

DRAFT RECOMMENDATION REPORT

'Marshlands' Agricultural Development Proposal (EPBC 2019/8464)**Recommendation**

1. That the proposed action, to expand agricultural development on the property 'Marshlands' in the Moree Plains Shire, NSW, be approved subject to the conditions specified below.

Conditions	Relevant paragraph in report
Part A – Conditions specific to the action	
1. The approval holder must not clear more than 59 ha of Coolibah - Black Box Woodlands in the treatment area as depicted in the Certificate treatment area map at <u>Appendix A</u> .	39
2. To compensate for the loss of 59 ha of Coolibah - Black Box Woodlands , prior to the commencement of the action, the approval holder must secure an offset of 237 ha of Coolibah - Black Box Woodlands , as depicted in the Certificate offset area map at <u>Appendix B</u> , by registering the area on the public register of set asides maintained by NSW Local Land Services.	39
3. The approval holder must act in accordance with NSW Local Land Services requirements .	39 - 40
Part B – Standard administrative conditions	
4. The approval holder must notify the Department in writing of the date of commencement of the action within 10 business days after the date of commencement of the action.	Standard administrative condition
5. The approval holder must make and maintain accurate and complete compliance records .	Standard administrative condition
6. If the Department makes a request in writing, the approval holder must provide copies of compliance records to the Department within the timeframe specified in the request. Note: Compliance records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act , and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the Department's website or through the general media.	Standard administrative condition
7. Within 10 business days after the completion of the action , the approval holder must notify the Department in writing.	Standard administrative condition

Definitions:

In these conditions, except where contrary intention is expressed, the following definitions are used:

Business day means a day that is not a Saturday, a Sunday or a public holiday in New South Wales.

Certificate offset Area Map means the map at Appendix B.

Certificate Treatment Area Map means the map at Appendix A.

Clear means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance). Clearing does not include any relevant prescribed burns for bushfire management, where applicable.

Commencement means any physical works associated with the action.

Completion of the action means when the approved action has reached the maximum allowable clearing limit (as defined in condition 1).

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Coolibah – Black Box Woodlands means the Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions ecological community, listed as endangered under the EPBC Act.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Department means the Australian Government agency responsible for administering the EPBC Act.

NSW Local Land Services requirements means the *Local Land Services Act 2013*, *Local Land Services Regulation 2014* and the Mandatory Compliance Certificate issued under the NSW Land Management (Native Vegetation) Code 2018.

Offset area means the areas (in hectares) as identified in the **Certificate offset Area Map**.

Treatment area means an area (in hectares) as identified in the **Certificate Treatment Area Map** where loss or long-term modification of habitat has occurred.

Background**Description of the project and location**

2. On 23 May 2019, Mr Peter Boland (the person proposing to take the action and also the proponent) submitted a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The proposed action is for agricultural development (native vegetation clearing and conversion to dryland cultivation) on the property 'Marshlands' in the Moree Plains Shire in northwest NSW, approximately 50 km west of Moree.
3. The proposed action will clear 59 ha of native vegetation, all of which conforms to Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions (Coolibah – Black Box Woodlands), listed as endangered under the EPBC Act.

4. Marshlands, located between the lower Gwydir River and Gingham Watercourse on the lower Gwydir River floodplain, is currently used for dryland cultivation and grazing.
5. The Gwydir Wetlands are extensive terminal floodplain wetlands associated with the lower Gwydir River and Gingham Watercourse. The wetlands are estimated to include approximately 6829 ha of semi-permanent wetlands and a further 77,949 ha of floodplain wetlands.
6. Properties to the immediate west and north of Marshlands have been acquired by NSW National Parks and gazetted into the Gwydir Wetlands State Conservation Area (SCA). Gwydir Wetlands SCA supports floodplain woodland habitat dominated by Coolibah (*Eucalyptus coolabah*) and ephemeral wetlands. The SCA (approximately 8400 ha) contains a diversity of wetland habitats providing nesting, breeding and foraging habitats for a range of native fish and waterbirds, including migratory species listed under international agreements and a portion of the Gwydir Wetlands RAMSAR site. The Gwydir Wetlands Ramsar site (823 ha) is a parcel of four discrete wetland areas in the Gwydir River floodplain.
7. Except for the SCA, Marshlands is surrounded by properties with a similar land use of grazing and dryland cultivation.

Controlling provisions and assessment approach

8. The action was determined to be a controlled action on 27 August 2019 for likely impacts on listed threatened species and communities (sections 18 & 18A). The key impact associated with the action is the removal of 59 ha of Coolibah - Black Box Woodlands.
9. On the same date, it was determined that the proposed action would be assessed on referral information.
10. Under section 93(2) of the EPBC Act, the Secretary must prepare a draft recommendation report that includes recommendations on whether the taking of the action should be approved under part 9, and, if approval is recommended, any conditions that should be attached to the approval.
11. Under section 93(3) of the EPBC Act, the Secretary must publish on the internet the draft recommendation report and an invitation for anyone to give the Secretary, within 10 business days, comments in writing relating to the draft recommendation report or the action. Accordingly, this draft recommendation report has been prepared and will be published for comment.
12. The referral information is available on the Department's EPBC public notices webpage. All referral documents and other material used to prepare this draft recommendation report are listed at the end of this report.

Public consultation

13. Referral documentation was published on the Department's website on 4 July 2019 and public comments were invited until 18 July 2019. Two public submissions were received on the referral, one submission was submitted by a group of nine individuals.
14. Public submissions raised concerns about potential significant impacts to protected matters as a result of the proposed action. All public comments were considered and issues addressed as part of the referral decision.

State Assessment and Approval

15. By letter dated 4 July 2019, Mr Tim Kirby, the delegated contact for the New South Wales Minister for Planning and Public Spaces, the Hon Rob Stokes MP, was invited to comment on the referral. On the same day, Mr Tim Kirby confirmed that the project will not be assessed under an Accredited Assessment process for the purposes of section 87 of the EPBC Act.
16. The development proposal involves clearing of land zoned as RU1-Primary production. Clearing will enable the land to be converted from grazing to cropping activities. The action does not trigger the provisions of NSW Planning legislation as the action does not trigger a requirement for a development application to the local Council.
17. The proposed action is subject to the *Local Land Services Act 2013* and regulated by the Land Management (Native Vegetation) Code 2018 (Land Management Code).
18. Under the Land Management Code, clearing native vegetation on regulated rural land requires certification from NSW Local Land Services (NSW LLS) and provision of a set aside area to compensate for impacts. The set aside (offset) area must be listed on a public register maintained by NSW LLS and must be actively managed to promote vegetation integrity in perpetuity. NSW LLS will also undertake future monitoring of offset areas to ensure they achieve desired conservation outcomes.
19. The NSW LLS Mandatory Code Compliant Certificate requires the landholder to undertake reasonable efforts to promote vegetation integrity. A set aside management plan will be developed for Marshlands which will outline the management interventions likely to deliver the best environmental outcomes in the offset areas.

Assessment**Mandatory Considerations – section 136(1)(a) Part 3 controlling provisions**

20. In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action, so far as they are not inconsistent with any other requirements of Subdivision B, Division 1 of Part 9 of the EPBC Act.
21. The proposal was determined a controlled action under the following controlling provisions of the EPBC Act:
 - Listed threatened species and ecological communities (sections 18 and 18A).
22. The proposed action is likely to have a significant impact on the Coolibah - Black Box Woodlands, listed as endangered, as it will reduce the extent of the ecological community.
23. Potential impacts to other listed threatened species and communities were considered at the referral stage, including Koala (*Phascolarctos cinereus*) (combined populations of Qld, NSW and the ACT) listed as vulnerable under the EPBC Act. It was determined that the proposed action was unlikely to have a significant impact on this species or any other listed threatened species and ecological communities. Therefore, other listed species and communities are not discussed further in this draft recommendation report.

Listed threatened species and communities (sections 18 and 18A)Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions - Endangered*Listing information*

24. Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions was listed as an endangered ecological community under the EPBC Act on 1 March 2011.
25. The *Commonwealth Listing Advice on Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions* (the listing advice), at Appendix D, summarises the eligibility criteria for listing the community as endangered as its restricted geographic distribution makes it likely that multiple demonstrable threats could cause it to be lost in the near future and the ecological community has undergone a severe reduction in its integrity. The ecological community also met the eligibility criteria for listing because its rate of continuing detrimental change is substantial as indicated by clearing in the recent past.
26. The listing advice describes the key diagnostic characteristics and condition thresholds that define the minimum structure and condition of the ecological community that should be protected by the referral, assessment and compliance provisions of the EPBC Act.

Key threats

27. The *Approved Conservation Advice for Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions ecological community* (the Conservation Advice) identifies the following key threats impacting upon the Coolibah – Black Box Woodlands ecological community: clearing and fragmentation; changes to water flows and patterns; inappropriate grazing regimes; invasion by exotic species (especially *Lippia* (*Phyla canescens*) and African Boxthorn (*Lycium ferocissimum*)); and the low level of protection in reserves. Many of the threats to the ecological community also have adverse impacts on threatened species associated with the ecological community.
28. All remnants of the ecological community are subject to varying degrees of grazing, whether by domestic stock, feral herbivores (e.g. rabbits and goats) or native species such as kangaroos and wallabies.
29. *Lippia* and African Boxthorn are known to be aggressive environmental weeds that invade native grassy ecosystems.

Treatment area

30. NSW LLS and the proponent have identified the vegetation to be cleared meets the key diagnostic characteristics and condition thresholds for Coolibah – Black Box Woodlands as set out in the listing advice.
31. The proposed action is to clear 59 ha of Coolibah – Black Box Woodlands for conversion to cropping. The treatment area adjoins existing cultivation areas to the north and west.
32. The habitat features within the treatment area are described as limited (lack of mature trees and lack of hollows) with ground cover dominated by a few native species, including Black Roly-poly (*Sclerolaena muricata*). Grazing and historical thinning of trees has resulted in ground cover disturbance across the treatment area and large areas of woodland do not contain mature trees. In some areas, the woodland is characterised by dense regeneration of Coolibah as a result of historical land management and flood events. Many stems of the

dense regeneration of Coolibah are less than 20 cm diameter at breast height after 40-years of growth.

Avoidance and mitigation measures

33. The conservation advice recognises patches that link remnants in the landscape as particularly important to wildlife habitat and to the viability of the listed patches of the ecological community into the future.
34. The proposed clearing has been designed to retain native vegetation corridors and connectivity with adjoining properties, including the Gwydir Wetlands State Conservation Area (SCA) to the west.

Compensatory measures

35. The proponent has agreed to establish offset areas to compensate for the impacts of the proposed clearing. The proponent has identified 237 ha of Coolibah – Black Box Woodlands on the Marshlands property (Certificate offset area map at [Appendix B](#)) to be registered on the public register of set aside areas maintained by NSW LLS. The 172 ha northern offset area provides connectivity to the Gwydir SCA to the west and north, while the southern 65 ha offset area provides connectivity across the property and properties to the east.
36. The Department has quantified an offset liability in accordance with the Department's Environmental Offset Policy and Offset Assessment Guide. The Department considers that the provision of, and management of the proposed direct offset will provide a measurable conservation benefit to the impacted protected matter, and is necessary to compensate for impacts to the Coolibah – Black Box Woodlands.
37. The proposed offset area is grazed opportunistically and is impacted in some areas by exotic ground cover species, particularly lippia. Ongoing management of the offset areas, invasive weed control and managed grazing pressure, is expected to improve the condition of the ecological community over time.
38. NSW LLS set asides are listed on a public register and must be actively managed to promote vegetation integrity in perpetuity. Landholders are required to undertake reasonable efforts to promote vegetation integrity in the offset area. NSW LLS also works with landholders on a case-by-case basis to identify the management interventions likely to deliver the best environmental outcomes in the offset area. On this basis the Department is satisfied that registering offsets on the LLS public register is an appropriate security mechanism to conserve the offset areas.

Conditions

39. The Department recommends conditions be attached to the approval, as set out in Paragraph 1 of this draft recommendation report, to ensure that the intended conservation outcomes of the offset areas are achieved. In particular, the Department recommends:
 - Condition 1 be attached to limit direct impacts from the proposed action,
 - Condition 2 be attached to compensate for the loss of 59 ha of Coolibah - Black Box Woodlands in the treatment area through direct offset of 237 ha of Coolibah - Black Box Woodlands,
 - Condition 3 is considered necessary to ensure the action is undertaken in accordance with state requirements, and

- Standard administrative conditions (Conditions 4 - 7) are attached to ensure that the Department retains visibility of the approval holder's success in meeting the approval conditions and that the Minister has the capacity to take enforcement action under the EPBC Act.

40. Condition 3 is considered appropriate as the action is subject to the NSW Land Management Code which requires the landholder to manage the offset areas to improve native vegetation integrity and minimise impacts from key threatening processes and record management actions undertaken on the offset areas (refer State assessment and approval section, paragraphs 15 – 19 above).

Conclusion

41. The Department considers that the impacts to the Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions will be acceptable, provided the action is undertaken in accordance with the recommended conditions.

Considerations for Approval and Conditions

Mandatory considerations – section 136(1)(b) Economic and social matters

42. In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider economic and social matters, so far as they are not inconsistent with any other requirements of Subdivision B, Division 1 of Part 9 of the EPBC Act.

43. The purpose of the action is to improve dryland cereal crop production and the economic viability of the Marshlands property, with the area to be cleared to be incorporated with the existing cultivation that is occurring on the property. Improvements in the agricultural and economic viability of Marshlands may have positive, though minimal, economic and social outcomes for the local community.

44. The Department has considered economic and social matters in recommending the approval of the proposed action.

Factors to be taken into account – section 136(2)(a) Principles of ecologically sustainable development

45. In considering the matters under section 136(1), the Minister must take into account the principles of ecologically sustainable development. The principles of ecologically sustainable development, 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;
- 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.

46. In recommending approval of the proposed action, the Department has taken into account the principles of ecologically sustainable development in accordance with paragraph 136(2)(a) of the EPBC Act. In particular, the Department considers:

- a. that the likely impacts on the environment as a result of the proposed action are satisfactory in terms of their long-term and short-term economic, environmental and social impacts;
- b. that there is sufficient scientific information to conclude that the proposed action will be unlikely to result in unacceptable impacts to any protected matter. The Department has recommended conditions to mitigate and offset residual significant impacts on the protected matter;
- c. the recommended conditions of approval allow for the proposed action to occur in a sustainable way to protect listed threatened species and communities and the environment more broadly for future generations;
- d. the importance of conserving biological diversity and ecological integrity in relation the controlling provision for this proposed action is reflected in the recommended conditions of approval which include measures to mitigate and offset impacts on the protected matter; and,
- e. the referral documentation and the Department's advice in this recommendation report include consideration of a range of information on the economic costs, benefits and impacts of the proposed action.

Factors to be taken into account – section 136(2)(ba) – recommendation report

47. If Division 3A of Part 8 (assessment on referral information) applies to the action, in considering the matters under section 136(1), the Minister must take into account the finalised recommendation report relating to the action given to the Minister under subsection 93(5).

48. Following the public comment period, in accordance with section 93(4), this draft recommendation report will be finalised, taking account of any comments received within that period. The finalised recommendation report will then be provided to the Minister in accordance with section 93(5).

Factors to be taken into account – section 136(2)(e) – other information

49. In considering the matters under section 136(1), the Minister must take into account any other information the Minister has on the 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)).

50. There are no strategic assessments relevant to the proposed action and the Department has considered all relevant information on the impacts of the proposed action in this report.

Factors to be taken into account – section 136(2)(f) – relevant comments given to the Minister in accordance with an invitation under section 131 or 131A

51. In considering the matters under section 136(1), the Minister must take into account any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A.

52. Relevant Commonwealth Ministers and the person proposing to take the action will be invited to comment on the proposed decision after the draft recommendation report has been published and public comments have been invited.

Factors to be taken into account – section 136(2)(g) – notice

53. If a notice relating to the action was given to the Minister under subsection 132A(3), in considering the matters under section 136(1), the Minister must take into account the information in the notice. Section 132A does not apply to the action.

Person's environmental history – section 136(4)

54. In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:

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

55. The referral states that Mr Peter Boland has not been the subject of proceedings under Commonwealth, State or Territory Law.

56. The Department's internal Compliance Section was consulted on the environmental record of the person proposing to take the action. On 16 July 2019, the Compliance Section confirmed there are no compliance incidents relating to the person proposing to take the action recorded in Departmental databases that relate to contraventions of national environmental law.

57. There is no other information available to the Department that would suggest the proponent is not a suitable person to be granted an approval.

Considerations in deciding on condition – section 134

58. In accordance with section 134(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).

59. The Department has recommended conditions necessary or convenient to protect and mitigate impacts on a matter protected by Part 3 of the EPBC Act for which the approval has effect.

60. In accordance with section 134(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;
 - aa. information provided by the person proposing to take the action or by the designated proponent of the action;
 - 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.
61. The proposed action is subject to the *Local Land Services Act 2013* and regulated by the Land Management Code. Under the Land Management Code, the proposed action will require certification from NSW LLS and provision of an offset area to compensate for impacts. A NSW LLS Mandatory Code Compliant Certificate will require the landholder to make reasonable efforts to manage the offset area in a manner expected to promote vegetation integrity and record management actions undertaken on the offset area. A set aside management plan specific to Marshlands outlines the management interventions likely to deliver the best environmental outcomes in the offset areas.
62. The Department has considered the NSW approval process and the conditions likely to be imposed by NSW LLS.
63. As set out in this draft recommendation report, the Department has recommended conditions that it considers necessary to protect the Coolibah - Black Box Woodlands.
64. The person taking the action will be invited to give comments on the recommended conditions before a final decision is made on whether or not to approve the action, and if so what conditions are attached to the approval. The Department will ensure that the proponent is able to consent to and implement the requirements.

Consideration of Condition-setting Policy

65. The Department has considered the likely scope and severity of the impacts to protected matters, and the proposed avoidance and mitigation measures, and determined that it is likely the proposed action will result in a significant residual adverse impact on Coolibah - Black Box Woodlands.
66. The Department considers that the likely NSW LLS conditions are suitable to manage the residual impacts to the protected matter resulting from the proposed action. Specifically the Department considers the requirement to secure and manage the offset areas to promote vegetation integrity will improve the condition of the offset over time.
67. Accordingly the Department considers that it is necessary and convenient to apply approval conditions to this project, as outlined in Paragraph 1 of this draft recommendation report. In applying this analysis, the Department has had regard to the EPBC Act Condition-setting Policy (2015).

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

68. In accordance with section 139(1), in deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
- a. Australia's obligations under:

- (i) the Biodiversity Convention; or
- (ii) the Apia Convention; or
- (iii) CITES; or

b. a recovery plan or threat abatement plan.

69. In accordance with section 139(2), if:

- f. 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
- g. the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;

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

The Biodiversity Convention

70. The Biodiversity Convention is available at:

<http://www.austlii.edu.au/au/other/dfat/treaties/ATS/1993/32.html>

71. 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.

72. The Biodiversity Convention promotes environmental impact assessment to avoid and minimise adverse impacts on biological diversity. The Department has undertaken an assessment to identify the likely impacts of the proposed action on listed threatened species and communities and has recommended measures to manage these impacts.

73. The Department also considered the Biodiversity Convention's ultimate aim of conservation of listed threatened species and communities in the wild when recommending conditions requiring mitigation and offsets for matters of national environmental significance, and the recommended approval decision is therefore not considered to be inconsistent with the Biodiversity Convention.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

74. CITES is available at: <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/1976/29.html>

75. CITES is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild plants and animals does not threaten their survival.

76. The proposed action does not involve international trade in fauna or flora and is not inconsistent with CITES.

Convention on the Conservation of Nature in the South Pacific (APIA Convention)

77. The Convention on the Conservation of Nature in the South Pacific (APIA Convention) encourages the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystems occurring therein (particular

attention being given to endangered species), as well as superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value. The APIA Convention is available at:

<http://www.austlii.edu.au/au/other/dfat/treaties/ATS/1990/41.html>

78. The APIA Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, Australia's obligations under the Convention have been taken into consideration. The recommendations are not inconsistent with the Convention which has the general aims of conservation of biodiversity.

Recovery Plans and Threat Abatement Plans

79. There are no recovery plans relevant to the proposed action.

80. There are no threat abatement plans relevant to the proposed action.

Conservation Advice

81. The approved conservation advice relevant to this proposed action is:

- a. Department of Sustainability, Environment, Water, Population and Communities (2011). *Approved Conservation Advice for Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions ecological community*. Canberra, ACT: Department of Sustainability, Environment, Water, Population and Communities. Available from: <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/66-conservation-advice.pdf>. In effect under the EPBC Act from 01-Mar-2011.

82. The approved conservation advice describes the typical distribution and habitat values of the ecological community, key threats and priority recovery and threat abatement actions to support recovery of the ecological community. Identified priority recovery actions include enhanced invasive weed management, management of total grazing pressure, reducing changes to hydrology, creating and restoring wildlife corridors and minimising direct clearing impacts.

83. The approved conservation advice is at Appendix C to this report. You are required to have regard to the approved conservation advice in deciding whether or not to approve the proposed action. The Department has had regard to the approved conservation advice and has given consideration to the likely impacts of the proposed action on listed threatened species and communities in recommending approval of the proposed action subject to conditions.

84. The Department is of the view that approval of this action would not be inconsistent with the conservation advice (see discussion above in paragraphs 24 to 41).

Bioregional Plans section 176(5)

85. In accordance with section 176(5), the Minister is 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. The Department does not consider there to be any relevant bioregional plan for the purposes of the Minister's decision-making.

Precautionary Principle – section 391

86. In making the decision under section 133 on whether or not to approve the taking of an action, the Minister must take account of the precautionary principle to the extent that he or she can do so consistently with the Act. The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible damage.
87. The predicted nature and scope of impacts to protected matters are documented in the referral and this report. The relevant impacts from land clearing are well understood, predictions about the likely impacts can be made with a high level of confidence. The Department is satisfied that registering offsets on the LLS public register is an appropriate security mechanism to conserve and manage the offset areas.
88. The Department considers the recommended conditions of approval provide a comprehensive and precautionary approach to ensure the proposed action can comply with performance measures, and that the predicted residual impacts would be effectively avoided, minimised, mitigated and/or compensated.

Minister not to consider other matters – section 136(5)

89. 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 Subdivision B, Division 1, Part 9 of the EPBC Act, to consider.
90. The Department has based its recommendation on whether to approve the action, and what conditions to attach to the approval, on information relevant to the impacts of the proposed action on protected matters and other considerations as set out in the EPBC Act.

Conclusion

91. The proposed action will impact on known habitat for the Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions, listed as endangered under the EPBC Act.
92. The Department considers the likely impacts of the proposed action on protected matters will be acceptable, provided the action is undertaken in accordance with the recommended conditions of approval.
93. Having considered all matters required to be considered under the EPBC Act, the Department recommends the proposed action be approved, subject to the recommended conditions.

Duration of approval

94. The Department recommends that the approval remain valid for a period of 10 years to allow sufficient time to undertake the proposed action.

Material used to prepare Recommendation Report

95. Referral information (EPBC 2019/8464), submitted by SMK on behalf of Mr Peter Boland on 3 July 2019, as published on 4 July 2019 on the Department's EPBC Act Public Notices website, including the following documents:
- a. 2019/8464 Referral form
 - b. Aboriginal Heritage Information Management System results Lot 39 DP750508

- c. EPBC Assessment Marshlands
- d. EPBC Gwydir Wetlands Clearing Proposal Map - Marshlands - Landholding 2
- e. Gwydir Valley Floodplain Management Plan 2016 - Management Zones
- f. Marshlands - Aboriginal due diligence 25-1-19
- g. Marshlands -Draft Certificate Set-Aside Area Map
- h. Marshlands - Draft Certificate Treatment Area Map
- i. Marshlands Clearing Area 1 2018-06-21 - 11-24
- j. Marshlands Clearing Area 2 2018-06-21 - 11-24
- k. Marshlands Clearing Area 3 2018-06-21 - 11-23
- l. Marshlands Flora and Fauna description 22-5-19
- m. Marshlands Set Aside1 2018-06-21 - 11-25
- n. Marshlands Set Aside 2 2018-06-21 - 11-25
- o. Marshlands Set Aside 3 2018-06-21 - 11-25
- p. Marshlands Set Aside 4 2018-06-21 - 11-23
- q. Marshlands Set Aside 5 2018-06-21 - 11-22
- r. Marshlands Set Aside 6 2018-06-21 - 11-17
- s. Marshlands Set Aside 6 2018-06-21 - 11-19
- t. Marshlands Set Aside 7 2018-06-21 - 11-22

Appendices

Appendix A: Certificate treatment area map

Appendix B: Certificate offset area map

Appendix C: Approved Conservation Advice for Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions

Appendix D: Approved Listing Advice for Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions