adequate to avoid, mitigate and manage impacts, such that any impacts to water resources would not be unacceptable.

#### *Conditions*

69. To ensure that the department retains oversight over the proposed action so that water resources will be protected, and that damage will be rehabilitated, I considered that it was necessary to impose conditions on the approval requiring the proponent to comply with particular conditions of the development consent which required the proponent to do the things I have identified at [63]-[64] above, and further added that the plans must be updated to include the proposed action.
70. I was satisfied that if the plans were updated, the conditions attached to the development consent (and which conditions of this approval would require compliance with) adequately addressed the concerns raised by the IESC, and the outstanding matters which the OWS identified. I accepted that no further conditions were required as the conditions of the development consent (which were directed to mitigation, management or, as a last resort, compensation of potential impacts) were sufficient.

#### *Conclusion on water resources*

71. I agreed with the department that, approval of the proposed action, with conditions, would not have an unacceptable impact on water resources.

#### **Economic and social matters**

72. In making my decision, I had regard to the economic and social matters relevant to the proposed action, as follows. I noted that the Preliminary Documentation states:

*... The Proposed Action would produce a metallurgical coal product that can be used in the steelmaking process.*

*The RUM has been in care and maintenance since 2014. If mining was not to recommence, then the approved but as yet unmined RUM coal resources would most likely not be mined and, therefore, the NSW Government royalties and tax payments associated with the mining of the approved RUM coal in the Pikes Gully and Middle Liddell Seams may not be realised.*

*[the proponent] would utilise the existing Ashton Coal Project workforce to mine the [the proponent]-operated portion of the RUM. Accordingly, the Proposed Action would provide for the ongoing employment of the [the proponent] workforce (personnel and contractors).*

*The RUM Modification 9 Environmental Assessment (GSS Environmental, 2012) proposed an operational workforce of 410 long-term total average employees, which is similar to the 386 employees previously assessed for the Ashton Coal Complex. Social impact themes for the local area in the context of a proposed mining development were identified in the Glendell Continued Operations Project Social Impact Assessment (Umwelt, 2019) – the Glendell Mine is located approximately 1 km from the Proposed Action area. These themes include issues such as dust and noise emissions, health, community, economic benefits, employment, property prices and impacts on water. A review of the relevance of the Proposed Action to the social impact themes identified by Umwelt (2019) is provided in Table 4. Based on the review, there would be a negligible change in social impacts under the Proposed Action.*

*Given the Proposed Action is located within an established mining precinct, involves the continued employment of the existing [the proponent] workforce and use of established off-site infrastructure (e.g. road network and rail and port infrastructure), there would be a negligible regional and national economic and social impacts.*

*The estimated capital investment for the Proposed Action is approximately \$165 million Australian Dollars (AUD).*

*An economic assessment completed by NSW Mining, Exploration & Geoscience on the Modification Report concluded the Proposed Action (MEG, 2021):*

- *would generate approximately \$120 million AUD in royalties;*
- *have a Net Present Value of approximately \$84 million AUD; and*
- *have a total resource value of approximately \$1.7 billion AUD.*

73. I noted that the proponent had indicated that the proposed action would not materially change the way of life and rural lifestyle for the local community, which is located in a mining precinct (and surrounded by a number of mines). The proposed action would utilise existing infrastructure and facilities, was unlikely to have an impact on services in the area, and would implement a Noise Management Plan and Air Quality and Greenhouse Management Plan, as well as the mitigating measures described in the discussion on water resources above, to address the social impact themes which are referred to in the extract above.

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

74. In approving the proposed action subject to conditions, I took into account the principles of ecologically sustainable development, including the precautionary principle (s 391(2)). I acknowledged that the Preliminary Documentation stated:

*The design, planning and assessment of the Proposed Action have been carried out applying the principles of ESD, through:*

- *incorporation of risk assessment and analysis at various stages in the design and environmental assessment and within decision-making processes;*
- *adoption of high standards for environmental and occupational health and safety performance;*
- *consultation with regulatory and community stakeholders; and*



- *optimisation of the potential economic benefits to the community arising from the development of the Proposed Action.*

*In addition, it can be demonstrated that the Proposed Action can be operated in accordance with ESD principles through the application of existing mitigation and management measures to minimise environmental impacts of the Action.*

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

75. The department considered that the proposed action had gone through an environmental impact assessment process with economic, environmental, social and equitable considerations, and included a public consultation process. This process saw the proponent consider all short-term and long-term impacts on protected matters. All impacts were assessed and the department identified how any potential impacts on the identified ecological communities, and water resources, will be managed through the recommended conditions of approval under the EPBC Act. In addition, the department recommended conditions that requires the site to be rehabilitated to the same, or better quality than pre-mining, which further enhanced the long-term outcomes of the proposed action.

76. I was satisfied that the information before me allowed detailed consideration of long and short-term economic, environmental, social and equitable impacts, and agreed with the department that the likely long-term and short-term economic, environmental, social and equitable impacts are satisfactory, and acceptable.

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

77. Under sections 3A(b) and 391(2) of the EPBC Act, the precautionary principle provides that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

78. The Preliminary Documentation stated:

*A range of mitigation measures have been adopted as components of the Action design to minimise the potential for serious impacts to the environment, including the continuation of environmental management and monitoring programmes and compensatory measures.*

*Minimal uncertainty regarding the information used in these specialist assessments is expected given the extensive experience and knowledge gained from the operation of the adjacent Ashton Underground Mine. [the proponent] has successfully managed environmental impacts during the mining of the Pikes Gully, Upper Liddell and Upper Lower Liddell Seams to achieve the Performance Measures in Development Consent DA 309-11-2001-i.*

79. The department considered, and I accepted, that the precautionary principle applied. However, I accepted the department's analysis that the lack of certainty related to the potential impacts of the proposed action is addressed by recommended conditions that restrict environmental impacts, impose strict monitoring, and adopt environmental standards which, if not achieved, require the application of response mechanisms to avoid adverse impacts.

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

80. The proposed action does not propose any material change to landforms in the underground areas at the RUM, and I accepted that the predicted vertical subsidence in the area of natural ground would not result in a material change to landforms and any minor subsidence impacts would be monitored and remediated as they occur (if required).

81. I noted that the proposed action would not change the future land use or land management at the RUM, and the proposed action would also provide continued significant stimulus to local and regional economies, thus contributing to future generations through social welfare, amenity and infrastructure. I was satisfied that the intergenerational principle had been appropriately considered, and informed the Preliminary Documentation and the assessments and recommendations.

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

82. In making my decision, I was satisfied that the importance of conserving biological diversity and ecological integrity had been at the forefront of both the planning and design of the proposed action, and the assessment of the proposed action. I noted, in particular, that clearance of TECs had been entirely avoided, and any impacts of subsidence on water resources or TECs would be appropriately managed to maintain biological diversity and ecological integrity.

Improved valuation, pricing and incentive mechanisms should be promoted

83. I noted that consideration had been given to the economic impacts (both positive and negative) as I have discussed above, and that the proponent had referred to a number of planning and policy documents in the Preliminary Documentation, which reflected consideration of evaluation, pricing, and incentive mechanisms.

#### **Assessment Report - section 136(2)(bc)**

84. In making my decision, I had regard to the Preliminary Documentation (noting that no comments were received following its publication) and the recommendation report. I have referred to these, where relevant, throughout my reasons above.

#### **Other information - section 136(2)(e)**

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

#### *Greenhouse Gas Emissions*

86. The department advised, and I accepted, that the proposed action will produce greenhouse gas (GHG) emissions. I noted that the EPBC Act does not regulate GHG emissions as a discrete protected matter. However, GHG emissions from the taking of an action may be considered where those emissions will, or are likely to, result in a 'significant impact' on a protected matter. Relevant to this proposed action, the combustion of coal and/or gas on a global scale results in GHG emissions, which increases the effects of climate change, including the regularity, scope and intensity of climate hazards. Against this context, I also accepted that the GHG emissions and physical effects of climate change may adversely affect the TECs and water resources I discussed above, and I should consider the likely impacts of the GHG emissions on the TECs and water resources.

87. The department informed me of the following:

*The Ashton Coal Project Modification Report (for the NSW approval of the modification) included a greenhouse gas (GHG) assessment. It concluded that total estimated Scope 1, 2 and 3 greenhouse gas emissions for the modified RUM would be approximately 6 million tonnes (Mt) carbon dioxide equivalent (CO<sub>2</sub>-e) for the lifespan of the approval (until the end of 2032). This includes 2.6 Mt of Scope 1 and 2 and 3.4 Mt of Scope 3 emissions.*

88. The department considered that, even if impacts on listed threatened species and ecological communities and water resources arising from GHG emissions could be said to be impacts of the proposed action, the Scope 1, 2 and 3 emissions for this proposed action (of 6 Mt) for the life of the

proposed action are extremely low and therefore, such impacts would not be, and would not likely be, significant.

89. In my role, I have been required to consider climate change impacts from GHG emissions from other actions on protected matters. Having regard to the GHG emissions of those other actions, and the emissions of this proposed action, I agreed with the department that, even if the GHG emissions could be said to be impacts of the proposed action (direct or indirect), those impacts would not be significant.

**Relevant comments - section 136(2)(f)**

90. I have identified and summarised the relevant comments received at [20]-[21] above, and had regard to those when making my decision.

**Relevant advice - section 136(2)(fa)**

91. As required, I had regard to the advice obtained from the IESC. I refer to the advice in my consideration of the impact on water resources at [54]-[71] above.

**Person's environmental history – section 136(4)**

92. The proponent stated in their Preliminary Documentation that there have been three proceedings against the proponent in the NSW Land and Environment Court in 2011 and 2012, of which two were dismissed. The other related to granting access for traditional owners and archaeological experts to four Aboriginal sites at the Ashton Coal Mine, and access was granted. I noted that these proceedings took place over 10 years ago.
93. I also noted that the Triage and Operations Coordination Section, Compliance and Enforcement Branch of the department was consulted on the proponent's environmental history, and confirmed that there was no adverse environmental history associated with the proponent or its parent companies.
94. The department considered that the proponent was a suitable person for approval. Noting the limited adverse compliance history set out above, I agreed with the assessment that the proponent was a suitable person to hold an approval.

**Requirements for decisions about listed threatened species and communities (section 139 of the EPBC Act)**

*Biodiversity Convention*

95. In my making my decision, I was required to ensure that any decision I made would not be inconsistent with the Biodiversity Convention. The objectives of the Biodiversity Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.
96. The Biodiversity Convention promotes, as far as possible and as appropriate, procedures requiring environmental impact assessments of proposed actions that are likely to have significant adverse effects on biological diversity with a view to avoiding and minimising such impacts. The assessment undertaken for the purposes of the development consent, and the process under the EPBC Act are consistent with the Biodiversity Convention. Further, these assessments have given consideration to the appropriate combinations of avoidance, management, monitoring and mitigation measures for TECs likely to be impacted by the proposed action, which I considered to be consistent with the objectives of conservation of biological diversity.

97. I also noted that the public had had the opportunity to participate in the assessment process, and that information relating to the proposed action would, by virtue of the conditions, be made publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.
98. I agreed with the department, and was satisfied, that approval of the proposed action with conditions would not be inconsistent with Australia's obligations under the Biodiversity Convention.

*Apia Convention*

99. 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.
100. The department informed me that the Apia Convention was suspended with effect from 13 September 2006. As Australia currently has no international obligations under the Apia Convention, I did not consider that any decision could be inconsistent with the Apia Convention.
101. Nevertheless, I noted the department's advice that the Apia Convention had been taken into consideration, and that the recommendations made by the department were not considered to be inconsistent with the Convention which has the general aims of conservation of biodiversity. I agreed (and refer to my reasons in relation to the Biodiversity Convention above).
102. Accordingly, even if the Apia Convention did impose obligations, I was satisfied that approval with conditions would not be inconsistent with the Apia Convention.

*International trade in endangered species*

103. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. I agreed with the department that, as the proposed action does not involve international trade in specimens of wild animals and plants, approval would not be inconsistent with the CITES.

*Recovery Plans and Threat Abatement Plans Recovery Plan*

104. I was required to consider any Recovery Plans and Threat Abatement Plans relevant to my decision, and ensure that my decision was not inconsistent with these statutory documents.
105. I have had regard to these documents in making my decision, as discussed above at [26]-[53] above. I am satisfied that approval of the proposed action (subject to conditions) would not be inconsistent with any of these plans.

*Conservation Advice(s)*

106. I was required to have regard to any approved conservation advice for any species which is likely to be, or will be, significantly impacted by the proposed action. I have identified the relevant conservation advices, and how I took them into account, in my discussion at [26]-[53] above.

**Bioregional plans (section 176(5) of the EPBC Act)**

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

**Conditions**

108. I have noted above in my consideration of the listed threatened species and water resources the conditions that I considered necessary for the protection of those protected matters. In deciding that

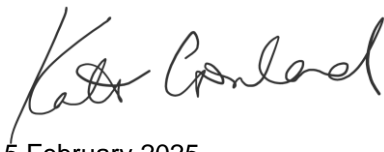
those conditions were necessary, I had regard to the very detailed conditions of the development consent, and agreed that the minor variations to the proposed conditions of approval requested by the proponent following my proposed decision were appropriate as they would ensure alignment and consistency in the conditions of my approval and the development consent.

109. I noted that the department had also recommended various standard administrative conditions that allow for enforcement, record-keeping and appropriate documentation to be provided to the department. These conditions include:
- the proponent publishing all plans on its website
  - the proponent notifying the department of any change or proposed change to the development consent.
  - the proponent notifying the department of the commencement of the proposed action.
  - annual compliance reporting and relevant timeframes, and the reporting of instances of non-compliance and the relevant procedures and timeframes;
  - independent audits of compliance with the proposed conditions and the relevant procedures and timeframes; and
  - completion of action protocols.
110. In regard to the timeframes for reporting any non-compliance, I acknowledged that the comments of Geoscience Australia indicated that the conditions of the development consent specified a report being made within 7 days, whereas the department's recommended condition was 2 business days. I did not consider it necessary to change the department's recommended period to align with the development consent, particularly noting that a requirement to report within 2 days would ensure that the department had immediate knowledge of any non-compliance, and could take appropriate steps, if required.
111. I agreed that these conditions should be imposed as they were both necessary and convenient for the purposes of ensuring that the department can maintain adequate oversight over the proposed action and ensure protection of the any protected matters.

## CONCLUSION

112. In making my decision, I considered each of the matters I have discussed above. There were no other matters which I took into account.
113. For the reasons I have detailed above, and having considered all matters required to be considered under the EPBC Act, I accepted the recommendation of the department that the proposed action be approved, with conditions.

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<b>Name and position</b>	Kate Gowland Branch Head Environment Assessments (NSW, ACT) Branch
<b>Signature</b>	
<b>Date of decision</b>	5 February 2025

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## ANNEXURE A

### 130 Timing of decision on approval

#### *Basic rule*

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.

### 133 Grant of approval

...

#### *Notice of refusal of approval*

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

### 134 Condition to inform persons taking action of conditions attached to approval

...

#### *Generally*

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

#### *Conditions to protect matters from the approved action*

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

This subsection does not limit subsection (1).

#### *Examples of kinds of conditions that may be attached*

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



guarantee or cash deposit:

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

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

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

...

#### *Considerations in deciding on condition*

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

### 136 General considerations

#### *Mandatory considerations*

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

#### *Factors to be taken into account*

- (2) In considering those matters, the Minister must take into account:
  - (a) the principles of ecologically sustainable development; and
  - (b) the assessment report (if any) relating to the action; and
  - ...
  - (c) if Division 5 (public environment reports) of Part 8 applies to the action:
    - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
    - (ii) the recommendation report relating to the action given to the Minister under section 100; and
  - ...
  - (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
  - (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
  - (fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB; and (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

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

#### *Person's environmental history*

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

*Minister not to consider other matters*

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

**137A Requirements for decisions about National Heritage places**

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

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- (c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

**139 Requirements for decisions about threatened species and endangered communities**

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

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

- (2) If:

- (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
- (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

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

**140 Requirements for decisions about migratory species**

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

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

## **176 Bioregional plans**

...

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

## **391 Minister must consider precautionary principle in making decisions**

### *Taking account of precautionary principle*

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

### *Precautionary principle*

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

## ANNEXURE B

### A: Proposed decision briefing package

Att A	Recommendation report
<u>Final Preliminary Documentation</u>	
Att B1	Preliminary Documentation Main report
Att B2	App A - Ecology assessment
Att B3	App B - Subsidence review
Att B4	App C - Groundwater impact assessment
Att B5	App D - Site water balance
Att B6	App E - biodiversity management plan
Att B7	App F - water management plan
Att B8	Statement no comments received on Preliminary Documentation
<u>Decision notice</u>	
Att C1	Proposed decision notice
Att C2	Proposed decision notice maps
<u>Feedback on Preliminary Documentation</u>	
Att D1	IESC advice
Att D2	DCCEEW comments 15 December 2023
Att D3	Proponent response to DCCEEW comments 19 March 2024
Att D4	OWS advice on final Preliminary Documentation
<u>NSW Development consent</u>	
Att E	NSW Development Consent for DA 104/96
<u>Line area advice</u>	
Att F1	Environment history check 12 July 2024
Att F2	Statutory document check 22 August 2024
Att F3	Conditions team comments 22 August 2024
<u>Statutory documents</u>	
Att G1	Recovery plan - Hunter Valley Weeping Myall
Att G2	Conservation advice - Hunter Valley Weeping Myall
Att G3	Conservation advice - Central Hunter Valley eucalypt forest
Att G4	Threat Abatement Plan - <i>Phytophthora cinnamomi</i>
<u>Letters</u>	
Att H1	Letter to proponent and PPTA
Att H2	Letter to minister for resources
Att H3	Letter to NSW minister

### B: Responses to invitation for comment on proposed decision

### C: Notice of decision

### D: Letters to relevant parties