

DEPARTMENT OF THE ENVIRONMENT

Statement of reasons for approval of a proposed action under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

I, JAMES BARKER, Assistant Secretary of the Assessments (Queensland, Victoria, Tasmania) and Policy Implementation Branch, Department of the Environment (the **Department**), delegate for the Minister for the Environment (the **Minister**), provide the following statement of reasons for the decision of Deb Callister, as delegate of the Minister for the Environment (the **delegate**) of 10 February 2016, under section 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**), to approve the proposed action by Wearco Pty Ltd to establish an industrial development on a property described as 4499-4651(Lot 39 on SP258739) Mount Lindesay Highway, North Maclean, Queensland [as described in EPBC Act referral 2013/6941 received on 22 July 2013 and the variation of proposal to take action received on 12 July 2015] (the **proposed action**).

Legislation

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

Background

2. On 22 July 2013, Wearing Developments Pty Ltd referred to the Minister, under section 68 of the EPBC Act, a proposal to establish an industrial estate at 4499-4651 Mount Lindesay Highway, North MacLean (Lot 39 on SP258739) in Queensland.
3. Wearing Developments Pty Ltd subsequently changed its name to Wearco Pty Ltd (the **proponent**). An ASIC search confirmed that Wearco Pty Ltd holds the same Australian Business Number as Wearing Developments Pty Ltd.
4. The proposed action site is part of the Greater Flagstone Priority Development Area. This larger parcel of land (7 188 hectares in size) is the site for a new satellite city that is expected to absorb approximately 120 000 residents and will contain a mix of commercial, industrial and residential infrastructure. Development will be undertaken in accordance with the Greater Flagstone Priority Development Area Development Scheme that was approved by the Queensland Government on 8 October 2011.
5. The proposed action involves the removal of 117.28 ha of vegetation; comprised of 62.77 ha of forest and 54.51 ha of grassland with scattered trees. Nearly all of the vegetation is regrowth forest, and there are some patches of remnant forest.
6. The referral was available for public comment from 22 July to 6 August 2013. No public submissions were received and no State or Commonwealth Ministers made comments on the referral.

¹ This legislation does not form part of the reasons but is provided as contextual background.

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7. On 27 August 2013, the delegate determined that the project was a controlled action under section 75 of the EPBC Act, subject to the following controlling provisions: listed threatened species and ecological communities (sections 18 and 18A). On the same day, the delegate determined that the project would be assessed by preliminary documentation.
8. The preliminary documentation was prepared and published for public comment from 23 February 2015 until 9 March 2015. The proponent received 48 submissions during the public comment period, with an additional three received after the consultation period had closed.
9. On 9 March 2015 the Member for Logan, Mr Linus Power MP wrote to the Minister seeking an extension of time to allow local residents to comment. On 20 May 2015, the Department responded noting that the requirement to direct the proponent to publish the preliminary documentation had been met, and an extension to the timeframe was not available under the EPBC Act. However, the Department agreed to accept comments outside the public comment period and the delegate took into consideration all further comments received during the assessment.
10. On 26 May 2015, the proponent provided a response to the submissions received during the preliminary documentation public comment period, along with revised preliminary documentation incorporating the proponent's responses to the public comments received.
11. On 15 July 2015 the delegate agreed to a request by the proponent to vary the proposed action. The variation included amending the original lot number from Lot 309 on SP137557 to Lot 39 on SP258739, to reflect the resumption of a parcel of land by the Queensland Department of Transport and Main Roads for the purpose of upgrading the adjoining Mount Lindesay Highway. The delegate was satisfied that this would result in a reduction in size of the proposed action site and would not increase impacts on matters of national environmental significance identified during the referral. The referral originally described the proposed action site as being 127.9 ha in size. The subsequent variation reduced the size of the proposed action site to 117.28 ha.
12. On 16 July 2015, the final preliminary documentation, incorporating responses to public comments, was published for information.
13. On 31 August 2015, 12 October 2015, and 8 December 2015, the delegate extended the time frame in which to make a decision on approval. The extensions were granted in order to consider additional information provided by interested parties, to allow the proponent to respond to this additional information, and to allow time for appropriate consultation.
14. On 11 January 2016, the delegate proposed to approve the proposed action subject to conditions, having regard to relevant information available to the delegate.

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15. In accordance with sections 131 and 131AA of the EPBC Act, the delegate invited comments on the proposed decision from:
 - the proponent;
 - the Minister for Infrastructure and Regional Development, the Hon Warren Truss MP; and
 - the Minister for Defence, Senator the Hon Marise Payne.
16. The delegate also notified the Queensland Minister for Environment and Heritage Protection, Hon Dr Steven Miles of the proposed decision.
17. The proponent responded on 14 and 21 January primarily regarding the timing of offsets. The timing of offsets is reflected in the final conditions of the proposal. Neither the Commonwealth or State Ministers provided any comments.
18. On 10 February 2016, the delegate approved, subject to conditions, the taking of the proposed action under section 130(1) and section 133 of the EPBC Act for the purposes of the following controlling provisions: listed threatened species and ecological communities (sections 18 and 18A).

Evidence or other material on which the delegate's findings were based

19. The delegate's decision to approve the proposed action was based on consideration of the final approval decision brief prepared by the Department (the brief) dated 3 February 2016.
20. The brief comprised the following:
 1. The proposed approval decision brief, incorporating:
 - A. The Department's recommendation report, including the following attachments:
 - Attachment 1 – Location map of the proposed action area.
 - Attachment 2 – Vegetation map of the proposed action area.
 - Attachment 3 – Location map showing an east-west habitat corridor to the north of the proposed action area.
 - Attachment 4 – Department of the Environment (2012). *Approved Conservation Advice for Phascolarctus cinereus (combined populations of Queensland, New South Wales and the Australian Capital Territory)* (Koala Northern Designatable Unit). Commonwealth of Australia, Canberra.
 - Attachment 5 – Additional information provided on the proposed offset strategy and research plan.
 - Attachment 6 – Additional information on an alternate proposed offset strategy

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Attachment 7 - Saunders, D.L. and Tzaros, C.L. (2011). *National Recovery Plan for the Swift Parrot Lathamus discolor*, Birds Australia, Melbourne.

Attachment 8 - Department of the Environment and Heritage (2005) *Threat Abatement Plan for Beak and Feather Disease affecting endangered psittacine species*.

Attachment 9 - Department of the Environment (2015). *Threat Abatement Plan for Predation by Feral Cats*. Commonwealth of Australia, Canberra.

Attachment 10 - Threatened Species Scientific Committee (TSSC) (2012) *Commonwealth Listing Advice for Lathamus discolor (swift parrot)*.

Attachment 11 - Threatened Species Scientific Committee (TSSC) (2001) *Commonwealth Listing Advice for Pteropus poliocephalus (grey-headed flying-fox)*.

Attachment 12 - Threatened Species Scientific Committee (TSSC) (2004b) *Commonwealth Listing Advice for Dasyurus maculatus maculatus (spot-tailed quoll, spotted-tailed quoll, tiger quoll)*.

Attachment 13 - Department of the Environment, Water, Heritage and the Arts (2008). *Threat abatement plan for predation by the European red fox*. Commonwealth of Australia, Canberra.

Attachment 14 – Representative information provided to the Department following the public comment period.

Attachment 14A – Barrenger H and Whyte I (2015) *Looking out for Quolls in Logan*, Wildlife Preservation Society of Queensland. Report prepared for the Logan City Council. 4 August 2015.

Attachment 15 – Proponent's responses to additional information provided to the Department following the public comment period.

Attachment 16 - Threatened Species Scientific Committee (TSSC) (2008) *Approved Commonwealth Conservation Advice for swamp tea-tree (Melaleuca irbyana) Forest of South-east Queensland*.

Attachment 17 - Department of Sustainability, Environment, Water, Population and Communities (2011). *Threat Abatement Plan for the biological effects, including lethal toxic ingestion, caused by cane toads*. Commonwealth of Australia, Canberra.

Attachment 18 - Threatened Species Scientific Committee (TSSC) (2005) *Commonwealth Listing Advice on Swamp Tea-tree (Melaleuca irbyana) Forest of South-east Queensland*.

Attachment 19 - Department of the Environment (2014). *Threat Abatement Plan for disease in natural ecosystems caused by Phytophthora cinnamomi*. Commonwealth of Australia, Canberra.

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- B. Proposed approval decision notice
 - C. Finalised preliminary documentation (the **preliminary documentation**) including:
 - Attachment 1 - Response to public comments
 - Attachment 2 - Results of the targeted survey for spotted-tail quoll
 - Attachment 3 - Referral documentation
 - D. Letters to proponent and relevant Ministers
 - E. Conditions justification and worksheet
 - F. Correspondence with the proponent on draft conditions
 - G. Environmental Reporting Tool report
 - H. Advice from relevant areas of the Department
- 2. Responses from the proponent on the proposed decision
 - 3. Additional information provided to the Department following the proposed decision, including information on the social and economic analysis, and the proponent's response to this information
 - 4. Notice of decision and tracked-changes notice comparing the proposed and final decision notices
 - 5. Letters to the proponent, Commonwealth Ministers and State government ministers
 - 6. Internet links to the following documents:
 - A. *South East Queensland water sensitive urban design guidelines* (South East Queensland Healthy Waterways Partnership and Ecological Engineering, 2007)
 - B. *Queensland Urban Drainage Manual* (QUDM) (Queensland Department of Energy and Water Supply, 2013)
 - C. *The Biodiversity Convention*
 - D. *The Convention on International Trade in Endangered Species of Wild Fauna and Flora*
 - E. *The Convention on the Conservation of Nature in the South Pacific* (APIA Convention)

Findings on material questions of fact

21. The proposal was determined a controlled action for the listed threatened species and ecological communities (sections 18 and 18A) controlling provision.

Sections 18 and 18A: Listed threatened species and ecological communities

Impacted species and communities

22. The following listed threatened species and ecological communities were considered for assessment:
- **Koala** (*Phascolarctus cinereus*) (combined populations of Queensland, New South Wales and the Australian Capital Territory) – vulnerable
 - **Swift parrot** (*Lathamus discolor*) – endangered
 - **Grey-headed Flying-fox** (*Pteropus poliocephalus*) – vulnerable
 - **Spot-tailed quoll** (*Dasyurus maculatus maculatus*) (south-eastern mainland population) – endangered
 - **Swamp tea-tree** (*Melaleuca irbyana*) forest of south-east Queensland (**swamp tea-tree forest**) – critically endangered
23. The Department's Environmental Reporting Tool identified an additional 24 listed threatened species and ecological communities that are, or have habitat that is 'known to occur', 'likely to occur' or 'may occur' within 1km of the referred project. The delegate agreed with the Department's conclusion that, based on desktop and field surveys undertaken for the preliminary documentation, these 24 listed threatened species and ecological communities were unlikely to occur on the proposed action site or be affected through indirect impacts, and were unlikely to be significantly impacted by the proposed action.

Koala, swift parrot and grey-headed flying fox

24. The delegate agreed with the Department's conclusion that if the proposed action were approved, it would remove 62.77 ha of forest which provides habitat that is critical to the survival of the koala, potential winter foraging habitat critical to the survival of the swift parrot, and potential foraging habitat critical to the grey-headed flying-fox.
25. The delegate noted that the preliminary documentation described other areas of the site to be cleared (54.51 ha) as open pasture with widely scattered trees. The delegate agreed with the Department's conclusion that this open pasture is not habitat that is critical to the survival of the koala, swift parrot or grey-headed flying fox.
26. The delegate noted that the preliminary documentation included a number of commitments to assist in mitigating the impacts of the proposed action on native fauna, including developmental staging and sequential clearing in accordance with Policy 6 of the *Nature Conservation (Koala Conservation) Plan and Management Program 2006-2016* (Queensland Government, Environmental Protection Agency). In addition, the delegate agreed with the Department's recommendation that the

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implementation of the draft Queensland *Code of Practice for the welfare of wild animals affected by land-clearing and other habitat impacts and wildlife spotter/catchers* (Australian Wildlife Hospital, 2009), in combination with undertaking clearing in accordance with Policy 6 of the *Nature Conservation (Koala Conservation) Plan and Management Program 2006-2016* (Queensland Government, Environmental Protection Agency) would reduce the impacts on EPBC listed threatened species caused directly or indirectly by development or land-clearing. This is reflected in Condition 4. The delegate noted that this condition is primarily for the protection of the koala, as swift parrot and grey headed flying fox are mobile species and will readily disperse away from the proposed action site at the time of clearing.

27. The delegate agreed with the Department's conclusion that removal of 62.77 ha of habitat critical to the survival of the koala, swift parrot and grey-headed flying-fox to be a significant residual impact and an offset would be required as compensation for this residual significant impact.
28. The delegate considered two offset strategies proposed by the proponent to compensate for the residual significant impact on the koalas on the proposed site. The first proposed offset strategy was contained in the preliminary documentation and the second was submitted to the Department at a later stage (prior to the granting of the approval).
29. The delegate agreed with the Department's conclusion that neither of these strategies was consistent with the *EPBC Act environmental offsets policy* (the **offsets policy**). Both proposed offset strategies involved the provision of offsets after the action had commenced. The delegate did not consider that this was 'timely compensation' for the impacts as set out in the offsets policy. Furthermore, the delegate considered that the research offset in one of the proposals did not meet the criteria for research and educational programs set out in the offsets policy, as the proposed research program did not endeavour to improve the viability of the impacted protected matter. Furthermore, the delegate considered that the proposed research program was not targeted towards any of the research priorities set out in the relevant conservation advices.
30. The delegate attached conditions 2 and 3 to the approval to ensure that the proponent provides a detailed Offset Management Strategy for these threatened species, which meets the requirements of the offsets policy, and to ensure that this strategy be approved prior to commencement of the action. The delegate also noted that offsets for different species may overlap where they share the same habitat requirements, so offsets which compensate for the koala would also compensate for the swift parrot and the grey-headed flying-fox.

Spot-tailed quoll

31. In making the approval decision the delegate noted that, while at referral the proposed action was not considered likely to have a significant impact on the spot-tailed quoll, that due to the substantial community interest in and concern for the species, the spot-tailed quoll was included and considered during the assessment process.

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32. The delegate noted that the public made a large number of submissions regarding the spot-tailed quoll. Some submissions noted the sightings of quolls in areas near the proposed action site, particularly to the north of the proposed action site.
33. The delegate noted that the report entitled *Looking out for Quolls in Logan* described the results of quoll surveys conducted between 2011-2014. While the surveys were conducted within about 20 km of the proposed action area, they did not directly examine the site. The surveys included identification of potential quoll habitat, field surveys using quoll detection dogs, almost 55 000 hours of camera trapping, and the results of a community engagement and reporting strategy. The delegate noted that this survey did not report any photographic evidence of the spot-tailed quoll, but that it did capture a large number of photographs of species that pose threats to quolls, including extensive red fox sightings. The report also notes that quoll detection dogs found indicators of the quoll's presence in two locations: Edelsten Reserve and Spring Mountain Forest Park, which are 5 km and 15 km from the proposed action area, respectively.
34. The delegate noted the large number of sighting of quolls in the area, which were detailed in the *Looking out for Quolls in Logan* report and in public submissions.
35. The delegate considered that there is likely to be a low density population of the spot-tailed quoll in the region, and that an area 1-5 km to the north of the site is likely to be an important east-west habitat corridor.
36. The delegate also took into account the quoll-specific targeted survey conducted by the proponent at the proposed action site. The fieldwork for this survey was carried out at the proposed action site from 18 June until 12 July 2015 (25 days in total). The survey comprised searches for optimal habitat on the proposed action site, as well as a remote detection camera survey and a hairtube survey. The survey did not locate any evidence of spot-tailed quoll at the proposed action site. The delegate also noted that the survey concluded that the proposed action site did not contain areas of rocky outcrop, large fallen logs, a significant number of large hollow-bearing trees or stags or dense areas of undergrowth, which is preferred habitat for the spot-tailed quoll. The delegate noted the evidence provided by the proponent that the site has been almost completely cleared in the past, and the proponent's statements that almost all of the timber fallen during logging was removed.
37. On the basis of the site-specific information, the delegate concluded that there was no habitat critical to the survival of the spot-tailed quoll at the proposed action site.
38. As the proposed action area does not provide habitat critical to the survival of the spot-tailed quoll, and there is no conclusive evidence of them being present at the site, the delegate considered that the proposed action would not have an unacceptable impact on this species.

Swamp tea-tree forest

39. The delegate noted that the preliminary documentation identified swamp tea-tree forest occurring on the adjacent Lot 1 RP1132251, to the south and downstream of the proposed action site.

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40. The delegate considered that the proposed action could potentially have indirect impacts on the swamp tea tree forest, such as a change in hydrology from the proposed earth works.
41. The delegate noted that the approved conservation advice for the swamp tea tree forest identified managing changes to hydrology and water flows as priority recovery and threat abatement actions.
42. The delegate concluded that controlling stormwater runoff was necessary to ensure that there is not an unacceptable indirect impact on this ecological community, which is present to the south of the proposed action site.
43. The delegate imposed conditions 5 and 6, requiring the preparation of a stormwater management plan for the operational phase of the proposed action, to ensure that post-development runoff to the south of the site is within 10% of pre-development flows.

Conclusion

44. Having regard to the relevant briefing material provided by the Department, the delegate found that the proposed action would not have an unacceptable impact on the spot-tailed quoll.
45. Having regard to the relevant briefing material provided by the Department, the delegate found that the proposed action would not have an unacceptable impact on relevant listed threatened species and communities (the koala, swift parrot, grey-headed flying-fox and the swamp tea tree forest) provided the conditions imposed are implemented (including mitigation and offset measures).

Social and economic matters

46. The delegate noted that the preliminary documentation included a *Social and Economic Analysis* (Craven Ovenden Town Planning, 27 November 2013); and an *Economic evaluation of an industrial, business and commercial precinct development in North Maclean* (Synergies Economic Consulting, November 2013).
47. The delegate noted that the *Social and Economic Analysis* includes an economic analysis that is based on estimates by Economic Development Queensland that the North Maclean Identified Growth Area will provide 7 800 direct jobs, and that 45% of these jobs are attributable to the proposed action. The analysis concludes that when the proposed action site is fully developed, the size of the economy will be \$557 million (2013 projection) per year greater than without the project and the proposed action will create 12 307 full-time equivalent jobs including direct and flow-on jobs. The *Social and Economic Analysis* concluded that, at a regional level, the proposed action is expected to generate a significant and positive economic impact in both the nearby townships and the Greater Flagstone Priority Development Area.
48. The delegate considered information provided by a member of the public that included advice from an academic economist that was critical of the input-output modelling used in the *Social and Economic Analysis*. The delegate also noted that the Department provided this information to the proponent and considered the proponent's response.

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49. The delegate noted that there had been substantial community concern regarding the proposed action. The delegate noted that at the time the project was approved, an online petition against the development had received 1 594 signatures, and that a hard-copy petition with 1 007 signatures had been mailed to the Minister's office.
50. The delegate noted that the main economic and social concerns raised by the community included: industrial development being located in a rural residential area; inadequate community consultation; potential for changes to hydrology to affect local landowners; increased traffic density; uncertainty regarding the type of industry; and the possibility of air and water pollution.

Additional considerations

Comments provided by relevant Ministers (s 131)

51. Before the delegate 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, the delegate must invite any relevant Commonwealth Ministers to provide comments on the proposed decision within 10 business days.
52. As set out in paragraph 15 above, the delegate invited the relevant Ministers to comment on the proposed decision.

Considerations in deciding on conditions – section 134

53. 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).
54. Based on the delegate's findings of fact, the delegate was satisfied that all the recommended conditions attached to the proposed approval were necessary or convenient to protect, repair and/or mitigate impacts on a matter protected by a provision of Part 3 for which this proposed approval has effect.
55. In accordance with section 134(4)(a), in deciding whether to attach a condition to an approval, the delegate was required to consider 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.
56. In deciding whether or not to approve the taking of the proposed action with attached conditions, the delegate noted that no other relevant conditions have been imposed or are likely to be imposed under a law of a state or self-governing Territory or another law of Commonwealth.

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57. In accordance with section 134(4)(aa), in deciding whether to attach a condition to an approval, the delegate considered all of the information provided by the proponent.
58. The delegate considered that the conditions attached to the approval are a cost effective means of achieving the object of the conditions.

Environmental history – subsection 136(4)

59. The delegate noted that the referral documentation states that Wearing Developments Pty Ltd (now known as Wearco Pty Ltd) was a newly created company and as such, does not have a history of environmental management. Wearco Pty Ltd has not been subject to any proceedings under a Commonwealth, State or Territory law for the protection of the environment, or the conservation and sustainable use of natural resources.
60. The delegate concluded that there was no reason to consider that the proponent would be unwilling or unable to undertake this proposed action in accordance with the conditions.

Precautionary principle – section 391

61. In making the decision whether to approve the proposed action, the delegate considered the precautionary principle in accordance with section 391 of the EPBC Act - “that lack of full scientific certainty should be not used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.”

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

62. The principles of ecologically sustainable development, as defined in section 3A of the EPBC Act are:
 - a. the 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; and
 - e. improved valuation, pricing and incentive mechanisms should be promoted.

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63. In making the decision, the delegate took into account the principles of ecologically sustainable development in accordance with section 136(2)(a) of the EPBC Act. In particular:
- a. The recommendation report and the preliminary documentation contained information on the long-term and short-term economic, environmental, social and equitable considerations.
 - b. Any lack of certainty related to the potential impacts of the project is addressed by proposed conditions that will reduce the level of environmental impacts, and provide compensation for the residual impacts upon the relevant listed threatened species.
 - c. The proposed conditions will ensure protection of EPBC listed species and ecological communities. Those conditions allow for the project to be delivered and operated in a sustainable way, to protect the environment for future generations, and to protect listed threatened species.
 - d. The delegate considered the importance of conserving biological diversity and ecological integrity in relation to all the controlling provisions for this project.
 - e. The delegate considered a range of information on the economic costs, benefits and impacts of the project.

Bioregional plans – section 176(5)

64. In accordance with section 176(5), the delegate is required to have regard to bioregional plans in making any decision under the EPBC Act to which the plan is relevant. No bioregional plans are relevant to the proposed action.

Listed threatened species and communities considerations — section 139

65. Section 139(1)(a) of the EPBC Act requires that in deciding whether to approve a proposed action for which listed threatened species and communities is a controlling provision, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Convention on Biological Diversity (**CBD**), the Convention on Conservation of Nature in the South Pacific (**Apia Convention**) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**).
66. The delegate concluded that the likely impacts on listed threatened species would be avoided and mitigated by the proponent to a reasonable degree if the conditions were implemented, and that the residual impacts would be appropriately compensated for. The delegate concluded that approving the proposed action, subject to the conditions, would not be inconsistent with the Biodiversity Convention, CITES or the APiA Convention.

Biodiversity Convention

67. The objectives of the CBD, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and

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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.

68. The delegate considered that approving the action was not inconsistent with the Biodiversity Convention, which promotes environmental impact assessment to avoid and minimise adverse impacts on biological diversity.
69. The delegate, in approving the action, required species specific mitigation, management and compensation measures for listed threatened species and/or ecological communities. The approval required information related to the proposed action to be publically available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Apia Convention

70. The Apia Convention was suspended from 13 September 2006. Even though the Convention is no longer in effect, the delegate took into account Australia's obligations under the Convention in making the decision.
71. 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.
72. The delegate, in approving the proposed action, required the proponent to secure and protect habitat to compensate for residual significant impacts to listed threatened species and communities.
73. The delegate considered that approval of the proposed action is not inconsistent with the convention which has the general aim of conserving biodiversity.

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

74. CITES is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.
75. The delegate concluded that approving the action is not inconsistent with CITES, as the proposed action does not involve international trade of endangered species of wild fauna and flora.

Approved conservation advices

76. In considering whether to approve, for the purposes of a subsection of section 18 or 18A, the taking of an action, and the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed ecological community, the delegate must, in deciding whether to so approve the taking

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of the action, have regard to any approved conservation advice for the species or community.

77. The delegate found that the following approved conservation advices are relevant to the proposed action:
- a) Threatened Species Scientific Committee (2012) *Approved Conservation Advice for Phascolarctus cinereus (combined populations of Queensland, New South Wales and the Australian Capital Territory) (Koala Northern Designatable Unit)*; and
 - b) Threatened Species Scientific Committee (2008) *Approved Conservation Advice for swamp tea-tree (Melaleuca irbyana) Forest of South-east Queensland*.
78. In accordance with section 139(2) of the EPBC Act the delegate has had regard to those conservation advices in deciding to approve the proposed action for the purposes of sections 18 and 18A.

Recovery plans

79. In deciding whether or not to approve for the purposes of a subsection of section 18 or 18A the taking of an action, and what conditions to attach to such an approval, the delegate must not act inconsistently with a recovery plan.
80. The delegate found that the following recovery plan was relevant to the proposed action:
- Birds Australia (2011) *National Recovery Plan for the swift parrot (Lathamus discolor)*
81. In accordance with section 139(1)(b) of the EPBC Act, in deciding whether to approve for the purposes of a subsection of section 18 or 18A the taking of the action, and what conditions to attach to such an approval, the delegate concluded that the approval was not inconsistent with the *National Recovery Plan for the swift parrot (Lathamus discolor)*.

Threat abatement plans

82. In deciding whether or not to approve for the purposes of a subsection of section 18 or 18A the taking of an action, and what conditions to attach to such an approval, the delegate must not act inconsistently with a threat abatement plan.
83. The delegate found that the following threat abatement plans are relevant to the management of the listed threatened species and ecological communities listed at paragraph 22:
- Department of the Environment (2015) *Threat Abatement Plan for predation by feral cats*
 - Department of Sustainability, Environment, Water, Population and Communities (2011) *Threat Abatement Plan for the biological effects, including lethal toxic ingestion, caused by cane toads*
 - Department of the Environment (2014) *Threat Abatement Plan for disease in natural ecosystems caused by Phytophthora cinnamomi*

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- Department of the Environment, Water, Heritage and the Arts (2008) *Threat Abatement Plan for predation by the European red fox*

The delegate also noted that the *Threat Abatement Plan for Beak and Feather Disease Affecting Endangered Psittacine Species* ceased in October 2015.

84. In accordance with section 139(1)(b) of the EPBC Act, in deciding whether to approve for the purposes of a subsection of section 18 or 18A the taking of the action, and what conditions to attach to such an approval, the delegate concluded that the approval was not inconsistent with these threat abatement plans.

Reasons for decision

85. In light of the findings above, the delegate concluded that, if taken in accordance with the conditions of approval under the EPBC Act, the proposed action is likely to impact on important habitat for EPBC Act listed threatened species. The delegate concluded that the likely impacts of the proposed action on listed threatened species would not be unacceptable provided the action is undertaken in accordance with the conditions imposed and the mitigation and offset measures set out in the recommendation report.
86. The delegate therefore decided on 10 February 2016 to approve the taking of the action, in accordance with section 130(1) and 133 of the EPBC Act, subject to conditions.

Signed



James Barker

Assistant Secretary
Assessments (Qld, Tas, Vic) and Policy Implementation Branch
Environment Standards Division
Department of the Environment

23 May 2016

Annexure A

The following are relevant legislative provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Legislative Provisions

[Note: Please find below some corrections and suggested changes.]

3 Objects of Act

- (1) The objects of this Act are:
 - (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
 - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
 - (c) to promote the conservation of biodiversity; and
 - (ca) to provide for the protection and conservation of heritage; and
 - (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
 - (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
 - (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
 - (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.
- (2) In order to achieve its objects, the Act:
 - (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and
 - (b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and
 - (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and
 - (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and
 - (e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:
 - (i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and
 - (ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and

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- (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and
- (iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and
- (f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and
- (fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and
- (g) promotes a partnership approach to environmental protection and biodiversity conservation through:
 - (i) bilateral agreements with States and Territories; and
 - (ii) conservation agreements with land-holders; and
 - (iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and
 - (iv) the involvement of the community in management planning.

3A Principles of ecologically sustainable development

The following principles are *principles of ecologically sustainable development*:

- (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.



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Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision C—Listed threatened species and communities

18 Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

- (1) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Critically endangered species

- (2) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Endangered species

- (3) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Vulnerable species

- (4) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

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- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Critically endangered communities

- (5) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Endangered communities

- (6) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

18A Offences relating to threatened species etc.

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
 - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
 - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2A) Strict liability applies to paragraph (2)(c).

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.

- (4) Subsections (1) and (2) do not apply to an action if:
- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
 - (i) a species included in the extinct category of the list under section 178; or
 - (ii) a conservation dependent species; or
 - (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant impact) is an ecological community included in the vulnerable category of the list under section 181.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

19 Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited

- (1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.
- (2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.
- (3) A subsection of section 18 or 18A does not apply to an action if:
- (a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (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.
- (1B) The *relevant period*, in relation to a controlled action, is as follows:
 - (a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;
 - (b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
 - (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
 - (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public environment report or the finalised environmental impact statement, as the case requires;
 - (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

What is an assessment report?

- (2) An *assessment report* is a report given to the Minister as described in:
 - (a) subsection 47(4) (about assessments under a bilateral agreement); or
 - (b) subsection 84(3) (about assessments in a manner specified in a declaration); or
 - (c) subsection 87(4) (about assessments by accredited assessment processes).

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.

Time does not run while awaiting advice from Independent Expert Scientific Committee

- (4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

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before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

- (a) on or after the day the Minister requested the advice; and
- (b) on or before the day on which the Minister obtains the advice.

Time does not run while further information is sought

- (5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
 - (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

131 Inviting comments from other Ministers before decision

- (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.

131AA Inviting comments before decision from person proposing to take action and designated proponent

- (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;

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- (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.
- (4) The Minister must not provide under subsection (2):
- (a) a copy of so much of a document as:
 - (i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (ii) the Minister is satisfied contains information that is commercial-in-confidence; or
 - (b) information that:
 - (i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or
 - (ii) the Minister is satisfied is commercial-in-confidence.
- (5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.
- (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).
- (7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:
- (a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and
 - (b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the

approval—the Minister’s decision under section 134 to attach those conditions to the approval.



131A Inviting public comment before decision

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.

132 Requesting further information for approval decision

If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, the Minister may request any of the following to provide specified information relevant to making the decision:

- (a) the person proposing to take the action;
- (b) the designated proponent of the action;
- (c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission;
- (d) if:
 - (i) the action is to be taken in a State or self-governing Territory; and
 - (ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and
 - (iii) the relevant impacts of the action have been assessed under a law of the State or Territory;the appropriate Minister of that State or Territory;
- (e) any other person the Minister considers appropriate.

132A Requesting notice from appropriate State or Territory Minister about certain actions

(1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:

- (a) is to be taken by a person for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
- (b) is to be taken by a constitutional corporation; or
- (c) is an action whose regulation is appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries.

Note: This section also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(2) However, this section does not apply to an action if:

- (a) the action:

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- (i) is a nuclear action; or
 - (ii) is to be taken entirely in a Commonwealth marine area; or
 - (iii) is to be taken entirely on Commonwealth land; or
 - (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
- (b) the relevant impacts of the action have been assessed under Part 8.
- (3) Before the Minister (the *Environment Minister*) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.



133 Grant of approval

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.

Note: The period for which the approval has effect may be extended. See Division 5.

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:

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- (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).

Limit on publication of approval

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
 - (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

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.

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

Definition

- (8) In this section:

assessment documentation, in relation to a controlled action, means:

- (a) if the action is the subject of an assessment report—that report; or
- (b) if Division 3A of Part 8 (assessment on referral information) applies to the action:
 - (i) the referral of the proposal to take the action; and
 - (ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or
- (c) 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; or
- (d) if Division 5 of Part 8 (public environment reports) 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; or
- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:

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- (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.

134 Conditions of approval

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

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

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

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

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

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(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.



135 Certain approvals and conditions must not give preference

- (1) This section deals with the approval:
- (a) for the purposes of section 21 or 22A of a nuclear action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation; or
 - (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.
- (2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.



Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
- (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (if any) relating to the action; and
- ...
- (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
 - ... (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
 - (fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB; and
 - (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

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

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:
- (a) the person's history in relation to environmental matters; and

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

Minister not to consider other matters

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



139 Requirements for decisions about threatened species and endangered communities

- (1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
 - (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan or threat abatement plan.
- (2) If:
 - (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.



Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

- (1) A person whose taking of an action has been approved under this Part must not contravene any condition attached to the approval.

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
 - (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.
- (1A) Subsection (1) does not apply to a person who is not the holder of the approval if:
 - (a) the person was not informed of the condition; and
 - (b) the person could not reasonably have been expected to be aware of the condition.

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Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:
- (a) the person takes an action or omits to take an action; and
 - (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
 - (c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person whose taking of an action has been approved under this Part is guilty of an offence if:

- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
- (c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.

142B Strict liability offence for breach of approval condition

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:

- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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Note 3: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

Note 4: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.

- (2) Subsection (1) does not apply to a person who is not the holder of the approval if:
- (a) the person was not informed of the condition; and
 - (b) the person could not reasonably have been expected to be aware of the condition.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code



Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made

158A Approval process decisions not affected by listing events that happen after section 75 decision made

- (1) In this section:

approval process decision means any of the following decisions:

- (a) a decision under section 75 whether an action is a controlled action;
- (b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;
- (c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;
- (d) a decision under section 87 on the approach for the assessment of the impacts of an action;
- (e) a decision under section 133 whether to approve an action;
- (f) a decision under section 134 to attach conditions to an approval of an action;
- (g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
- (h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

- (a) a property becoming a declared World Heritage property;
- (b) a change in the world heritage values of a declared World Heritage property;
- (c) a place becoming a National Heritage place;
- (d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;
- (e) a place becoming a Commonwealth Heritage place;
- (f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
- (g) a wetland becoming a declared Ramsar wetland;
- (h) a change in the boundaries of any of the following:
 - (i) a World Heritage property;
 - (ii) a National Heritage place;

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- (iii) a Commonwealth Heritage place;
 - (iv) a declared Ramsar wetland;
 - (v) the Great Barrier Reef Marine Park;
 - (i) a species becoming a listed threatened species;
 - (j) an ecological community becoming a listed threatened ecological community;
 - (k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
 - (l) a species becoming a listed migratory species;
 - (m) any other event of a kind specified in the regulations.
- (2) This section applies if:
- (a) the Minister has, before or after the commencement of this section, decided under section 75 (the *primary decision*) whether an action (the *relevant action*) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
 - (b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.
- (3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
- (4) After the listing event occurs, the listing event is to be disregarded:
- (a) in making any further approval process decision in relation to the relevant action; and
 - (b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).
- (5) This section has effect despite any other provision of this Act and despite any other law.



Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.



Division 2—Bioregional plans

176 Bioregional plans

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.

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- (2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.
- (3) The co-operation may include giving financial or other assistance.
- (4) A bioregional plan may include provisions about all or any of the following:
 - (a) the components of biodiversity, their distribution and conservation status;
 - (b) important economic and social values;
 - (ba) heritage values of places;
 - (c) objectives relating to biodiversity and other values;
 - (d) priorities, strategies and actions to achieve the objectives;
 - (e) mechanisms for community involvement in implementing the plan;
 - (f) measures for monitoring and reviewing the plan.
- (4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.
- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.



Part 13—Species and communities

Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans

Subdivision AA—Approved conservation advice

266B Approved conservation advice for listed threatened species and listed threatened ecological communities

Minister to ensure there is approved conservation advice

- (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.
- (2) For this purpose, ***approved conservation advice*** is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
 - (a) a statement that sets out:
 - (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and
 - (ii) the main factors that are the cause of it being so eligible; and
 - (b) either:
 - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or
 - (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.