



**THE HON SUSSAN LEY MP
MINISTER FOR THE ENVIRONMENT
MEMBER FOR FARRER**

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

I, SUSSAN LEY, Minister for the Environment, provide the following statement of reasons for my decision of 1 October 2021, under subsection 130 (1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, to approve the development of a new open cut coal pit at the Mangoola Coal Mine approximately 20 km west of Muswellbrook, New South Wales (EPBC 2018/8280) (**proposed action**).

LEGISLATION

1. Relevant legislation is set out in Annexure A. This legislation does not form part of my reasons but is provided as contextual background to my decision.

BACKGROUND

Description of the proposed action

2. The proposed action involves extending the existing open cut mine known as the Mangoola Coal Mine (EPBC 2018/8280) through the establishment of a new open cut coal pit to the north of the existing Mangoola Coal Mine operation (**Northern Pit**), and related surface infrastructure and activities, and extending the existing mine life until December 2030 (representing 8 years of mining in the Northern Pit if mining commences in 2022).
3. The proposed action includes:
 - a. extracting an additional 52 Mt of coal by extending the footprint of the open cut mine to the north of the approved footprint by approximately 623 ha. In this statement of reasons, I refer to the area of additional disturbance as a result of the proposed action as the Northern Extraction Area (**NEA**)
 - b. maintaining the extraction rate of run-of-mine (ROM) coal at 13.5 Mt per annum
 - c. construction of a haul road overpass across Big Flat Creek and Wybong Road in order to link the existing Mangoola Coal Mine to the proposed NEA.
 - d. continuing use of the existing Mangoola Mine Coal Handling and Processing Plant (CHPP), train load out facility, rail loop and mining fleet.
 - e. construction of additional water truck fill points and ongoing relocation of mining support infrastructure as mining progresses.

- f. establishment of an out-of-pit overburden emplacement area.
 - g. distribution of overburden between the NEA and the existing mine in order to optimise the final landform design.
 - h. realignment of a portion of Wybong Post Office Road.
 - i. construction of a water management system (WMS) which will be connected to the existing mine.
4. The proposed action area is in the Wybong Creek catchment, an unregulated tributary of the Goulburn River which subsequently flows into the Hunter River. Wybong Creek has an estimated catchment area of 792 square kilometres (km²).
 5. The proponent and the person proposing to take the action is Mangoola Coal Operations Pty Limited, which is a subsidiary of Glencore Coal Pty Limited.

EPBC Act referral and controlled action decision

6. The existing Mangoola Coal Mine was referred under section 68 of the EPBC Act in January 2007. On 19 February 2007, a delegate of the then Minister determined that it was not a controlled action under the EPBC Act (EPBC 2007/3228).
7. On 17 August 2018, the proponent referred the proposed action under section 68 of the EPBC Act.
8. On 21 January 2019, a delegate of the then Minister determined that the proposed action was a controlled action under section 75 of the EPBC Act, and that the controlling provisions for the proposed action were:
 - a. sections 18 and 18A (listed threatened species and ecological communities)
 - b. sections 24D and 24E (water resources).
9. The decision noted that the proposed action would be assessed under the assessment bilateral agreement with NSW.
10. On 18 June 2021, my delegate accepted variations to the proposed action which included an increase in the estimated resource available for mining from approximately 45 million tonnes (Mt) to approximately 52 Mt, a decrease in both the extent of the proposed mining pit and the overall disturbance footprint of the proposed action, an increase in the predicted life of the mine as well as minor changes to the project layout.

NSW assessment and approval and IESC advice

11. The proposed action has been assessed under the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) and was approved by the NSW Independent Planning Commission (**IPC**) on 26 April 2021 (SSD-8642).

12. The proponent lodged the application and an Environmental Impact Statement (EIS) in relation to the proposed action in May 2019. Public exhibition of the EIS occurred for 42 days between 18 July 2019 and 28 August 2019. During this period 334 public submissions were received, comprised of 13 submissions from NSW agencies and councils, 17 submissions from special interest groups and 304 submissions from the general public. 69 per cent of submissions supported the project and 27 per cent of submissions objected to it. Key issues raised by the submissions included:
 - Cumulative air quality impacts, potential adverse health impacts on the local community, and amenity impacts from dust.
 - Noise impacts on residents in close proximity to the mine, specifically in relation to sleep disturbance, and inadequate noise monitoring.
 - Social impacts, including impacts on sense of community composition, cohesion, character, function and sense of place; impacts on the surrounding aesthetic value and amenity; and negative impact on community services and property value.
 - Issues relating to climate change, including intergenerational equity, greenhouse gas (GHG) and scope 3 emissions, consideration of the Rocky Hill decision, and alternative energy transition.
 - Biodiversity impacts, including impacts to flora and fauna and threatened species, and concerns about the adequacy of the proposed offset.
 - Water impacts, including impacts on surface water resource security, reduction of water quality in the affected catchments, impacts to private groundwater bores, and concerns about water usage/extraction.
 - Issues relating to the final landform, including the proposed final void design, void water quality, and the impractical use of land as a final void
13. The proponent provided a response to these submissions to NSW Department of Planning, Industry and the Environment (DPIE), and DPIE prepared an Assessment Report (DPIE AR).
14. On 23 August 2019, DPIE and my delegate jointly sought advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) on the impacts of the proposed action on water resources. The IESC provided its advice to the NSW DPIE and the Department on 4 October 2019.
15. On 29 January 2021, DPIE referred the proposed action to the IPC for determination, recommending the proposed action be approved.
16. The IPC's review included a public hearing over two days on 3 and 4 March 2021, conducted electronically.
17. The IPC received a total of 895 written public submissions, 776 submissions were in support, 107 submissions objected to the proposed and 12 submissions commented on the proposed action. Submissions in support of the proposed action raised the local and

regional socio-economic benefits of the proposed action, including employment opportunities. Submissions opposed to the proposed action raised issues including impacts to groundwater, biodiversity, GHG emissions, and social impacts.

18. On 26 April 2021, the NSW IPC approved the proposed action subject to conditions (**NSW development consent**).
19. The Department was formally advised by DPIE of the outcome of the NSW assessment process on 6 May 2021 and provided with the NSW assessment documents. DPIE recommended that I should approve the proposed action.

Proposed decision, consultation and further information

20. On 15 September 2021, I proposed to approve the proposed action subject to conditions. In accordance with sections 131 and 131AA of the EPBC Act, I wrote to each of the following persons and invited comments on the proposed decision and conditions:
 - a. The proponent,
 - b. The Hon Ken Wyatt AM MP, Minister for Indigenous Australians
 - c. The Hon Keith Pitt MP, Minister for Resources and Water
 - d. The Hon David Littleproud MP, Minister for Agriculture and Northern Australia
 - e. The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction
21. I also notified the NSW Minister for Planning and Public Spaces, the Hon Rob Stokes MP of my proposed decision.

Proponent

22. The proponent responded on 23 September 2021, requesting a few grammatical changes to the proposed conditions and suggesting that key terms be revised for consistency.
23. A revised copy of the proposed final conditions was provided to the proponent on 23 September 2021. On 24 September 2021, the proponent confirmed that they agreed to the conditions as amended.

Minister for Indigenous Australians

24. On 29 September 2021, the Minister for Indigenous Australians responded. I address these comments below under economic and social matters.

Minister for Resources and Water

25. On 28 September 2021, the Department of Industry, Science, Energy and Resources provided comments from Geosciences Australia. I address these comments below under Water Resources.

26. Nil response was received from the Minister for Agriculture and Northern Australia and the Minister for Energy and Emissions Reduction.

Decision

27. On 15 July 2021, the statutory period to make this decision was extended to 10 September 2021, On 8 September 2021, the statutory period was extended again to 1 October 2021.

28. On 1 October 2021, I decided to approve the taking of the proposed action for the purposes of sections 18, 18A, 24D and 24E, subject to conditions.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

29. My decision to approve the taking of the proposed action was based on consideration of the final approval decision brief prepared by the Environment Assessments (NSW, ACT) Branch of the Department dated 1 October 2021.

30. The final approval decision brief comprised the following:

A: Proposed decision briefing package

Attachment A – Legal Considerations

Attachment B – Proposed Approval Decision Notice

Attachment C: Letters

C1 – Letter to Proponent

C2 – Letter to Minister for Indigenous Australians

C3 – Letter to Minister for Resources and Water

C4 – Letter to Minister for Agriculture and Northern Australia

C5 – Letter to Minister for Energy and Emissions Reduction

C8 – Letter Notifying NSW

Attachment D: QA, ERT, and Background Documentation

D1 – QA checklist

D2 – ERT Report 5 km buffer generated 3 September 2021

D3 – Department's Review of the 3 September 2021 ERT report

D4 – Approved variation to the proposed action

D5 – ERT Report original

D6 – Referral package

Attachment E: Line Area Advice

E1 – Species Information and Policy Section listing advice (6 September 2021)

E2 – Office of Water Science Advice

E3 – Internal Environmental history check (17 May 2021)

Attachment F: Requests and Responses for Further Information

F – Environmental history letter and response from proponent (25 June 2021)

Attachment G: NSW Assessment Documentation

G1 – Letter from DPIE advising of state approval

G2 – State Development Consent

G3 – NSW assessment report

G4 – DPIE additional information requests and responses

G5 – IPC Statement of Reasons (report)

G6 – BCD advice

Attachment H: Statutory Documentation

H1 – Conservation Advice for *Prasophyllum* sp. *Wybong*

H2 – Conservation Advice for Regent Honeyeater (*Anthochaera phrygia*)

H3 – Conservation Advice for Swift Parrot (*Lathamus discolor*)

H4 – Recovery Plan for Regent Honeyeater

H5 – Recovery Plan for Swift Parrot

H6 – Recovery Plan for Grey-headed Flying-fox

H7 – Recovery Plan for White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland

H8 – Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads

H9 – Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs

H10 – Threat abatement plan for disease in natural ecosystems caused by *Phytophthora cinnamomi*

H11 – Threat abatement plan for competition and land degradation by rabbits

H12 – Threat abatement plan for predation by feral cats

Attachment I: Proponent's Assessment Material

I1 – EIS and attachments

I2 – Response to Submissions Report (RTS)

I3 – Department's response to *Prasophyllum sp. wybong* briefing note/offset analysis

I4 - *Prasophyllum sp. wybong* briefing note/offset analysis

I5 - Proponent's response to BCD on MNES

Attachment J: IESC Advice

J1 – IESC Advice

J2 – Proponent's Response to IESC advice

J3 – DAWE IESC advice summary table

Attachment K: Bioregional Assessment

K – Hunter subregion bioregional assessment

Attachment L: Duty of Care/Human Safety Consideration Documentation

L1 – *Glencore Pathway to Net-Zero 2050 Report*

L2 - Glencore Climate Change Credentials Presentation – in confidence – dated 23 August 2021

L3 - Glencore Presentation to Minister Ley – September 2021

L4 – DISER final technical advice

L5 – Report by Professor Will Steffen submitted to the IPC on 30 June 2020

L6 – Letter from Environmental Justice Australia dated 1 September 2021

B: Updated legal considerations report

C: Responses to invitation for comment on proposed decision Final Approval decision notice

D: Final Decision Notice

E: Letters notifying the proponent, relevant Commonwealth Ministers and the NSW Government of the final approval decision

F: Draft statement of reasons

G: DISER supplementary information

- H: Sharma Ors V Minister for the Environment Judgement
- I: Expert reports considered in Sharma
- J: The Greenhouse Gas Protocol 2004 (World Business Council for Sustainable Development and World Resources Institute)
- K: Additional proponent information
- L: School Strike 4 Climate (SS4C) Letter

FINDINGS ON MATERIAL QUESTIONS OF FACT AND REASONS FOR DECISION

Water resources (sections 24D & s 24E)

31. I was satisfied that the NSW assessment process identified the potential impacts of the proposed action on water resources, and that these impacts are accurately summarized in the DPIE AR (see in particular at pages 107 – 131) and the IPC statement of reasons (see in particular at pages 26 – 29).
32. On the basis of the NSW assessment process, and particularly the information and conclusions in the DPIE AR and the IPC statement of reasons, I found that the impacts of the proposed action on water resources are generally adequately addressed by conditions B36 to B52 and B85 to B91 of the NSW development consent. These conditions relate to:
 - a. water supply (B36-B38)
 - b. compensatory water supply (B39-B45)
 - c. water discharges (B46-B47)
 - d. water management performance measures (B48-B49)
 - e. the preparation and implementation of a Water Management Plan, which must be approved by the NSW Planning Secretary before mining operations commence (B50-B52)
 - f. rehabilitation of the site, including in relation to the final void and water quality (B85-B91).
33. I accordingly decided that it was necessary and convenient to attach conditions that reinforce the NSW development consent conditions, and which require that the proponent:
 - a. must not extract or process more than 52 million tonnes of run-of-mine coal over the life of the mine and restricts the location of the pit (condition 1).
 - b. comply with NSW development consent conditions B36 to B52 and B85 to B91 (condition 2)

- c. provide the department with a copy of the final version of the Water Management Plan required under NSW development consent condition B50 within 5 business days of its approval by the NSW Planning Secretary (condition 5)
- d. notify the department within 5 business day of submitting a request to change an approved Water Management Plan, and provide the department with a copy of any revised and approved Water Management Plan within 5 days of its approval (condition 6)
- e. notify the Department in writing within 5 business days of detecting or predicting exceedances of any trigger levels which are specified in the approved Groundwater Management Plan or Surface Water Management Plan required by condition B50 of the State development consent (condition 7).

34. These conditions will ensure that the department has the ability to enforce compliance with the requirements in the NSW conditions, and has up to date information for post approval and compliance matters.

35. Geoscience Australia provided a comment on my proposed decision which recommended removing the word 'approximately' in the wording of Condition 1 to increase clarity and enforceability. I agreed and adopted the recommendation. Additionally, in relation to Condition 1, GA recommended including limits on the size and depth of the open cut pit and final void which would improve protection for water resources from mining impacts. I noted that Condition 1 specifies a limit on coal extraction and restricts the location of the pit to the MCCO Additional Project area which is defined in Annexure 1 of the approval. I agreed with the Department that these limits would be sufficient. Further, from an administrative perspective, defining the amount of ROM coal to be extracted clarifies the scope of the activity for compliance purposes.

36. Geoscience Australia sought clarification as to the scope of the matters condition 7 is intended to regulate. I noted this comment and I was satisfied that Condition 7 is sufficient to ensure the proponent keeps the department informed of key developments and will regularly provide up to date information for post approval and/or compliance matters.

37. Geoscience Australia advised that I may need to approve the management plans required under the NSW development consent conditions. I accepted the department's advice that approval of the Water Management Plan by the NSW Planning Secretary (as required under the NSW development consent condition) is sufficiently rigorous.

IESC recommendations mostly addressed by NSW development consent conditions

38. The IESC advice identified the key potential impacts from the proposed action as:

- a. Contribution to cumulative impacts on groundwater-dependent vegetation and associated biota in the vicinity of Big Flat Creek;
- b. Presence of a final void in the rehabilitated landscape which will have impacts on water quantity and may also impact on groundwater quality;

- c. Potential ongoing water quality issues associated with sedimentation from both the proposed infrastructure and the unquantified impacts from uncontrolled discharges from sediment dams;
 - d. Potential impacts from water discharges on erosion and water quality in Big Flat Creek; and
 - e. Drawdown in four private bores of >2 m.
39. I accepted the Departmental advice, including from the Department's Office of Water Science (**OWS**) that the areas of further work required and recommendations made by the IESC have mostly been addressed by the NSW assessment process, and/or by the conditions attached to the NSW development consent. I accepted the IESC and Departmental advice that there were two aspects of the management of potential impacts on water resources that could be better addressed by attaching additional conditions to the approval, which I discuss below.

Outstanding issue – Groundwater Dependent Ecosystems

40. The IESC advised that the assessment methods employed in the EIS are unlikely to have captured all potential groundwater-dependent ecosystems (**GDEs**) that are present, and that the proponent should reassess the presence of GDEs in the vicinity of the area. The IESC noted that the ecohydrological model provided by the proponent needed to be more comprehensive because while two GDEs were assessed to be potentially impacted, no attempt had been made to quantify the impacts of the predicted drawdowns on GDEs. This limited the application of the model in identifying causal pathways and the likely severity of potential impacts of altered hydrology on water-dependent ecological assets.
41. NSW development consent condition B50 requires that a Water Management Plan be prepared to the satisfaction of the NSW Planning Secretary. Among other things, the Water Management Plan must include a Groundwater Management Plan that includes detailed baseline data of groundwater levels, yield and quality for GDE's potentially impacted by the proposed action, and a program to monitor and evaluate impacts on GDEs.
42. However, as the NSW development consent conditions do not specify performance measures for GDEs, I accepted the department's advice that it was necessary to attach an additional condition to the approval to protect GDEs from potential impacts of the proposed action. Condition 3 requires the proponent to:
- a. ensure that the action does not have any impact on GDEs beyond what was predicted in the EIS (the **GDE Performance Measure**) (condition 3)
 - b. implement a program to monitor the GDE Performance Measure, a trigger action response plan to respond to any exceedances of the GDE Performance Measure, and a plan to repair and mitigate any exceedances (condition 3(a))

- c. notify the department within 5 business days of finding an exceedance of the GDE Performance Measures, and the proposed repairs and/ or mitigation work to be undertaken. In the event the exceedance cannot be repaired or mitigated, the proponent must provide an offset to be approved by me (condition 3(b)).
43. This condition will ensure all GDE's within the proposed action area are protected from potential impacts and that the department is made aware of any exceedances.
44. In comments on my proposed decision, Geoscience Australia recommended greater clarity around the definition of the GDE performance measure. However, I noted the term 'environmental consequences' has been used to align with the terminology used for other performance measures in the NSW development consent. I was satisfied that the intent of the terminology 'environmental consequences' is clear and aligning the terminology with the NSW development consent provides greater consistency from an administrative perspective as well as clarity for the proponent.
45. Geoscience Australia recommended that the Commonwealth should include requirements to monitor groundwater resources to improve protection for GDEs. I agreed with the department that Condition B50 of the NSW development consent requires thorough groundwater monitoring, and compliance with this NSW condition is required by Condition 2 of the approval.
46. Geoscience Australia provided several comments in regard to the Condition 3(a). The comments largely related to the trigger action response plan, as well as the repair, mitigate and offset requirements. I noted that the intent of Condition 3 is to include the GDE performance measure, as well as monitoring and management requirements, in the Groundwater Management Plan, which is required by Condition B50(v) of the NSW development consent. I also noted that the trigger action response plan, repair, mitigate and offset (Condition 3(b)) requirements of Condition 3(a) are consistent with the requirements of Condition B50(v) of the NSW development consent. I was satisfied Condition 3(a) are sufficiently robust and provide consistency between Commonwealth and State conditions.
47. Geoscience Australia raised concerns regarding the timeframe set in Condition 3(b). GA stated the timeframe for notifying the department of a performance measure exceedance and the proposed repair works may be unrealistic. I noted that the timeframes for the actions required under the conditions have been reviewed and agreed to by the proponent. I was satisfied that the final conditions enable robust monitoring and compliance and set appropriate timeframes for the approval holder to undertake management actions.

Outstanding issue – surface water discharge and quality monitoring

48. The IESC noted that water quality monitoring is currently undertaken as part of the existing coal mine's operation in accordance with the Mangoola Coal Surface Water Monitoring Plan. However, no data had been provided for currently monitored sites in the Hunter River. The IESC also noted that discharge locations, volumes and qualities were not clearly presented in the EIS, and that discharge impacts had not been discussed in

the EIS. The IESC made a number of suggested improvements for mitigation and management of potential impacts.

49. The Water Management Plan required under NSW development consent condition B50 must include a Surface Water Quality Management Plan that includes (among other things) a program to monitor and evaluate controlled and uncontrolled discharges from the site and impacts on water supply for other water users, and a trigger action response plan to respond to any exceedances of the relevant performance measures and criteria.
50. The NSW development consent conditions do not specify which water quality parameters are to be included as part of the performance measures or the Surface Water Management Plan.
51. On the basis of the department's advice, which I accepted, I decided that it was necessary to attach an additional condition on the approval to ensure that appropriate management measures were developed and approved before coal extraction can proceed, and to provide additional information and warning of any potential adverse impacts on surface water resources. Condition 4 requires that the proponent must:
 - a. ensure that the action has a negligible impact on surface water quality (which is defined by reference to the predictions in the EIS and subsequent documentation provided as part of the NSW assessment process, and the Stream Monitoring Program discussed below) (condition 4(a))
 - b. submit a list of water quality monitoring parameters and performance criteria to be included in the Surface Water Management Plan required under NSW development condition B50(iv). The water quality parameters must include (but are not limited to) key metals (total and dissolved) and nutrients, and must be approved by me (condition 4(b)).
 - c. prepare a Stream Monitoring Program for the Hunter River discharge point which specifies water discharge locations, quality, volume, timing and frequency, and includes baseline water quality data, proposed mitigation measures and monitoring programs (condition 4c).

Conclusion about water resources

52. I found that, if the proposed action is undertaken in accordance with the conditions I have attached to the approval, the impacts of the proposed action on water resources will not be unacceptable.

Threatened species and ecological communities (sections 18 & s 18A)

53. On the basis of the Environmental Reporting Tool (ERT) report, the DPIE AR and the Department's advice, I considered that the proposed action is likely to have a significant impact on the following listed threatened species:
 - a. Regent Honeyeater (*Anthochaera phrygia*) – critically endangered
 - b. Swift Parrot (*Lathamus discolor*) – critically endangered

- c. Wybong Leek-orchid (*Prasophyllum* sp. *Wybong*) – critically endangered
- d. Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable
- e. White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community – critically endangered

On the basis of the information in the EIS, the findings in the DPIE AR and the Department's advice, I was satisfied that the proposed action is not likely to have a significant impact on any listed threatened species or ecological communities other than the four species and one ecological community above.

Approved conservation advice, recovery plans and threat abatement plans for listed threatened species

Regent Honeyeater

54. The conservation advice for Regent Honeyeater came into force in 2015 and identifies major threats to the species as clearing, degradation and fragmentation of habitat; removal of trees for timber and firewood, invasive weeds and inappropriate fire regimes; competition with other birds; and severe loss of genetic variability. Similarly, the recovery plan for the Regent Honeyeater which commenced in 2016 identifies major threats to the species as small population size, habitat loss, fragmentation and degradation, and competition.

55. The overall strategy for the recovery of the species, as detailed in the recovery plan, is to:

- a. improve the extent and quality of regent honeyeater habitat
- b. bolster the wild population with captive-bred birds until the wild population becomes self-sustaining
- c. increase understanding of the size, structure, trajectory and viability of the wild population
- d. maintain and increase community awareness, understanding and involvement in the recovery program.

56. The approved conservation advice states the priority conservation and management actions to assist in the recovery of the species are to:

- a. reverse the long-term population trend of decline and increase the numbers of Regent Honeyeaters to a level where there is a viable, wild breeding population, even in poor breeding years
- b. maintain key Regent Honeyeater habitat in a condition that maximises survival and reproductive success, and provides refugia during periods of extreme environmental fluctuation
- c. improve the extent and quality of Regent Honeyeater habitat

- d. bolster the wild population with captive-bred birds until the wild population becomes self-sustaining
- e. maintain and increase community awareness, understanding and involvement in the recovery program.

57. The threat abatement plan for competition and land degradation by rabbits is relevant to the Regent Honeyeater.

Swift Parrot

58. The recovery plan for Swift Parrot commenced in 2011 and identifies major threats to the species as habitat loss and alteration, climate change, collision mortality, competition, disease, illegal wildlife capture and trade, and cumulative impacts. Similarly, the conservation advice for Swift Parrot which came into force in 2016 identifies major threats to the species as predation by sugar gliders; habitat loss and alteration; collision mortality; competition; disease and illegal wildlife capture and trading.

59. The overall strategy for the recovery of the species, as detailed in the recovery plan, is to:

- a. identify the extent and quality of habitat
- b. manage and protect Swift Parrot habitat at the landscape scale
- c. monitor and manage the impact of collisions, competition and disease
- d. monitor population and habitat.

60. The conservation advice states that the priority conservation and management actions are to:

- a. review and update management prescriptions for swift parrots for use in the Forest Practices System and Local Government land use planning and approvals processes across the breeding and non-breeding range of Swift Parrots
- b. revise and update forestry prescriptions to reflect the most recent habitat information available in Victoria and New South Wales
- c. develop and implement strategies to reduce predation from sugar gliders when circumstances require
- d. consider installing nesting boxes suitable for Swift Parrots in areas of low sugar glider predation to enhance swift parrot breeding success
- e. continue to raise public awareness of the risks of collisions and how these can be minimised, targeting known high risk areas such as the greater Hobart, Melbourne and Western Sydney areas, and the central coast region of New South Wales (Wyong, Gosford, Lake Macquarie and Penrith Local Government areas)

- f. encourage and support the protection, conservation management and restoration of swift parrot nesting and foraging habitat through agreements with landowners, incentive programs and community projects
- g. develop and implement a Disease Risk Assessment for Swift Parrots.

61. The threat abatement plan for predation by feral cats is relevant to the Swift Parrot.

Prasophyllum sp. Wybong

62. The conservation advice for *Prasophyllum sp. Wybong* came into effect in 2009 identifies major threats to the species as habitat clearance, weed invasion, vehicle traffic and inappropriate disturbance regimes.

63. The conservation advice states that the priority conservation and management actions are to:

- a. Ensure mining, road widening and maintenance activities (or other infrastructure or development activities) involving substrate or vegetation disturbance in areas where *Prasophyllum sp. Wybong* occurs does not adversely impact on known populations.
- b. Manage any other known, potential or emerging threats including inappropriate disturbance, loss of pollinators and effects of climate change.
- c. Monitor known populations to identify key threats.
- d. Monitor the progress of recovery, including the effectiveness of management actions and the need to adapt them if necessary.
- e. Protect populations of the listed species through the development of conservation agreements and/or covenants.

64. There are no threat abatement plans relevant to *Prasophyllum sp. Wybong*.

Grey-headed Flying-fox

65. The recovery plan for Grey-headed Flying-fox commenced in 2021 and identifies major threats to the species as roosting and foraging habitat loss, camp disturbance, mortality in commercial fruit crops, heat stress and bushfires.

66. The overall strategy for the recovery of the species, as detailed in the recovery plan, is to:

- a. Identify, protect and increase native foraging habitat critical to the survival of the species
- b. Identify, protect and increase roosting habitat of Grey-headed Flying-fox camps
- c. Determine trends in the Grey-headed Flying-fox population so as to monitor the species' national distribution, habitat use and conservation status.

- d. 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
- e. Increase public awareness and understanding of Grey-headed Flying-foxes and the recovery program, and involve the community in the recovery program where appropriate
- f. Improve the management of Grey-headed Flying-fox camps in areas where interaction with humans is likely
- g. Significantly reduce levels of licenced harm to Grey-headed Flying-foxes associated with commercial horticulture
- h. Support research activities will improve the conservation status and management of Grey-headed Flying-foxes

67. There are no threat abatement plans relevant to the Grey-headed Flying-fox.

White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (Box Gum CEEC)

68. The recovery plan for Box Gum CEEC commenced in 2010 and identifies major threats to the ecological community as clearing and fragmentation for urban, rural residential, agricultural and infrastructure development, degradation resulting from inappropriate management and weed invasion by introduced perennial grasses.

69. The overall strategy for the recovery of the species, as detailed in the recovery plan, is to:

- a. achieve no net loss in extent and condition of the ecological community throughout its geographic distribution.
- b. increase protection of sites with high recovery potential.
- c. increase landscape functionality of the ecological community through management and restoration of degraded sites;
- d. increase transitional areas around remnants and linkages between remnants; and
- e. bring about enduring changes in participating land manager attitudes and behaviours towards environmental protection and sustainable land management practices to increase extent, integrity and function of Box Gum CEEC

70. The threat abatement plans for the biological effects, including lethal toxic ingestion, caused by cane toads; for predation, habitat degradation, competition and disease transmission by feral pigs; and for disease in natural ecosystems caused by *Phytophthora cinnamomi* are relevant to Box Gum CEEC.

Impact on listed threatened species

71. In determining the impact of the proposed action on listed threatened species and communities, I considered the department's analysis of the impacts of the 2019/2020 bushfires on the relevant species. I noted that the proposed action area is not considered a priority area as it is not adjacent to largely burnt areas of habitat. At a local level, the closest impacts of the main fires were approximately 31 km away from the proposed action area. Regionally and nationally, the fires were more severe in other areas of eastern Australia, and, as a result, have reduced overall habitat for the 5 impacted listed threatened species and ecological communities.

72. The proposed action will result in the clearing of:

- a. 148 ha of habitat for the Regent Honeyeater
- b. 148 ha of foraging habitat for the Swift Parrot
- c. 691 individuals of *Prasophyllum* sp. *Wybong* across 101.6 ha of land containing the species' habitat.
- d. 162.6 ha of foraging habitat for the Grey-headed Flying-fox
- e. 24.3 ha of Box Gum CEEC.

73. The nature of the proposed action means that it is unlikely to contribute to increased feral animal activity with the proposed action area.

74. Consistent with the Department's advice, and the *Significant Impact Guidelines 1. 1 - Matters of National Environmental Significance*, I found that this would have a significant impact on the four species and one ecological community. Specifically, I determined that the proposed action:

- a. would likely reduce the area of occupancy of the *Prasophyllum* sp. *Wybong*, Regent Honeyeater and Grey-headed Flying-fox,
- b. would adversely impact habitat critical to the survival of the Swift Parrot, and
- c. would reduce the extent of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

NSW development consent conditions relevant to listed threatened species and ecological communities

75. NSW development condition B53 requires the proponent to retire specified biodiversity credits. The retirement of credits must be carried out in consultation with NSW DPIE - Biodiversity, Conservation and Science Directorate and in accordance with the Biodiversity Offsets Scheme of the NSW *Biodiversity Conservation Act 2016*, to the satisfaction of the Biodiversity Conservation Trust.

76. NSW development consent condition B54 requires the proponent to implement a Biodiversity Offset Strategy for the development.

77. NSW development consent condition B55 requires the proponent to continue to implement the mitigation and management measures described in the approved Translocation Plan for Orchids and Other Threatened Flora, dated September 2012 and prepared by Umwelt for the Mangoola Coal Project disturbance area, to the satisfaction of the Planning Secretary.
78. NSW development consent condition B56 requires that, within 10 years of the cessation of mining operations, or other timeframe agreed to by the Planning Secretary, the proponent must make suitable arrangements for the long-term protection of the ecological mine rehabilitation and specified offset areas. If the rehabilitation area does not meet the listing criteria of the targeted Plant Community Type or the completion criteria, then the Applicant must retire the relevant deficient biodiversity credits in accordance with the Biodiversity Offsets Scheme of the BC Act, to the satisfaction of the BCT.
79. NSW development consent conditions B57 to B59 require the proponent to
- a. prepare a Biodiversity Management Plan to the satisfaction of the Planning Secretary.
 - b. not commence mining operations north of Wybong Road until the Biodiversity Management Plan is approved by the Planning Secretary.
 - c. implement the Biodiversity Management Plan as approved by the Planning Secretary.

Conditions of approval in relation to listed threatened species and ecological communities

80. In light of the significant impact of the proposed action on the four listed threatened species and one ecological community described above, I considered that it was necessary or convenient to attach conditions to the approval to protect, or to repair or mitigate damage to, these species and ecological community.
81. I decided to impose limits on the clearing of suitable habitat for the four listed threatened species, and the Box Gum CEEC consistent with the description of the proposed action in the EIS and the DPIE AR (see above at [72]) to ensure that no additional habitat of these four species and one ecological community will be cleared (condition 8).
82. I decided that it was necessary to impose conditions that build upon the requirements in the NSW development consent in relation to offsets.
83. Condition 9 requires that the proponent must retire biodiversity credits in relation to the listed threatened species and ecological community prior to the commencement of coal extraction (or another timeframe that I agree to). The number and type of credits required is consistent with the offsets required under the NSW development consent. This condition will ensure that there is transparency as to how the offset credits being retired under the NSW conditions correlate to the listed threatened species and ecological community which are or are likely to be significantly impacted by the proposed action.

84. Condition 10 requires that prior to the commencement of coal extraction (or another timeframe that I agree to) the proponent must provide evidence that 193.1 ha of *Prasophyllum* sp Wybong offset habitat has been secured under a Biodiversity Stewardship Agreement, and a *Prasophyllum* sp Wybong offset management plan. Condition 11 requires that the proponent must provide an annual report outlining the results of the monitoring and management actions required under the *Prasophyllum* sp Wybong offset management plan.

85. I considered that conditions 10 and 11 were necessary because the conditions of the NSW development consent do not provide for offsets in relation to this species. The *Prasophyllum* species present within the proposed action area is identified as a different species under NSW legislation, and the conditions of the NSW development consent accordingly do not provide for offsets in relation to the *Prasophyllum* sp. Wybong.

86. Finally, I decided it was necessary and convenient to attach a condition to the approval which requires the proponent to comply with conditions B54-B59 of the NSW development consent conditions (to the extent that these conditions relate to EPBC Act listed threatened species and ecological communities) (condition 12). The proponent must also notify the department if a change is proposed to these conditions, and if the conditions are changed (conditions 26 and 27). This will allow the department to retain an ongoing compliance role and ensure that the outcomes in relation to listed threatened species and ecological communities required under the NSW development consent conditions, including in relation to offsets, biodiversity management, and rehabilitation, are delivered.

Conclusion on listed threatened species and ecological communities

87. If the proposed action is undertaken in accordance with the conditions I have attached to the approval, the impacts of the proposed action on listed threatened species and ecological communities will not be unacceptable.

Greenhouse gas emissions relevant to matters of national environmental significance

88. I have considered all completed assessments and NSW development consent conditions relating to the GHG emissions of the proposed action. GHG emissions are categorised into three different types:
- Scope 1: direct emissions from owned or controlled sources of an organisation/ development;
 - Scope 2: indirect emissions from the, generation of purchased energy electricity, heat and steam used by an organisation/ development; and
 - Scope 3: all other upstream and downstream emissions related to an organisation/ development.

89. I noted that, under GHG emissions reporting and accounting frameworks¹, the Scope 2 and 3 emissions estimated for the proposed action are the Scope 1 emissions of other organisations/ developments. For example, the Scope 3 emissions from combustion of coal in an overseas country would form part of the Scope 1 emissions of the organisation / development using the coal (e.g. for metallurgical use of steel manufacturing or for electricity generation) and would also form part of the Scope 1 emissions of the country where the coal is combusted under applicable national accounting frameworks.
90. I noted that the proposed action will produce 52 million tonnes (Mt) of run of mine coal through to 2030. The coal produced by the proposed action will be 100% thermal coal.
91. DPIE stated in the AR that the Mining, Exploration and Geoscience (MEG) Division within the Department of Regional NSW advised that the existing Mangoola Mine currently sells product coal to domestic (27%) and export markets (73%).
92. Over the life of the proposed action, the maximum estimated total greenhouse gas emissions are predicted to total 107,940,192 t CO₂-e, made up of:
- 3,251,000 t CO₂-e of scope 1 primarily from fugitive emissions and diesel use during its operational phase;
 - 402,192 t CO₂-e scope 2 emissions, associated with the production of electricity used by the proposed action including underground mining equipment, conveyor belts, ancillary equipment, and administration facilities; and
 - 104,287,000 t CO₂-e of scope 3, which would be generated by third parties who transport and consume the extracted coal.

Proponent Assessment

93. The proponent's EIS included a Greenhouse Gas and Energy Assessment (GHGEA) prepared by Umwelt (Australia) Pty Ltd and dated May 2019.
94. The EIS proposes a range of management and mitigation measures to minimise scope 1 and scope 2 GHG emissions as far as possible, particularly by reducing electricity consumption and diesel usage. Minimisation strategies include:
- limiting the length of material haulage routes; thereby minimizing transport distances and associated fuel consumption;
 - optimising haul road ramp gradients and payload to reduce diesel consumption;
 - selecting equipment and vehicles that have high energy efficiency;
 - scheduling activities so equipment and vehicle operation is optimised (e.g. minimising idle times and in-pit servicing);
 - improving extraction and processing energy use through implementation of

¹ The *Greenhouse Gas Protocol* (GHG Protocol) (World Business Council for Sustainable Development [WBCSD] and World Resources Institute [WRI], 2004) was applied for the proposed action (Attachment G5 of Final Decision Brief)

through seam blasting;

- energy efficiency initiatives to reduce indirect electricity consumption i.e. scope 2 emissions;
- implementation of the existing emissions cap for the Mangoola Mine in accordance with the Safeguard Mechanism under the Australian national greenhouse gas mitigation policy framework; and
- participation, monitoring and reporting within the Commonwealth Government's National Greenhouse Energy and Reporting Scheme (NGERS), which includes ongoing review of technologies and measures to further minimise GHG emissions.

Public Comments

95. Public submissions on the EIS raised concerns about the potential air quality impacts of the project and the effect on human health, as well as the broader issue of cumulative air quality impacts.
96. Public submissions during the IPC process raised similar concerns to those raised on the EIS. Submissions also raised concerns regarding inter-generational equity, as well as the Government's commitment to reducing GHG emissions.

DPIE Assessment

Source of emissions and amount of emissions

97. The DPIE AR notes that the main sources of scope 1 and scope 2 GHG emission estimates from the proposed action will be associated with fugitive emissions due to exposure of coal seams during mining operations, and on-site electricity and diesel consumption. DPIE notes that the vast majority of scope 3 emissions from coal mined by this project will be generated by combusting the coal in power stations to generate electricity.
98. The AR states the proposed action is expected to generate approximately 108 Mt carbon dioxide equivalent (CO₂-e) over the life of the mine (8 years), comprising of 3.6 Mt CO₂-e of scope 1 and 2 emissions, and 104 Mt CO₂-e of scope 3 emissions

Scope 1 & 2 emissions

99. According to the DPIE AR, the proposed action's Scope 1 and 2 emissions represent a very small proportion of the proposed action's emissions (approximately 3.5%), and should be considered relative to the global impacts that would arise from the recovery of alternative coal resources for power generation, and weighed against the potential economic and social benefits of the Project.
100. DPIE states in the AR that Glencore has applied reasonable and feasible measures to reduce its scope 1 and 2 emissions through the design and operation of the proposed action. The majority (approximately 70%) of residual scope 1 and 2 GHG emissions

would be associated with fugitive gas emissions due to exposure of the seams during open cut mining operations and only 30% of the predicted scope 1 and 2 GHG emissions would be due to on site fuel and electricity consumption required to operate the mine.

101. DPIE recommended conditions to manage the GHG emissions of the proposed action to the greatest extent practicable, including requiring the proponent to:

- take all reasonable steps to improve energy efficiency;
- manage 'non-road' mobile diesel equipment to comply with any exhaust emission standards specified under an EPL for the site; and
- prepare a detailed Air Quality and Greenhouse Gas Management Plan for the project.

102. DPIE considered, in the DPIE AR, that the proposed action is not inconsistent with the NSW Government's NSW Climate Change Policy Framework and notes that the proponent has committed to limiting its coal production to 150 Mtpa across its global operations in order to minimise its total GHG emissions.

Scope 3 emissions

103. DPIE noted that almost 97% of emissions generated by the proposed action comprise Scope 3 GHG emissions from the consumption of coal by end users. DPIE also noted that under the Paris Agreement accounting rules and Australian legislation scope 3 emissions are not included in Project emission reporting to avoid double counting emissions.

104. The GHGEA stated that approximately 96% of the proposed action's scope 3 emissions are forecast to be generated by electricity generators burning coal in countries or jurisdictions such as Australia, China, India, Japan, Malaysia, Philippines, South Korea and Taiwan.

105. The NSW AR noted that the majority of key consumer countries identified by Glencore are signatories to the Paris Agreement.

106. The NSW AR further noted that, while Taiwan is not a signatory to the Paris Agreement, it has developed its own GHG emission reduction targets (enforced under its Greenhouse Gas Reduction and Management Act) comparable to those of countries who are signatories.

107. DPIE stated in the AR that the NSW Government's Strategic Statement on Coal Exploration and Mining in NSW (2020) identifies that, in the medium term, there will still be a strong global demand for thermal coal for power generation for at least the duration of the proposed action.

108. The GHGEA states that, under current policy settings, global GHG emissions are forecast to reach 56,200,000,000 t CO₂-e per annum by 2025 (the United Nations Environment Programme Emissions Gap Report 2016). Based on this forecast, the GHGEA estimates that during operation, the proposed action's scope 1 emissions will contribute approximately 0.00073 per cent to global emissions per annum. Based on this

estimate, the proponent considered that the proposed action, in isolation, is unlikely to influence global emissions and climate change trajectories.

109. The GHGEA also noted that for Australia to achieve its commitment under the Paris Agreement, it would need to achieve a 28% (i.e. 762,000,000 t CO₂-e) reduction in GHG emissions by 2030. The forecast project-related scope 1 emissions would increase the required national mitigation effort by approximately 0.43%. DPIE notes that the projected emissions levels for the proposed action were relatively modest for a coal mine of its scale and that the emissions would represent a small proportion of Australia's nationally determined contributions (NDCs).
110. DPIE noted the proposed action's scope 3 emissions occurring overseas will not contribute to Australia's NDC. These scope 3 emissions become the consumer countries' scope 1 and 2 emissions and will be accounted for in their respective national inventories.
111. DPIE noted that the NSW and Commonwealth Government's current policy frameworks do not promote restricting private development as a means for Australia to meet its commitments under the Paris Agreement or the long-term aspirational objective of the NSW Government's Climate Change Policy Framework. Neither do they require any action to be taken by the private sector in Australia to minimise or offset the GHG emissions of any parties outside of Australia, including the emissions that may be generated in transporting or using goods that are produced in Australia.
112. Further to this, NSW DPIE noted that the proponent had recently announced that it will limit coal production to 150 Mt per annum across its global operations in order to limit its total GHG emissions and that the proposed action fits within the coal production cap commitment. DPIE also notes that the proponent has reviewed the feasibility of pre-draining coal seam gas to reduce scope 1 and 2 emissions, however it considered this option is economically unviable due to capital and operational costs.
113. DPIE recommended that the proponent be required to prepare and implement a detailed Air Quality and Greenhouse Gas Management Plan to detail measures to minimise GHG emissions during both the construction and operational phases of the proposed action.
114. Overall, I noted that DPIE considered that the GHG emissions for the proposed action were adequately considered and that, if the proposed action is undertaken in accordance with the NSW conditions, are acceptable when weighed against the relevant climate change policy framework, objects of the EP&A Act (including the principles of Ecologically Sustainable Development) and the socio-economic benefits of the proposed action.

IPC decision and conditions

115. The IPC agreed with the DPIE assessment and also noted:
 - under the Paris Agreement, all emissions associated with an activity within Australia's borders count towards Australia's total emissions. Almost all countries have committed to track their progress with the aim to reduce global GHG emissions. The National

Greenhouse and Energy Report Scheme (NGERS) is a national reporting framework designed to support Australia's international reporting obligations. The IPC noted that NGERS does not require reporting of scope 3 emissions. The IPC noted that scope 3 emissions occurring overseas become the consumer country's scope 1 and 2 emissions and would be accounted for under the Paris Agreement in their respective national inventories;

- the proposed action is not inconsistent with the CCPF, the net zero plan or Australia's obligations in respect to the nationally determined contributions;
- The proposed action includes appropriate measures for minimising and managing scope 1 and scope 2 emissions to the greatest extent practicable.

116. The IPC noted there are uncertainties surround the largest component of the project's scope 1 emissions – fugitive emissions from coal seams, and the mitigation measures for these emissions with specific reference to the high methane content of the Upper Pilot Seam.

117. In response to this uncertainty, the IPC included a specific objective in Table 9 of condition B85 which requires the proponent to minimise post-mining fugitive emissions.

118. The IPC imposed conditions for air quality and GHG regulation (B30, B31, B32, B33, B34 and B85), including the approval holder must:

- take all reasonable steps to improve energy efficiency and reduce scope 1 and scope 2 GHG emissions;
- ensure that major mobile diesel mining equipment used in undertaking the development includes reasonable and feasible diesel emissions reduction technology;
- prepare and implement an Air Quality and Greenhouse Gas Management Plan; and
- minimise post-mining fugitive emissions from exposed coal seams (discussed above).

119. I noted that the IPC concluded in its Statement of Reasons that GHG emissions for the proposed action have been adequately considered and, in the context of the climate change policy framework (including government policy, objects of the EP&A Act, ESD principles, and socio-economic benefits), the impacts associated with the GHG emissions of the proposed action were acceptable and consistent with the public interest.

Conclusion on GHG emissions

120. I noted that the proposed action would result (over 8 years) in approximately:

- 3.25 Mt CO₂-e of Scope 1 emissions,
- 0.40 Mt CO₂-e Scope 2 emissions, and
- 104.29 Mt CO₂-e of Scope 3 emissions over the life of the proposed action.

121. I noted that NSW approval conditions B31-34 and B85 require that proposed action's Scope 1 & 2 emissions are minimised to the greatest extent possible.

122. I noted that the IPC found Scope 3 emissions become the consumer countries' Scope 1 and 2 emissions and would be accounted for under the Paris Agreement in their respective national inventories. The management of GHG emissions under international and national frameworks is discussed further below from [201]-[249].

123. Taking into account the DPIE AR and IPC decision consideration of GHG emissions, I found that the NSW conditions were sufficient to protect matters of national environmental significance, and it was not necessary to impose further conditions in relation to GHG emissions in respect of the applicable controlling provisions.

Economic and Social matters (section 136(1)(b))

124. I considered the following economic and social matters relevant to the proposed action.

Economic Matters

125. The DPIE AR stated the proposed action will provide major economic benefits for the region and NSW as whole, including:

- a) a predicted net benefit to the community of \$408 million, including \$129.5 million to the NSW Government
- b) on-going employment of up to 480 operational workers
- c) temporary employment of 145 workers during construction
- d) providing significant funding for local infrastructure and community service projects over the life of the mine in the order of \$5 million, including a Voluntary Planning Agreement with Muswellbrook Council for community enhancement program and road maintenance.

126. An Economic Impact Assessment (EIA) was prepared by Cadence Economics (Cadence) in 2019 as a part of the EIS. The EIA was peer reviewed on behalf of Glencore by Emeritus Professor Jeff Bennet.

127. The independent economic expert concluded the EIA was consistent with the EA Guideline and Technical Notes and provided sound findings regarding the likely economic impacts associated with the project.

128. Public submissions to the IPC cited both positive and negative economic impacts of the proposed action. Issues raised include:

- i. the contribution to the local economy through employment and support for local business.
- ii. the scale of economic impacts and benefits has been overstated.
- iii. the economic future for coal mining is uncertain.

129. DPIE considered a range of economic issues in the AR including amenity and health

impacts, impacts on water and agriculture, biodiversity and heritage, traffic and visual impacts.

130. The IPC imposed a number of conditions to mitigate and manage residual social impacts, including requiring the proponent to:
 - i. comply with strict noise, blasting and air criteria and operating conditions, and prepare noise, blasting and air quality management plans;
 - ii. comply with water quality objectives, discharge requirements and compensatory water requirements for any loss of water supply due to mining operations;
 - iii. independent review of potential exceedances of applicable environmental criteria, at the request of landowners.
131. State condition B108 requires the proponent to prepare and implement a Social Impact Management Plan for the project in consultation with Muswellbrook Council, the Community Consultative Committee, the local community and other interested stakeholders.
132. DPIE acknowledged that Council and community members raised genuine concerns about potential impacts of the project on the lifestyle, amenity or wellbeing of the community.
133. DPIE noted in the AR that it carefully weighed the impacts of the project against the significance of the resources and the socio-economic benefits. On balance, DPIE believes the proposed action's benefits to the local, regional and State economies outweigh its potential costs, is in the public interest and is approvable, subject to stringent conditions.
134. I noted that the IPC did not accept the proponent's methodology used to calculate benefits to NSW based workers and supplier benefits and found them to be over-estimated in the proponent's EIA. However, the IPC accepted that the proposed action would have a positive economic impact in relation to employment through the provision of up to 400 ongoing positions, 80 operational positions and 145 construction jobs. The IPC acknowledged that a large portion of workers' salaries would be reinvested and circulated within the region and NSW more broadly.
135. Furthermore, the IPC did not accept the proponent's methodology for calculating GHG costs and disregarded the EIA's approach to the allocation of the costs of fugitive emissions. The IPC was of the view that all fugitive Scope 1 and 2 emissions should be fully costed for in the economic analysis because they are emitted in NSW and therefore attributable to NSW. However, the IPC considered that the total estimated GHG cost did not materially alter the proposed action's net benefit to NSW.
136. I noted that, in making its final decision to approve the project, the IPC considered that the project will generate net positive social and economic benefits for the local area, Hunter region and greater NSW through continued employment opportunities.

Social matters

137. The EIS includes a Social Impact Assessment (SIA) prepared by Umwelt Pty Ltd, which considers the negative and positive social impacts of the project on adjacent landowners as well as local and regional communities.
138. The SIA was prepared in accordance with DPIE's Social Impact Assessment Guidelines for State Significant Mining, Petroleum Production and Extractive Industry Development (2017).
139. The DPIE AR states the proposed action will generate a range of social benefits for the local and regional community through direct and indirect employment opportunities and economic growth in the regional economy. It will also generate benefits for the State through royalties and tax revenues.
140. The SIA recognised potential adverse social impacts in the local community, particularly to rural residents close to the mine where there will be increased impacts. DPIE acknowledged while the potential impacts are predicted to remain within relevant assessment criteria or could be appropriately addressed in accordance with NSW policies and guidelines, local residents are still likely to have concerns about the potential impacts to their lifestyle, amenity or wellbeing.
141. The IPC considered the potential social impacts of the project, and the likely social benefits, and concluded the benefits include:
- a. Generation of additional jobs.
 - b. Employment opportunities for the Indigenous community.
 - c. Growth in indirect employment in upstream and downstream industries.
 - d. Diversification from a predominantly agricultural economy.
 - e. Increase in local procurement.
142. The IPC statement of reasons acknowledged the potential for negative social impacts on the local community and region through increased pressure on local services, facilities, social dynamics and other land users.
143. Issues raised in public submissions to the IPC included: employment, job certainty, flow-on benefits to local business, local community benefits, social impacts, community enhancement, visual impacts, air quality, noise, vibration, proximity to dwellings, lighting, transport, traffic, biodiversity, sustainability, water resources, climate change, flooding, bushfire, rehabilitation, final landform and mine closure.
144. The IPC noted the project will result in a range of positive and negative social risks and/or impacts, but concluded that the negative social risks associated with the proposed action can be appropriately monitored, managed and mitigated through the State conditions.

Conclusion on economic and social impacts

145. I noted that the DPIE AR and IPC assessment concluded that, with appropriate management and mitigation, the negative social impacts could be managed to achieve the benefits of the project.
146. I agreed with the DPIE and IPC assessment of social and economic impacts of the project, noting that the IPC found that some of the proponent's estimated benefits were overstated. I found that the proposed action would result in net positive economic and social impacts.

Indigenous and cultural matters

147. The EIS addressed the impact of the proposed action on two areas of heritage; Aboriginal Cultural Heritage and Values, and Historical Heritage.
148. An Aboriginal Cultural Heritage Assessment Report (ACHAR) was prepared by Australian Cultural Heritage Management in consultation with 37 Registered Aboriginal Parties (RAPs) as part of the EIS process.
149. An Aboriginal Archaeological Impact Assessment (AAIA) was also prepared by OzArk Environmental & Heritage Management (OzArk) to assess the scientific value of sites and artefacts identified within the project area.
150. The ACHAR identified a total of 71 Aboriginal sites within the Northern Extension area, of which 26 are within the proposed disturbance area. These sites include 15 artefact scatters and 11 isolated finds. DPIE noted the 26 sites located within the proposed disturbance area will be impacted if the project goes ahead.
151. The DPIE AR states two sites near Big Flat Creek occur within the footprint of the proposed haul road overpass and have low-moderate to moderate scientific significance. The DPIE AR also notes the remaining sites have low scientific significance.
152. An Historic Heritage Assessment (HHA) was prepared by Umwelt as part of the EIS process. The DPIE AR states no items of historic heritage were identified within the Northern Extension Area. DPIE also noted the nearest historic heritage items are located between 1,680 m and 3,049 m from the Northern Extension Area.
153. DPIE noted the only potential impacts to these sites will be from blasting operations and the vibration predicted to be generated by the project is predicted to be well below the relevant impact criteria.
154. The NSW IPC agreed with the DPIE assessment that the Aboriginal cultural heritage impacts of the project are likely to be minimal and are able to be suitably managed. The NSW IPC imposed conditions requiring that the proposed action does not cause direct or indirect impacts on any identified heritage items located outside of the NEA, beyond those predicted in the EIS. The IPC was also of the view that the 26 aboriginal sites within the proposed disturbance area should be salvaged in accordance with protocols outlined in the existing approved Aboriginal Cultural Heritage Management Plan (ACHMP). The IPC imposed conditions which require the proponent to prepare and

implement an updated ACHMP.

155. The NSW Assessment and IPC assessment concluded that impacts to indigenous and cultural heritage as a result of the proposed action are likely to be minimal and can be suitably managed under the NSW conditions.

Comments from the Minister for Indigenous Australians

156. I wrote to the proponent and relevant Commonwealth Ministers inviting comments on the proposed decision, as required under sections 131AA(1) and 131(1) of the EPBC Act.
157. Minister Wyatt responded on 29 September 2021. Minister Wyatt supported the measures proposed as part of the Commonwealth's approval to minimise potential impacts water resources, and listed threatened communities and ecological communities.
158. In acknowledging the Mangoola Coal's commitment to biodiversity, Minister Wyatt stated that there is opportunity for the proponent to collaborate with relevant Indigenous stakeholders and Traditional Owners to develop protocols to protect and manage culturally significant flora, fauna (in particular, the Grey-headed Flying-fox), and sites within the project area.
159. Minister Wyatt encouraged me to work with NSW to ensure the preservation of Aboriginal cultural heritage materials by applying best practice standards to the oversight of the project. He specified the best practice standards are detailed in *Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia and the Best Practice Standards in Indigenous Cultural Heritage Management and Legislation*.
160. Minister Wyatt noted that for privately funded projects, neither the Commonwealth nor NSW governments attach conditions requiring the engagement of Indigenous enterprise or minimum employment outcomes. He encouraged the engagement of Indigenous employees to help realise the economic value of the project to local Indigenous people.
161. Minister Wyatt acknowledged Mangoola Coal's parent company, Glencore, has established an Indigenous Employment Pathways Program. Additionally, he recognised Mangoola Coal expressed in the EIS that they will consider establishing a traineeship or work experience program. Minister Wyatt strongly encouraged the proponent to work with Traditional Owners, Jobactive providers, and Vocational Training and Employment Centres to identify the most appropriate employment pathway. Additionally, he recommended the proponent liaise with Traditional Owners to identify suitable Indigenous businesses to support activities under the project. Minister Wyatt, noted that services such as Supply Nation, may also be useful to identify suitable Indigenous businesses.
162. Minister Wyatt recommended that ongoing, active engagement with all relevant Indigenous stakeholders and Traditional Owners throughout the project's lifespan would ensure best practice. He also expressed the commitments made by the proponent in the EIS were encouraging and suggested formalising the engagement, funding, and employment commitments through an Indigenous Land Use Agreement.

Conclusion

163. I noted that the letter to the proponent includes the advice of Minister Wyatt and encourages ongoing Indigenous stakeholder consultation.
164. I agreed with the DPIE and the IPC assessment of the Indigenous and cultural heritage impacts of the proposed action.

Duty of care and human safety

165. Notwithstanding that I have appealed the Federal Court decision in *Sharma v Minister for Environment* [2021] FCA 560 (**Sharma No 1**) and *Sharma v Minister for Environment (No 2)* [2021] FCA 774 (**Sharma No 2**), in making my decision I have had regard to the impacts of the proposed action on the lives and safety of Australian children and my duty to take reasonable care, in the exercise of my powers under ss 130 and 133 of the EPBC Act, to avoid causing personal injury or death to persons under 18 years of age and ordinarily resident in Australia, arising from emissions of carbon dioxide into the Earth's atmosphere. I gave human safety elevated weight in making my decision.

Relevance of the Sharma decision

166. On 8 July 2021, the Federal Court of Australia declared that I have a duty to take reasonable care, in the exercise of my powers under ss 130 and 133 of the EPBC Act in respect of the Vickery Extension Project (EPBC 2016/7649) (**Extension Project**), to avoid causing personal injury or death to persons under 18 years of age and ordinarily resident in Australia, arising from emissions of carbon dioxide into the Earth's atmosphere: *Sharma v Minister for Environment (No 2)* [2021] FCA 774 (**Sharma No 2**). On 27 May 2021, the Court published its reasons for making that declaration: *Sharma v Minister for Environment* [2021] FCA 560 (**Sharma No 1**). These decisions are collectively referred to as **Sharma**.
167. The Court also found that human safety is a mandatory relevant consideration in relation to a controlled action that may endanger human safety, including through the emission of greenhouse gases (**GHG**).
168. The Court found that I owed the applicants and other Australian children a duty to take reasonable care to avoid causing them personal injury when deciding whether to approve the Extension Project. The relevant risk of personal injury was the real risk of harm to Australian children arising from heatwaves and bushfires, brought about by increases to global average surface temperatures: see *Sharma No 1* at [247]. The Court found that the Extension Project would lead to the emission of 100 million tonnes of CO₂, which the Court found would cause a small but measurable increase to global average temperatures and that the project's emissions would increase the risk of harm to Australian children arising from climate change. While the Court accepted that the contribution of the Extension Project to the increase in global average surface temperature might be characterised as "tiny", there was a "real risk that even an infinitesimal increase in global average surface temperature may trigger a 4°C Future World" and, in that context, "the Minister's prospective contribution is not so insignificant as to deny a real risk of harm to the Children": *Sharma No 1* at [253].

169. I am appealing the whole of the Federal Court's judgment in *Sharma*, except for that part concerning the dismissal of the application for an injunction. The grounds for the appeal are set out in the notice of appeal that has been filed with the Federal Court. The basis of the appeal is generally that the primary judge made errors of law.
170. Although I am appealing the Federal Court's judgment in *Sharma*, I have applied the *Sharma* reasoning to my decision.
171. This part of my reasons addresses the risks to human safety posed by the proposed action and my duty to take reasonable care to avoid causing death or injury to Australian children in making my decision. This section of my reasons is structured as follows:
- a. Global coal markets and the likelihood of the proposed action's emissions increasing global GHG emissions;
 - b. How GHG emissions are managed under international and national frameworks;
 - c. Summary of GHG emissions for the proposed action, measures being undertaken by the company to manage the proposed action and Independent Planning Commission (IPC) Assessment;
 - d. Risks of a warming climate;
 - e. Social and economic considerations;
 - f. Conclusion.

Global coal markets and the likelihood of the proposed action's emissions increasing global GHG emissions

172. The department sought the advice of the Department of Industry, Science, Energy and Resources (**DISER**) in relation to the extent to which, if at all, the approval of certain coal projects would affect the global level of consumption of coal in possible future scenarios (**DISER Advice**). I have taken this advice into account, in addition to considering publications of the International Energy Agency that analyse trends in global markets including the 'World Energy Outlook 2020' (**WEO 2020**), IEA Electricity Market Report – July 2021 (**Electricity Markets Report**) and 'Net Zero by 2050'.
173. I have also taken into account the expert reports of Professor Will Steffen filed in the *Sharma* proceedings, dated 30 June 2020, 7 December 2020 and 17 January 2021. These reports are referred to as the '**Steffen Reports**' and are included in this brief with the other reports filed in the proceeding from Dr Ramona Meyricke, Professor Anthony Capon and Dr Karl Mallon. I have also taken into account the letter from Environmental Justice Australia on behalf of Lock the Gate Alliance in relation to the proposed action and the letter from School Strike 4 Climate dated 24 August 2021.
174. The DISER Advice explains that the two primary uses of coal are for energy and steelmaking. Coal used for steelmaking is referred to as metallurgical or coking coal. Coal used for energy is referred to as thermal coal.
175. The proponent has advised that 100% of the coal produced will be thermal coal for electricity production.
176. The Mangoola mine extension will produce 52 Mt of thermal coal used for electricity

generation over a period of 8 years. I noted that, based on current use of Mangoola's coal and the projections in the GHGEA, that thirty per cent of Mangoola's coal will likely supply domestic power stations (AGL) and 70% will be exported.

177. The GHGEA (2019) states that approximately 96% of the proposed action's scope 3 emissions are forecast to be generated by electricity generators burning coal in countries or jurisdictions such as Australia, China, India, Japan, Malaysia, Philippines, South Korea and Taiwan.
178. On 20 September 2021, at the request of the department, the proponent provided an updated breakdown of Mangoola coal sales in the 2020-21 financial year. In that financial year approximately 30% of coal was sold in Australia, with the remaining 70% exported to Japan, South Korea, India, Taiwan, Thailand, New Caledonia, China, Cambodia Chile, Indonesia, Malaysia, Netherlands, Pakistan, Turkey and Vietnam.

Global demand for coal

179. The WEO 2020 identifies a number of scenarios for future global energy demand and supply in 2040. These scenarios include the:
- Sustainable Development Scenario (SDS): which assumes that global coal consumption will be constrained to a level consistent with the aims of the Paris Agreement and energy-related sustainable development goals (SDG) (these are: affordable and clean energy (SDG 7), to reduce the severe health impacts of air pollution (part of SDG 3) and climate action (SDG 13)); and
 - Stated Policies Scenarios (STEPS): which assumes that global coal consumption will not be constrained to a level consistent with the aims of the Paris Agreement or address sustainable development goals. This scenario takes into account the policies and implementing measures affecting energy markets that have been adopted as of mid-2020, together with relevant policy proposals which have not been fully implemented.
180. The DISER Advice notes that global demand for coal will gradually decrease to 2040 in either SDS or STEPS scenario. Global demand for coal is estimated to be 1850 Mtce in 2040 in the SDS scenario and 4735 Mtce in 2040 in the STEPS scenario. However, demand for coal varies by region.
181. The DISER Advice details predicted coal demand in the STEPS scenario and demonstrates that demand for coal in the Asia Pacific region (including Southeast Asia, Japan, India and China) will remain relatively steady up to 2040. The DISER Advice states:
- Coal consumption in India is expected to grow over the next 20 years by 182 Mtce. Coal consumption in South East Asia is also expected to grow rapidly over the same period, increasing by 157 Mtce. Coal use rebounds in China in the near term, peaking around 2025, before declining to 2040. Japan is expected to see the largest reduction in coal consumption over the period, declining by 55 Mtce. By 2040, the Asia Pacific region will account for 85 per cent of global coal consumption.

182. The DISER Advice details predicted coal demand in the SDS scenario and demonstrates that demand for coal will decrease to 2040. Although in this scenario there is a decline in overall demand, this decline is much less significant for the life of the proposed action which is 8 years.
183. The DISER Advice notes that, in either the SDS or STEPS scenario, the global demand for coal up to 2040 can be met by alternative sources of coal. Alternative sources of coal include all currently approved Australian coal mines, as well as all known or likely coal mines and coal deposits outside Australia but excludes the proposed action and other unapproved Australian coal mining developments.

Global demand for electricity from fossil-fuels

184. The IEA Electricity Information: Overview (Statistics Report August 2021)² states that in 2019, generation from combustible fuels (e.g. coal, oil, natural gas, biofuels and industrial and municipal waste) accounted for 65.3% of global gross electricity production. Electricity generation from combustible fuels accounted for 57.1% of total OECD gross electricity production, compared with 71.1% for non-OECD. The IEA report³ found that coal accounted for 36.7% of global electricity production in 2019, natural gas 23.5%, hydro 16%, nuclear 10.3%, wind 5.3%, solar 2.6% and biofuels and waste 2.4%.
185. The IEA⁴ forecasts that increases in electricity generation from all renewable sources should push the share of renewables in the electricity generation mix to an all-time high of 30% in 2021. However, despite record additions of renewable generation capacity, the IEA's Electricity Market Report – July 2021⁵ states that fossil fuel-based generation and associated emissions are rising along with electricity demand. Although renewable electricity generation continues to grow strongly, it cannot keep up with increasing demand. Renewables are expected to be able to serve around half of the projected growth in global demand in 2021 and 2022.
186. The IEA Electricity Market Report – July 2021 states that, as electricity demand growth rebounds in 2021, only half of the increased supply is expected to be provided by renewable energy, with coal supplying almost 40% of new demand.
187. The IEA Electricity Market Report – July 2021 states that coal generation will continue to increase in the Asia Pacific region in the coming years because year-on-year demand growth is still strong in several countries, including China, India, Indonesia and Vietnam.
188. The IEA Coal 2020 Report also forecasts that coal demand will rise in South and Southeast Asia as electricity demand and infrastructure expand. This region has strong economic growth prospects and relies on coal to supply part of the additional energy

² <https://www.iea.org/reports/electricity-information-overview/electricity-production>

³ <https://www.iea.org/data-and-statistics/charts/world-gross-electricity-production-by-source-2019>

⁴ <https://www.iea.org/reports/global-energy-review-2021/renewables>

⁵ <https://iea.blob.core.windows.net/assets/01e1e998-8611-45d7-acab-5564bc22575a/ElectricityMarketReportJuly2021.pdf>

needs, especially for power generation. Indonesia and Vietnam in particular, as well as the Philippines, are expanding coal-fired power plant capacity.

189. I noted the department's advice that these forecasts are based on policies and investment projections in place at the time of publication of these respective reports.

NSW Strategic Statement on Coal

190. The NSW Government has developed a Strategic Statement on Coal Exploration and Mining in NSW. The statement identifies that coal mining in NSW is anticipated to continue for the next few decades. Although recognising that emissions reduction measures will be required, the statement notes that ending or reducing NSW thermal coal exports while there is still strong global demand for coal is likely to have little to no impact on global carbon emissions.

Alternative sources of coal and related GHG emissions

191. The DISER advice notes the long term demand for thermal coal depends primarily on its price and demand for energy (including the cost of alternative energy products and consumer preferences for energy types). Supply of thermal coal depends on availability in nature, the technology used for extraction, the labour and capital costs associated with production, the cost of transporting the coal to the demand source (normally by rail and ship) and the regulatory costs associated with environmental protection and worker health and safety.
192. I accepted the conclusion of the DISER Advice that my decision to approve the proposed action would not affect any of the demand factors identified. I further accepted the DISER Advice that recent trade disruptions have demonstrated the substitutability of coal, where coal destined for China has been resold or redirected to various countries and China has managed to source its coal needs in the absence of previously substantial Australian supply. The DISER Advice concludes:

Regardless of any feasible scenario of future global demand, the small fraction of current global coal supply that these projects represent, combined with the relatively flat global seaborne coal cost curves indicates that the Decision will not have any discernible impact on global coal prices. The alternative sources of coal identified in sub-question 1 are readily substitutable for any coal that might be produced by the Coal Mining Projects.

193. I noted DISER's advice that the carbon dioxide emissions of electricity generated from thermal coal are dependent on a number of factors. DISER advised that it is not possible to identify specific mine sources that would be the alternative sources of coal in the event the proposed action is not approved. DISER considered that it is not possible to conclude that any decision to approve the coal mining projects including the proposed action will necessarily increase GHG emissions associated with coal consumption.

Impact of a decision to approve or refuse the proposed action on global GHG emissions and climate change

194. I accepted the department's recommendation that I find that the available evidence indicates that a decision to approve the proposed action would be unlikely to lead to an increase in global average surface temperatures. This is because the action consequent upon the approval of the project is not likely to cause more coal to be consumed globally (and therefore more GHG emissions) than if the proposed action was not approved.
195. The DISER Advice states that 'any decision of the Minister to approve one or more of the Coal Mining Projects (Decision) is not expected to materially impact on the total amount of coal consumed globally'. I agreed with this conclusion. DISER noted that the approval or refusal of the proposed action will not affect global demand for coal and there are sufficient alternative sources of coal to supply future demand for coal in projected future scenarios. In those circumstances, the rejection of the proposed action is unlikely to have an impact on total global coal consumption, or to impact the price of coal.
196. The DISER Advice noted that it is not possible to identify specific mines that will be used in substitution for the proposed action's coal. I also noted the department's advice that, in circumstances where the refusal of the proposed action would not impact the total amount of coal consumed, and other coal sources will be available to meet demand, it is not possible to conclude that the amount of GHG emissions that would occur even if the proposed action was approved would necessarily increase in any material degree.
197. I also took into account the Steffen Reports in reaching the above conclusion. Professor Steffen acknowledges the argument that 'if a proposed new coal development is not allowed to proceed, another new coal resource, either in Australia or overseas, will be developed to take its place'. However, Professor Steffen states that this argument is flawed because it presumes that there is and will continue to be a demand for new coal resources beyond those that already exist, whereas he is of the view that evidence demonstrates that coal production is in steady decline. I noted the department's advice that this is inconsistent with other available evidence which indicates that demand for coal is likely to continue (see paragraphs [179]-[189] above).

Conclusion on coal markets and substitution

198. The Court in *Sharma* decided an increase to total global GHG emissions poses a risk to human safety by increasing total global average surface temperatures. The relevant risk to human safety found to exist in *Sharma* was the risk of death or personal injury from heatwaves or bushfires.
199. As previously noted, I have appealed the *Sharma* decision, which is pending.
200. I accepted the department's view that the approval of the proposed action is not likely to cause harm to human safety because, if the proposed action is not approved, there is no reason to believe that a comparable amount of coal would not be consumed in substitution of the proposed action's coal. Therefore, I considered that the proposed action will not necessarily result in an increase to global GHG emissions.

How GHG Emissions are managed under international and national frameworks

201. In the event that (contrary to the above conclusion) the small amount of emissions from the proposed action are additional and are not substituted by emissions from other coal production, I have considered the national and international frameworks within which those emissions will be managed and measures to mitigate their impacts. I have summarised these frameworks below. These matters have further informed my consideration of my duty of care and my consideration of the impact of the proposed action on human safety.

International framework for climate change

202. The international climate treaties, the Paris Agreement, done at Paris on 12 December 2015, the Kyoto Protocol, done at Kyoto on 11 December 1997, and the United Nations Framework Convention on Climate Change (UNFCCC), done at New York on 9 May 1992, are the primary multilateral mechanisms governing the international response to climate change.
203. The Paris Agreement entered into force on 4 November 2016. 191 countries are Party to the Paris Agreement, including Australia.
204. The temperature goal of the Paris Agreement is to limit the increase in global average temperature to well below 2°C and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. All parties must prepare, communicate and maintain successive NDCs and pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
205. The department advised that projections in the IPCC Special Report, 'Global Warming of 1.5°C' (8 October 2018) indicate that, if NDCs in place in 2018 were implemented successfully, the world would reach 2.7-3.2 degrees Celsius above pre-industrial levels by 2100. Under the Paris Agreement, successive NDCs are required to represent a progression beyond the current NDC and reflecting its highest possible ambition (Article 4.3).
206. Importantly, under Article 4 of the Paris Agreement, parties aim to reach global peaking of GHG emissions as soon as possible, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removal by sinks of GHG in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty. 137 governments around the world, including Australia, have announced intentions to reach net zero emissions which better align with the Paris Agreement temperature goal.
207. To respond to climate change, industry, legal and financial fiduciary bodies have also called on business to recognise, understand and respond appropriately to the risks and consequences posed by climate change, potentially independent of government policy. Many companies and businesses have also established net zero by 2030 - 2050 targets. Industry is increasingly acknowledging that effort across the whole supply chain is required to enable sectors to decarbonise.

Climate commitments made by markets for Glencore coal

208. On 20 September 2021, at the request of the department, the proponent provided an updated breakdown of Mangoola coal sales in the 2020-21 financial year. In that financial year, coal was sold in Australia, Japan, South Korea, India, Taiwan, Thailand and New Caledonia, China, Cambodia, Chile, Indonesia, Malaysia, Netherlands, Pakistan, Turkey and Vietnam. The proponent noted that 84% of these sales occurred in countries identified in the 2019 EIS, and over 98.4% were to countries that are signatories to the Paris Agreement or with equivalent domestic policies for emissions reductions.
209. As outlined above, the GHGEA forecast that 96% of the proposed action's scope 3 GHG emissions will be generated in Australia, China, India, Japan, Malaysia, Philippines, South Korea and Taiwan. Taking into account the GHGEA projections, and the export destinations for the current Mangoola coal, I accepted that the vast majority of the proposed action's coal is likely to be exported to the overseas markets identified in the GHGEA. I noted that some variations may include export to the other destinations where Mangoola coal is currently exported.
210. I have taken into account the national commitments of countries identified in the proponent's 2019 GHGEA. DISER provided the following information regarding these commitments:

Japan

211. Japan's official NDC commits to emissions reduction of 26% below 2013 by 2030. In addition,
- Japan's Global Warming Countermeasures Law 2021 commits that "a decarbonised society will be realized by 2050".
 - At the US-hosted Leaders' Summit on Climate in April 2021, Japan announced it will reduce emissions 46% below 2013 by 2030.
 - Japan's Ministry of Economy, Trade and Industry (METI) released its Basic Energy Policy draft in July 2021. Under the plan, by 2030:
 - coal use will be reduced from 26% to 19%
 - gas use will be reduced to 56% to 41%
 - solar is set to increase to 15% from 6.7% in 2019
 - wind is set to increase to 6% from 0.7% in 2019

The Republic of Korea (South Korea)

212. South Korea's official NDC commits to emissions reduction of 24.4% below 2017 emissions by 2030. In addition,
- At the US-hosted Leaders' Summit on Climate in April 2021, South Korea announced a commitment to ending financing of overseas coal fired power plants.

India

213. India's official NDC commits to reducing the emissions intensity of its GDP by 33 to 35 percent by 2030 from 2005 levels; achieving about 40 percent cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030 with the help of transfer of technology and low cost international finance including from Green Climate Fund; and, creating an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030.
214. In addition, India first announced a target of 450 GW of renewable energy capacity by 2030 at the 2019 Climate Action Summit, and reiterated the target at the US-hosted Leaders Summit on Climate in April 2021.

Taiwan

215. Taiwan is not a Party to the Paris Agreement. It submitted an intended NDC in 2015 committing to reduce emissions 20% below 2005 levels by 2030. In addition,
- Taiwan legislated its Greenhouse Gas Reduction and Management Act in 2015 with the long-term goal to reduce emissions 50% below 2005 levels by 2050.

China

216. China's official NDC commits to achieve the peaking of CO₂ emissions around 2030 and making best efforts to peak early; to lower CO₂ emissions per unit of GDP by 60% to 65% from the 2005 level; to increase the share of non-fossil fuels in primary energy consumption to around 20%; and to increase the forest stock volume by around 4.5 billion cubic meters on the 2005 level.
217. In addition, at the General Debate of the 75th Session of the United Nations General Assembly, China's President Xi Jinping announced China would:
- Scale up its NDC with more vigorous policies and measures,
 - Peak CO₂ emissions before 2030,
 - Achieve carbon neutrality before 2060.
218. China's 14th Five Year Plan (released March 2021) includes a number of intentions aligned with the President's announcement:
- develop an action plan to achieve peak carbon emissions by 2030, anchored to efforts to achieve carbon neutrality by 2060, and the need to adopt more vigorous policies and measures.
 - aim to reduce carbon dioxide emissions per unit of GDP by 18 per cent over the 2021 to 2025 period (the same target as the 13th Five Year Plan), peak carbon emissions by 2030 and achieve carbon neutrality by 2060.
 - detailed targets will be revealed when sectoral plans are released towards the end of 2021. For the first time, the Ministry of Ecology and Environment will also

release a Five Year Plan for Climate Change in late 2021, which will serve as a blueprint for China's climate action.

The Department notes that on September 22, President Xi Jinping announced China would not build new coal fired power stations abroad.

Malaysia

219. Malaysia's official NDC commits to economy-wide carbon intensity (against GDP) reduction of 45% (unconditional) by 2030 compared to 2005 levels.

The Philippines

220. The Philippines' official NDC commits to a 75% reduction in emissions below BAU by 2030. 2.71% of this target is unconditional and 72.29% is conditional. The mitigation contribution is conditioned on the extent of financial resources, including technology development & transfer, and capacity building, that will be made available to the Philippines.

Viet Nam

221. Viet Nam's official NDC commits to reduce emissions by 9% compared to BAU by 2030 using domestic resources, and up to 27% with international support through bilateral and multilateral cooperation and the implementation of new mechanisms in the Paris Agreement.

222. I also noted the department's advice on the polices of:

New Caledonia

223. The Department notes that New Caledonia, as a territory of France, is not a separate Party to the Paris Agreement. In 2016 New Caledonia implemented an energy transition scheme which aims to reduce energy consumption, increase the amount of renewables in the energy mix and reduce emissions⁶.

Thailand

224. Thailand's NDC aims to reduce GHG by 20% from business as usual level (2005 the reference year) by 2030⁷.

Indonesia

225. Indonesia's updated NDC commits it to an unconditional reduction target of 29% and conditional reduction target up to 41% of the business as usual scenario by 2030⁸.

226. I noted that Japan, South Korea, India, China, Malaysia, Philippines, Vietnam, France (New Caledonia), Thailand, and Indonesia are signatories to the Paris Agreement and

6 https://gouv.nc/sites/default/files/atoms/files/2016.06.23_schema_transition_energetique_stenc.pdf

7 <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Thailand%20First/Thailand%20Updated%20NDC.pdf>

8 <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/Updated%20NDC%20Indonesia%202021%20-%20corrected%20version.pdf>

Taiwan has equivalent commitments.

Domestic Measures

227. I noted the following matters concerning domestic measures to address climate change.

228. Under the UNFCCC, Kyoto Protocol and Paris Agreement, the Australian Government has committed to reduce national GHG emissions, track progress towards those commitments, and report annually on Australia's GHG emissions⁹. Australia first communicated its NDC under the Paris Agreement in 2015, committing to an economy-wide target to reduce GHG emissions by 26 to 28% below 2005 levels by 2030.

229. I noted that the department consulted with DISER who advised:

Australia has a strong record of overachieving on its emissions reduction targets – we overachieved on our two previous targets, under the Kyoto Protocol and UNFCCC.

Australia has in place a comprehensive suite of emissions reduction policies, which are working to reduce emissions in all sectors of the economy. Building on these policies, the government is currently focused on low emissions technologies globally scalable, commercial, and achievable.

Australia's Technology Investment Roadmap¹⁰ will drive down the cost of low emissions technologies and accelerate their deployment, both in Australia and overseas. The Roadmap brings a strategic and system-wide view to future investments in low emissions technologies, in partnership with the private sector, states and territories, and key international partners.

The Roadmap's first annual Low Emissions Technology Statement¹¹ articulates five priority technologies (clean hydrogen, carbon capture and storage, low carbon materials like steel and aluminium, energy storage and soil carbon) and accompanying stretch goals – ambitious but realistic goals to bring priority low emissions technologies to economic parity with existing mature technologies.

These technologies are expected to avoid in the order of 250 million tonnes of emission per year by 2040, through deployment in Australia and low emission exports. The Roadmap will guide the deployment of an estimated \$20 billion of Government investment between now and 2030, including through the CEFC, ARENA, the Climate Solutions Fund, and the Clean Energy Regulator. The Government's investments through the Roadmap will help to secure around \$80 billion in total investment from the private sector and governments over the next 10 years.

230. Commonwealth legislation relating to the Australian Government's policies and programs to reduce emissions and fulfil its emissions reporting and target tracking obligations are regulated by the Clean Energy Regulator (CER). The CER is responsible for administering the *National Greenhouse and Energy Reporting Act 2007 (NGER Act)*, the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the *Greenhouse and Energy*

⁹ <https://www.industry.gov.au/policies-and-initiatives/australias-climate-change-strategies/tracking-and-reporting-greenhouse-gas-emissions>.

¹⁰ <https://www.industry.gov.au/data-and-publications/technology-investment-roadmap-first-low-emissions-technology-statement-2020>

¹¹ <https://www.industry.gov.au/sites/default/files/September%202020/document/first-low-emissions-technology-statement-2020.pdf>

Minimum Standard Act 2012, and the Australian National Registry of Emission Units Act 2011.

231. Australia's National Inventory System (NIS) estimates and reports Australia's GHG emissions in accordance with Intergovernmental Panel on Climate Change (IPCC) guidelines and rules adopted by the Parties to the Paris Agreement. The NIS comprises an independent national monitoring system to compile Australia's national GHG inventory. The UN climate treaties, including the Paris Agreement, specify that Parties are responsible for the emissions occurring within their jurisdictions.
232. The department advised that this means that emissions across each jurisdiction, conceptually equivalent to scope 1 emissions, are aggregated to fulfil Paris Agreement emission reporting and target accounting obligations. Scope 2 and scope 3 emissions that occur within the same jurisdiction are not added to this calculation as it would result in double counting of emissions: one facility's scope 2 and 3 emissions are another facility's scope 1 emissions. Scope 3 emissions associated with Australian facilities that occur outside Australia's jurisdiction (e.g. emissions from the combustion of Australia's coal in an export destination) are accounted for in the countries where those emissions occur.

NSW

233. The NSW government has developed the NSW climate change policy framework (CCPF) and NSW Net Zero plan which provides guidance and measures to achieving net zero emissions in NSW by 2050.
234. The aim of the NSW Climate Change Policy Framework (CCPF) is to maximise the economic, social and environmental wellbeing of NSW in the context of changing national and international policy, with the aim to achieve net-zero emissions by 2050.
235. The Net Zero Plan builds on the CCPF and sets out a number of initiatives to deliver a 35% cut in emissions by 2030, compared to 2005 levels. NSW has recently announced it will update its emissions reduction targets for 2030, setting a new goal to reduce emissions by 50 per cent below 2005 levels by 2030..
236. In addition to the above policies, the NSW State Environmental Planning Policy for mining (Mining SEPP) requires the NSW consent authority to consider, in approving a development application:
- whether conditions should be attached to consents to ensure that the development is undertaken in an environmentally responsible manner, including conditions to ensure that GHG emissions are minimised to the greatest extent possible (clause 14(1) of the Mining SEPP); and
 - an assessment of GHG emissions (including downstream emissions) from the development and must do so having regard to any applicable State or national policies, programs or guidelines concerning GHG emissions (clause 14(2) of the Mining SEPP).
237. As discussed above, the NSW IPC assessed the GHG emissions of the proposed action

and imposed conditions relating to air quality and GHG regulation (B30-B34 and B85).

238. I noted that the IPC concluded that the GHG emissions of the proposed action were adequately considered and that the impacts associated with the GHG emissions of the proposed action were acceptable and in the public interest.

Summary of measures to manage the proposed action and IPC assessment

239. A full description of the proposed action is contained earlier in these reasons. The proposed action is to extend an existing approved open cut mine (the Project EPBC 2018/8280) through the establishment of a new open cut coal pit to the north of the existing Mangoola Coal Mine operation; and related surface infrastructure and activities, and extracting an additional 52 Mt of coal. The proposed action will produce greenhouse gas emissions, as stated in the DPIE AR. The emissions of the project are discussed above at [88]-[123]. The emissions of the proposed action consist of approximately:

- 3.25 Mt CO₂-e of Scope 1 emissions
- 0.40 Mt CO₂-e of Scope 2 emissions, and
- 104.29 Mt CO₂-e of Scope 3 emissions, which would be generated by third parties who transport and consume the extracted coal.

240. I noted that the preparation of a comprehensive Air Quality and Greenhouse Gas Management Plan is a condition of the development consent granted for the Project under the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) (Condition B31). Condition B33 requires the proponent to implement the Air Quality and Greenhouse Gas Management Plan as approved by the Planning Secretary.

241. The NSW development consent states that the Air Quality and Greenhouse Gas Management Plan must:

- a. be prepared by a suitably qualified and experienced person/s whose appointment has been endorsed by Planning Secretary;
- b. be prepared in consultation with the Community Consultative Committee;
- c. describe the measures to be implemented to ensure:
 - i. compliance with the air quality criteria and operating conditions of this consent;
 - ii. best practice management is being employed to:
 - o minimise the development's air quality impacts;
 - o minimise the development's Scope 1 and 2 greenhouse gas emissions; and
 - o improve the development's energy efficiency; and
 - iii. the air quality impacts of the development are minimised during adverse meteorological conditions and extraordinary events;

- d. describe the air quality management system in detail; and
- e. include an air quality management program, undertaken in accordance with the *Approved Methods for sampling and Analysis of Air Pollutants in New South Wales*, that:
 - i. establishes a diesel combustion emissions baseline;
 - ii. uses monitors to evaluate the performance of the development against the air quality criteria in this consent and to guide day to day planning of mining operations;
 - iii. adequately supports the air quality management systems; and
 - iv. includes a protocol for identifying any air quality related-exceedance, incident or non-compliance and for notifying DPIE and relevant stakeholders of these events.

State assessment

242. As discussed above in these reasons, NSW DPIE and the IPC assessed the GHG emissions of the proposed action and the IPC imposed conditions relating to air quality and GHG regulation (B30, B31, B32, B33, B34 and B85), including that the approval holder must:

- take all reasonable steps to improve energy efficiency and reduce scope 1 and scope 2 GHG emissions;
- ensure that major mobile diesel mining equipment used in undertaking the development includes reasonable and feasible diesel emissions reduction technology;
- prepare and implement an Air Quality and Greenhouse Gas Management Plan; and
- minimise post-mining fugitive emissions from exposed coal seams.

243. While the IPC requested that Mangoola give greater priority to investigating and minimising fugitive emissions from exposed coal seams, the IPC concluded that the GHG emissions of the proposed action were adequately estimated and that the impacts associated with the GHG emissions of the proposed action were acceptable and in the public interest.

244. The IPC imposed conditions for air quality and greenhouse gas regulation (B30-B34 and B85), as discussed above.

Proponent/Glencore commitments

245. I noted that the Mangoola coal mine is operated by Glencore, one of the world's largest and diversified resource companies. The proponent is a subsidiary of Glencore.

246. In December 2020, Glencore announced its target to reduce its global total emissions (scope 1, 2 and 3) by 40% by 2035; as well as its long-term goal to become a net-zero

company by 2050¹².

247. In December 2020, Glencore released their climate report, Pathway to net zero. This report outlines seven core actions that Glencore will take to achieve their GHG reduction targets. The core actions include managing scope 1 and 2 emissions of their global assets, supporting the uptake/integration of abatement and investing in carbon capture technology.
248. The department advised that Glencore has published statements and plans to the market on their net zero by 2050 pathway.
249. I noted that these commitments would be beneficial, but that, in deciding whether or not to approve the proposed action, I have taken into account that only those measures required by the NSW conditions are required to be carried out in accordance with the NSW development consent.

Risks of a warming climate

250. The department sought internal advice from Climate Adaptation and Resilience Division regarding the current state of climate change and, in particular, the outcomes from the most recent IPCC Report 'Climate Change 2021: The Physical Science Basis' (**IPCC Report**). The Climate Adaptation and Resilience Division advised that the Government receives its primary advice on climate science from the Bureau of Meteorology (BoM) and the CSIRO. This advice aligns with information provided by the IPCC and other national and international organisations.
251. I noted that the IPCC Report provides an update on the latest climate science, including the rates, causes and likely future trajectories of global warming and other changes to the climate system. I accepted the advice of the Climate Adaptation and Resilience Division that the key findings in IPCC Report are consistent with the findings of the State of the Climate 2020 report, produced by BoM and the CSIRO.
252. I noted that the IPCC Report finds that increasing global GHG emissions will increase global average surface temperatures with the consequences described in that report. These consequences pose risks to human safety.
253. I also noted the expert evidence regarding the risks of a warming climate filed by the Applicants in *Sharma*. I noted the consideration of the expert evidence in the *Sharma* judgment. I also noted my appeal from certain findings in the judgment which arguably go beyond aspects of the evidence that was before the Court, with particular reference to the Steffen Reports.
254. I also considered the expert advice from Dr Mallon, Dr Meyricke, and Professor Capon on impacts on human health as a result of a warming climate and the Court's finding of the relevant risk to human safety on the basis of this evidence.

12 <https://www.glencore.com/media-and-insights/news/Climate-Report-2020--Pathway-to-Net-Zero>

Contribution of the proposed action to climate change

255. Notwithstanding my decision to appeal the Sharma decision, I took into account that the Court in *Sharma* found that, even though the emissions of the proposed action were ‘tiny’ on a global scale, there was a real risk that even an infinitesimal increase in global average surface temperature may trigger a tipping point or a 4°C Future World: *Sharma No 1* at [168].
256. I agreed with the department’s conclusion that if, contrary to the DISER Advice, the proposed action caused ‘additional’ coal to be consumed, the proposed action would risk a very small increase in global GHG emissions (see below), and therefore a small increased risk to human safety.

Reasonable measures to mitigate climate change

257. As outlined above at [201]-[226], climate change is a global problem that the international community has responded to through the UNFCCC and now the Paris Agreement. Parties to the Paris Agreement have committed to prepare, communicate and maintain their NDCs that they aim to achieve, with the goal of limiting the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.
258. As outlined above, the proponent has advised that likely largest export customers of the coal will be to countries and jurisdictions such as Japan and South Korea which have strong GHG commitments. I noted that 98.4% of expected end customer base for the proposed action is located in countries that are signatories to the Paris Agreement or countries with equivalent domestic policies for reducing GHG emissions. I noted that Turkey has announced its intention to ratify the Paris Agreement as Mangoola coal is currently exported to Turkey.
259. I noted the advice of DISER which stated:

CO₂ emissions associated with the project that occur within Australia’s jurisdiction over the period 2021-30 would be covered by the Australian Government’s Paris Agreement Nationally Determined Contribution (NDC) for that period (2030 Paris target).

...

Emissions from the project occurring beyond that period (within Australia’s jurisdiction) will be covered by future NDCs made by the Government consistent with Article 4.3 of the Paris Agreement.

Projected emissions from the project over the 2021-30 period were considered in the preparation of Australia’s Emissions Projections 2020. That report states Australia is on track to meet and beat its 2030 Paris target.

260. I agreed with DISER’s advice that the approval of the proposed action would not affect Australia’s ability to achieve the commitments in its NDC. I found that the approval of the proposed action is consistent with Australia’s commitments under the Paris Agreement.

261. I also took into account that scope 3 emissions occurring overseas will become the consumer country's scope 1 and 2 emissions and be accounted for under the Paris Agreement in their respective national inventories. The Paris Agreement does not require parties to take particular measures to achieve their NDCs, rather, parties may determine which domestic mitigation measures to pursue, with the aim of achieving the objective of their NDC. The likely customer country governments or jurisdictions of the coal have made a number of commitments to reduce GHG emissions, as discussed at [208]-[226]. Countries where the coal will be consumed have a discretion to determine what climate change mitigation measures they will pursue in accordance with their national policies and pursuant to their NDCs (or in the case of Taiwan, their INDC).
262. While I also took into account the Steffen Reports in considering the impact of the proposed action on climate change, I disagreed with Professor Steffen's conclusions and accepted the Department's advice that a decision to refuse the proposed action is likely to have no impact on total GHG emissions.
263. Professor Steffen used a carbon budget approach to determine the limited cumulative amount of additional CO₂ emissions that can be emitted consistent with limiting global temperature rise to 2°C, consistent with the Paris Agreement.
264. I disagreed with Professor Steffen's conclusion that, because the majority of the world's existing fossil fuel reserves cannot be burned in the 'carbon budget', this means that no new fossil fuel developments or extensions can be approved consistent with limiting warming to 2°C.
265. The department noted the following points, which I took into account:
- First, consistent with the Paris Agreement, national governments have a discretion to determine what measures will be employed to reduce GHG emissions. There is no government policy requiring approval of coal mines to be refused in order to meet Australia's commitments under the Paris Agreement, or to prevent coal being available to other countries to reduce other countries' emissions.
 - Second, the scope 3 emissions from the burning of the coal are taken into account in the country where they are emitted, consistent with the Paris Agreement. The majority of the proposed action's emissions are scope 3 emissions, and the proposed consumers of the coal will be parties to the Paris Agreement.
 - Third, evidence as discussed above indicates that there is an ongoing demand for coal. A decision to refuse the proposed action is likely to have no reduction of total GHG emissions.
 - Fourth, while GHG emissions result from the burning of coal, there are many other sources. The department disagrees that the use of coal in particular cannot continue as a source of such emissions. The fact that *most* fossil fuels must remain unburned accepts that *some* proportion of the world's existing fossil fuel reserves can be exploited (see *Gloucester Resources v Minister for Planning* [2019] NSWLEC 9 at [551]), and does not take into account other measures that may be taken to reduce or offset emissions.

266. I have also taken into account the letter from Environmental Justice Australia (EJA) written on behalf of Lock the Gate dated 1 September 2021, referring to the Sharma decision, the IEA Net Zero 2050 Roadmap and the most recent IPCC report. The Sharma decision, IEA Net Zero 2050 Roadmap and IPCC report and have been discussed at sections 7.1, 7.2 and 7.5 respectively.
267. The department advised that the IEA Net Zero by 2050 Roadmap presents “a” pathway to achieving net zero emissions. The IEA describes this as “this formidable goal” “which requires “nothing short of a complete transformation of the global energy system”. In this scenario which outlines 400 milestones of what needs to be done across all energy supply and use sectors; the IEA posits that no new oil and gas fields and no new coal mines or mine extensions will be “required” in their pathway. I noted that the Net Zero by 2050 report is not a forecast but rather what IEA analysis finds to be “technically feasible, cost effective and socially acceptable”, noting that “each country will need to design its own strategy taking into account its specific circumstances”.
268. While recent projections indicate that parties’ current NDCs under the Paris Agreement are insufficient to limit global average temperatures to below 2°C, I noted that there are mechanisms under the UNFCCC and Paris Agreement (Article 4 to increase the commitments made for future NDCs) to achieve the Paris goal of well below 2 degrees.

Reasonable measures to mitigate human safety impacts posed by climate change

269. I considered conditions imposed by the NSW IPC directed at the reduction and mitigation of GHG emissions from the proposed action. Those measures are outlined above in [115] – [119].
270. I considered all completed assessments and NSW development consent conditions relating to GHG emissions. I noted that the IPC concluded that the proposed action included appropriate measures for minimising and managing the scope 1 and scope 2 emissions of the proposed action ‘to the greatest extent possible’.
271. I found that these conditions address the proposed action’s GHG emissions and mitigate the risk to human safety caused by the proposed action. I also took into account the social and economic benefits of the proposed action, as discussed earlier in my reasons and which are summarised below.

Social and economic considerations

272. I have outlined my findings on the relevant economic and social matters above
273. In summary, I found that the proposed action is estimated to result in an economic benefit to the NSW community. I considered that the refusal of the proposed action would prevent the opportunity for positive economic and social impacts.
274. The project is expected to enable the continuous employment of the 400 employees currently working at the existing Mangoola Mine, provide for an additional 80 on-going operational jobs, and generate 145 short term jobs during the construction phase.
275. I found that the proposed action would generate positive social and economic benefits for

the local area, Hunter region and greater NSW.

Conclusion on human safety risks

276. For the reasons discussed above, I found, after giving elevated weight to human safety as required by the *Sharma* decision, approval of the proposed action is not likely to cause harm to human safety and decided that the proposed action should be approved.
277. I found that, even if, contrary to the DISER Advice, the coal from the proposed action would not be substituted by other coal if the proposed action is not approved, it is appropriate to approve the proposed action, taking into account and balancing the other relevant considerations discussed throughout these reasons.
278. I further found that approval is appropriate, having regard to the social and economic benefits of the proposed action. I reached this conclusion after taking into account the matters referred to in these reasons and, in particular, that any contribution of the proposed action to global GHG emissions will be extremely small.

Additional considerations

279. In considering the matters relevant to the matters protected by the applicable controlling provision, and economic and social matters, I took into account:
- a. the principles of ecologically sustainable development (set out in section 3A of the EPBC Act), including the precautionary principle (set out in sections 3A(b) and 391 (2) of the EPBC Act) (section 136(2)(a));
 - b. the assessment report relating to the proposed action (section 136(2)(b));
 - c. any other information I have on the relevant impacts of the proposed action (section 136(2)(e));
 - d. relevant comments given to me by another Minister in accordance with an invitation under section 131, 131AA or 131A ((section 136(2)(f) and section 131AA(6));
 - e. relevant advice obtained from the IESC in accordance with section 131AB (section 136(2)(fa)).

Principles of ecologically sustainable development (section 136(2)(a)) including the precautionary principle (section 391)

280. 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)

- 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.

281. In making this decision, took into account the principles of ESD, including the precautionary principle. In particular:

- a. I was satisfied that the NSW assessment process involved consideration of the long-term and short-term economic, environmental and equitable impacts of the proposed action, and considered the information about these impacts as set out in the DPIE AR and the IPC statement of reasons.
- b. I agreed with the department's conclusion that there is sufficient information to know of, and understand, the likely impacts of the proposed action on matters protected by controlling provisions of the proposed action, and that where there is lack of certainty regarding the risk or severity of the environmental impacts this is addressed by conditions (both attached to the NSW development consent, and which I decided to attach) that provide for monitoring, reporting and response mechanisms to avoid adverse impacts.
- c. I was satisfied that the IPC considered inter-generational equality in its assessments of the potential environmental, social and economic impacts of the proposed action, and that the conditions attached to the NSW development consent, and the conditions which I decided to attach to the approval ensure that it must be implemented in a sustainable way to protect the environment for future generations.
- d. I considered the importance of conserving biological diversity and ecological integrity, and was satisfied that the EIS, the DPIE AR and the department took the conservation of biological diversity and ecological integrity into account as a fundamental consideration.
- e. I was satisfied that the cost of avoidance, mitigation and management measures provides appropriate pricing and incentive mechanisms for the protection of matters of environmental significance and the environment. I noted that the conditions attached to the NSW development consent implement performance-based outcomes where possible to provide incentive to achieve environmental outcomes and objectives in the most cost-effective way possible.

Assessment report (section 136(2)(b)) and relevant advice obtained from the IESC in accordance with section 131AB (section 136(2)(fa))

282. In making this decision I had regard to the following documents, which comprise the assessment report relating to the proposed action;

- a. the letter from DPIE advising of state approval and Commonwealth matters
- b. the NSW conditions of development consent
- c. the IPC's statement of reasons
- d. the DPIE AR
- e. the NSW Biodiversity Conservation Division advice on Matters of National Environmental Significance and
- f. the DPIE Preliminary Issues Report.

283. I also took into account the advice obtained from the IESC.

Any other information on the relevant impacts of the proposed action (section 136(2)(e))

284. The EIS and NSW assessment process considered the bioregional assessment conducted for the Hunter Subregion of the Northern Sydney Basin bioregion, which provides scientific information about the potential impacts of coal and coal seam gas development in this subregion, and examines the cumulative impacts for surface water and groundwater across Northern Sydney Basin. I accepted the department's advice that the extensive site-specific water impact assessments undertaken during the NSW assessment and the IESC advice provides a finer scale assessment of the proposed action's impacts on water resources.

285. Otherwise, all of the information on the relevant impacts of the proposed action that I considered was contained in the final approval decision brief, and is listed above.

Any relevant comments given to the Minister by another Minister in accordance with an invitation (s 136(2)(f))

286. As noted above, comments on the proposed action were received from:

- a. The Hon Ken Wyatt AM MP, Minister for Indigenous Australians.
- b. The Hon Keith Pitt MP, Minister for Resources and Water.

287. To the extent that these comments were relevant to matters under s 136(1), I took these comments into account, and they are addressed above.

Comments from the proponent (section 131AA(1) and section 131AA(6))

288. In making my decision I took into account the proponent's comments on the proposed decision, as addressed above in the discussion of the conditions.

Proponent's history in relation to environmental matters (section 136(4)(a))

289. In deciding whether to approve a proposed action, and what conditions to attach to any approval, I may, under section 136(4) of the EPBC Act, consider whether the person proposing to take the action is a suitable person to be granted an approval.

Department's environmental history records

290. On 17 May 2021, the Compliance Section in the Department's Office of Compliance advised that a search of the department's Compliance and Enforcement Management System database and records held by the department indicated that there was one recorded contravention of the EPBC Act in 2011, relating to unstable grout being released into an ephemeral creek. At the time, the department considered that the incident would have been unlikely to cause a significant impact to matters of national environmental significance as the ephemeral creek was dry at the time of the incident. The NSW state government coordinated remediation works with the proponent, which was known as 'Xstrata' at the time, and no penalties or official warnings were issued.

291. The Compliance section advised that they were not aware of any contraventions of state laws associated with the proponent.

Environmental history from the proponent

292. On 28 May 2021, the department wrote to the proponent and requested information (from the last ten years) on the following matters:

- the environmental history of the proponent and its executive officers;
- the environmental history of the proponent's parent body or parent bodies; is; any body or bodies of which the proponent is a subsidiary; and
- the environmental history of the executive officers of the proponent's parent body or parent bodies.

293. On 25 June 2021, the proponent responded and provided the department with the company's environmental history for the past ten years.

294. The response stated that the proponent was responsible for five environmental incidents in the last ten years. The following table summarises these incidents:

Incident date	Issue	Regulatory action
4 November 2011	Exceedance of blasting limits	\$3000 penalty
28 September 2011	Failure to provide noise assessment reports	Official caution
30 April 2013	Failure to carry out road works	\$3000 penalty
31 March 2015	Mining blast	Official caution
4 March 2020	Exceedance of blast overpressure criteria	Formal warning

The response stated:

- a. that none of the proponent's executive officers were executive officers at the time of these contraventions have been convicted of any environmental offences in the last ten years, and
- b. that the parent body and its subsidiaries (other than Mangoola) are not operating companies and have not been convicted of any environmental offence in the last ten years. None of the current directors, secretaries or officers of these subsidiaries have been convicted of an environmental offence in the last ten years.

295. Conclusion on environmental history

296. The department recommended that I find that the proponent is a suitable person to be granted an approval.

297. The department noted that in having regard to the nature and scale of the incidents outlined above, the proponent had been issued with two penalties and one formal warning from DPIE, and two official cautions by the NSW Environmental Protection Authority. The department advised that these incidents did not result in significant environmental harm. The department also considered the penalties imposed were not severe and they were reflective of the minor nature of the incidents. Further, the proponent accepted and acknowledged these infringements and penalties which the department considered represented the proponent's commitment to take responsibility for incidents that result in environmental harm.

298. On the basis of this advice, which I accepted, I found that the proponent is a suitable person to be granted an approval.

Considerations in deciding on conditions – section 134

299. In accordance with section 134(1), I may attach a condition to the approval of an 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).

300. As discussed earlier in my reasons, I found that each of the conditions attached to the approval is necessary or convenient to protect, repair and/or mitigate impacts on a matter protected by provision of Part 3 for which the approval has effect.

301. Subsection 134(3A) of the EPBC Act states that certain conditions cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition. As noted above, prior to the decision being made the proponent indicated that it agreed to the conditions to be attached.

302. In accordance with section 134(4) of the EPBC Act, in deciding whether to attached conditions to the approval, I considered the following matters.

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 (s 134(4)(a))

303. I took into account the conditions of the NSW development consent to the extent they were relevant to matters of national environmental significance. I was satisfied that the conditions of approval I decided to attach are consistent with the requirements of the NSW development consent, and have been developed to avoid duplication with the NSW development consent.

304. I also had regard to the EPBC Act Condition-setting Policy, which outlines the Australian Government's approach to considering state and territory approval conditions when approving a project under the EPBC Act.

Information provided by the person proposing to take the action or by the designated proponent of the action (s 134(4)(aa))

305. I took into account the EIS and other material provided by the proponent, as well as the proponent's comments on the conditions in my proposed decision.

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 (s 134(4)(b))

306. I accepted the department's advice that the conditions I decided to attach are a cost effective means of ensuring that matters of national environmental significance are protected over time, including because they are largely based upon the conditions attached to the NSW development consent, which was in turn based on assessment material and commitments provided by the proponent.

Requirements for decisions about listed threatened species and communities (section 139)

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

- a. Australia's obligations under:
 - i. the Convention on Biological Diversity (Biodiversity Convention); or
 - ii. the Convention on the Conservation of Nature in the South Pacific (Apia Convention); or

iii. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); or

b. a recovery plan or threat abatement plan.

308. Section 139(2) states, if:

a. the Minister is considering whether to approve, for the purposes of a section 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;

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

The Biodiversity Convention

310. 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.

311. The Biodiversity Convention requires Contracting Parties, as far as possible and as appropriate, to introduce procedures requiring environmental impact assessments of projects that are likely to have significant adverse effects on biological diversity to avoid and minimise such impacts, and requires Parties to introduce appropriate arrangements to ensure that the environmental consequences of their programs and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account. The proposed action was subject to an environmental impact assessment process under the *Environmental Planning and Assessment Act 1979* (NSW) and assessment under the EPBC Act.

312. I have found above that the proposed action will not have unacceptable impacts on biodiversity, including Commonwealth-listed threatened species and communities, if it is taken in accordance with the recommended conditions.

313. I was satisfied that approving the proposed action, subject to conditions that avoid, mitigate and offset impacts to biodiversity, is not inconsistent with Australia's obligations under the Biodiversity Convention.

CITES

314. The aim of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. As the proposed action does not involve international trade in specimens of wild animals and plants, I was satisfied that approving the proposed action, subject to conditions, is not inconsistent with Australia's obligations under CITES.

Apia Convention

315. The 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.
316. The Apia Convention was suspended with effect from 13 September 2006.
317. While this Convention has been suspended, the department's advice included consideration of whether the proposed action would be consistent with the Apia Convention.
318. The proposed action has undergone an environmental assessment which concluded that the proposed action will not have an unacceptable impact on biodiversity, geological formations and objects of aesthetic interest or historic, cultural or scientific value, subject to the proposed conditions.
319. The proposed conditions of approval place restrictions on the extent of impacts the action can have on biodiversity and water resources, and how they are managed in the long-term. The proposed conditions also require ongoing monitoring of potential impacts and obligations for the person taking the action to implement mitigation and corrective actions, and to offset significant residual impacts.
320. As Australia currently has no international obligations under the Apia Convention, it cannot act inconsistently with them. Nevertheless, I was satisfied that approving the proposed action, subject to conditions would not be inconsistent with the Convention.

Recovery Plans and Threat Abatement Plans

321. When deciding whether to approve the taking of an action for the purposes of sections 18 and 18A, and what conditions to attach to any approval, I must not act inconsistently with a recovery plan or a threat abatement plan.
322. The recovery plans relevant to the proposed action are:
- a. Department of the Environment (2016). *National Recovery Plan for the Regent Honeyeater (Anthochaera phrygia)*. Canberra, ACT: Commonwealth of Australia.
 - b. Saunders, D.L. & C.L. Tzaros (2011). *National Recovery Plan for the Swift Parrot (Lathamus discolor)*. Birds Australia, Melbourne.
 - c. DAWE 2021, *National Recovery Plan for the Grey-headed Flying-fox 'Pteropus poliocephalus'*, Department of Agriculture, Water and the Environment, Canberra, March. CC BY 4.0.
 - d. Department of Environment, Climate Change and Water NSW. 2010. *National Recovery Plan for White Box - Yellow Box - Blakely's Red Gum Grassy*

Woodland and Derived Native Grassland. Department of Environment, Climate Change and Water NSW, Sydney.

323. 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 and Energy (2017). *Threat abatement plan for predation, habitat degradation, competition and disease transmission by feral pigs (Sus scrofa)* (2017). Canberra, ACT: Commonwealth of Australia.
- c. Department of the Environment (2014). *Threat abatement plan for disease in natural ecosystems caused by Phytophthora cinnamomi*. Canberra, ACT: Commonwealth of Australia.
- d. Department of the Environment and Energy (2016). *Threat abatement plan for competition and land degradation by rabbits*. Canberra, ACT: Commonwealth of Australia.
- e. Department of the Environment (2015). *Threat abatement plan for predation by feral cats*. Canberra, ACT: Commonwealth of Australia.

324. These plans are discussed above in the discussion about the impacts on listed threatened species. I was satisfied that the approval of the action would not be inconsistent with any of the relevant recovery plans or threat abatement plans.

Conservation advices

325. When deciding whether to approve the taking of an action for the purposes of sections 18 and 18A, and what conditions to attach to any approval, I am required to have regard to any approved conservation advice for a listed threatened species or community that is likely to be significantly impacted by the proposed action.

326. The conservation advices relevant to the proposed action which I considered are:

- a. Department of the Environment, Water, Heritage and the Arts (2009). *Approved Conservation Advice for Prasophyllum sp. Wybong (C. Phelps ORG 5269) (a leek-orchid)*. Canberra, ACT: Department of the Environment, Water, Heritage and the Arts.
- b. Department of the Environment (2015). *Conservation Advice Anthochaera phrygia regent honeyeater*. Canberra: Department of the Environment.
- c. Threatened Species Scientific Committee (2016). *Conservation Advice Lathamus discolor swift parrot*. Canberra: Department of the Environment.

Bioregional Plans section (176(5))

327. In accordance with section 176(5), I was 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.

Duration of approval

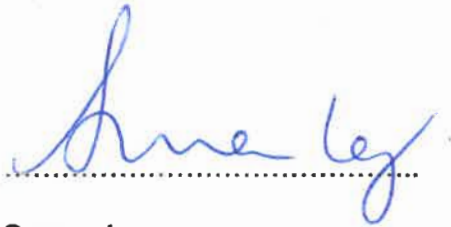
328. I accepted the Department's recommendation that the approval timeframe should be 19 years, to account for the construction period, proposed operational lifespan of 8 years, and site rehabilitation.

329. I accordingly decided to approve the proposed action until 31 December 2040.

Conclusion

330. In light of the findings in paragraphs [31]-[329], and not having considered any matter which I am not required or permitted to consider, 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) and sections 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).

Signed



Sussan Ley

Minister for the Environment

Date:

15th October 2021

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 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 is in the public domain; or
 - (c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (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 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

- (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.

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) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; 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.

Mandatory considerations

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (if any) relating to the action; and
 - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
 - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and

- (ii) the recommendation report relating to the action given to the Minister under section 95C; and
- (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (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

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 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;

(c) 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.