



Commonwealth of Australia

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

I, MIKE SMITH, as the then acting Assistant Secretary, Department of the Environment and Energy (the **Department**), then delegate for the Minister for the Environment and Energy (the **Minister**), provide this statement of reasons for my decision of 17 February 2017, under subsection 130 (1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**), to approve the proposed action by Big Island Mining Pty Ltd (the **proponent**) to expand the gold mining operation at the existing Dargues Gold Mine (approved as EPBC 2010/5770), located at Majors Creek, New South Wales [as described in EPBC Act referral 2015/7539; variation request received 16 September 2015 and accepted 23 October 2015] (the **proposed action**) (see Annexure B).

Legislation

1. Relevant legislation is set out in Annexure A.

Background

2. On 20 August 2015, the Department received, on behalf of the Minister, a referral from the proponent (EPBC 2015/7539) for consideration under the EPBC Act.
3. The proponent proposed to expand the gold mining operation at the existing Dargues Gold Mine (approved as EPBC 2010/5770), located at Majors Creek approximately 13 kilometres (km) south of Braidwood, New South Wales (NSW) and 60 km southeast of Canberra.
4. Between 24 August 2015 and 4 September 2015, the referral was made available for public comment and 37 public submissions were received. All submissions expressed concern or objected to the proposed action (as originally proposed, discussed further below), specifically against the proposal to undertake the cyanide based processing of ore and associated storage of contaminated waste on site.
5. One public submission on the referral reported the occurrence of several nationally listed threatened species and ecological communities present within the Neverbreak Hills Conservation Area, located approximately 4 km downstream of the mine site. Several other submissions referenced this submission. The Neverbreak Hills Conservation Agreement (the **NHCA**) was signed on 12 September 2013 between the Minister administering the *NSW National Parks and Wildlife Act 1974* and property owners Jacqueline Anne Ffrench and Bryan John Sullivan.
6. On 16 September 2015, the proponent submitted a request to vary the proposed action under section 156A of the EPBC Act, to remove cyanide based processing of ore from the proposal, along with storage of the associated contaminated waste, and to extend the life of the proposed operations.

7. On 23 October 2015, a delegate of the Minister accepted the request to vary the proposed action under section 156B of the EPBC Act.

The proposed action (as varied on 23 October 2015) includes the following components:

- a. an extension of the mine operational life by four (4) years
 - b. an increase in the maximum volume of ore to be extracted by 0.4 Megatonnes (Mt) from 1.2 Mt to 1.6 Mt
 - c. construction of a road between the box cut and tailings dam including a vehicle crossing over Spring Creek
 - d. construction and operation of an Eastern Waste Rock Emplacement
 - e. an amendment to the project site to accommodate the 'Slings' property
 - f. increase water harvesting rights (increased from 34.5 Megalitres (ML) to 37.0 ML).
8. On 27 October 2015, based on the location of the proposed action, the recorded and reported presence of EPBC listed threatened species and the presence of likely habitat in, adjacent to, or downstream of the mine site, a delegate of the Minister determined the proposed action was a controlled action under section 75 of the EPBC Act, subject to the following controlling provision:
- listed threatened species and communities (sections 18 and 18A).
9. On 27 October 2015, under section 87(5) of the EPBC Act, a delegate also decided that the proposed action would be assessed on preliminary documentation. On 1 December 2015, the Department sent a request for further information to be included as part of the preliminary documentation to the proponent.
10. On 23 June 2016, the proponent submitted draft preliminary documentation, prepared in consultation with the Department, to the Department in accordance with section 95A(2). The preliminary documentation was published and open for public comment from 20 July 2016 to 17 August 2016, during which time seven submissions were received, including:
- a. six submissions from members of the public
 - b. one submission from a Special Interest Group, namely the Coastwatchers Association.
11. On 29 August 2016, in accordance with section 95B(1) of the EPBC Act, the proponent provided the final preliminary documentation to the Department, including a copy of all submissions received, a summary of comments, the proponent's response to comments, and detailed information on where impact assessments and management responses had been addressed or revised in the final preliminary documentation.
12. On 28 October 2016, the proponent paid the stage 3 and 4 cost recovery fees, which started the 40 business day statutory timeframe for decision. The final preliminary documentation was subsequently published for information only from 16 November 2016 to 30 November 2016.
13. On 22 June 2016, the NSW Department of Planning and Environment (the **DP&E**) referred the proposed action to the NSW Planning Assessment Commission (the **PAC**) for determination of the proposed action under section 75W of the *Environment Planning and Assessment Act 1979* (the **EPA Act**), in accordance with the NSW Minister's delegation. On

10 August 2016, the PAC approved the proposed modification subject to DP&E's recommended conditions.

14. On 22 December 2016, a delegate of the Minister proposed to approve the proposed action subject to conditions, having regard to relevant information available to the delegate.
15. In accordance with sections 131 and 131AA of the EPBC Act, the delegate invited comments on the proposed decision from:
 - the proponent
 - the Commonwealth Minister for Industry, Innovation and Science
 - the Commonwealth Minister for Indigenous Affairs.
16. On 9, 18, 23 and 24 January 2017, the Department received comments from the proponent.
17. On 11 January 2017, the Department of the Prime Minister and Cabinet's Indigenous Environment Branch responded by noting that there are no Indigenous rangers or Indigenous Protected Area projects in that area, and therefore have no comments on the proposed decision.
18. On 13 January 2017, the Department for Industry, Innovation and Science noted that they had no comments on the proposed decision.
19. On 17 February 2017, I approved, subject to conditions, the taking of the proposed action under sections 130(1) and 133 of the EPBC Act for the purposes of sections 18 and 18A of the EPBC Act.
20. In relation to the assessment and approval in New South Wales, the proposed action is the third modification to NSW project approval MP10_0054 for the Dargues Gold Mine. In July 2015, a modification application was submitted to the DP&E under section 75J of the EPA Act. On 22 June 2016, the DP&E referred the proposed action to the PAC for determination. On 10 August 2016, the PAC approved the proposed modification, subject to DP&E proposed conditions. Subsequently, DP&E approved the third modification of the Dargues Gold Mine on 10 August 2016, subject to conditions.

Evidence or other material on which my findings were based

21. My decision to approve the proposed action on 17 February 2017 was based on consideration of the final approval decision brief prepared by the Department (the **Departmental brief**). It included the following attachments that I considered as part of that brief:
 - A. Comments and consultation on proposed decision
 - B. Proposed Decision Brief signed on 22 December 2016, including all attachments:
 - Recommendation Report
 - Final preliminary documentation
 - Environment Assessment Report and Biodiversity Management Plan
 - Preliminary documentation (including Referral and Response to public submissions)

- Letters to proponent and relevant Commonwealth Ministers inviting comments proposed decision
 - Recovery plans, conservation advices and threat abatement plans
 - Environment Reporting Tool (dated 12 October 2015 and 29 November 2016)
 - Consultation with Species Listing Information and Policy Section; Compliance and Post-Approvals Sections; and Department's Intelligence Section
 - Neverbreak Hills Conservation Agreement 2013
 - DPE Approval Conditions and PAC Approval
 - EPBC 2010/5770 Approval Decision Notice
- C. Consultation with species listing information and policy section, including:
- *New Threat Abatement Plan for competition and land degradation by rabbits (2016)*

Findings on material questions of fact

Listed threatened species and communities

22. The controlling provisions for the proposed action were sections 18 and 18A – listed threatened species and communities. I therefore assessed the impact that the proposed action was likely to have on listed threatened species and ecological communities.

Identified listed threatened species and communities

23. The Department's ERT report of 12 October 2015 identified 33 listed threatened species and 3 listed threatened ecological communities that may occur within 3 km of the proposed action (including Spring Creek and the downstream watercourse along Majors Creek and Araluen Creek to the confluence with the Deua River, approximately 25 km downstream).
24. At the time of the controlled action decision, the delegate considered that the following listed threatened species and communities were likely to be impacted by the proposed action:
- Giant Burrowing Frog (*Heleioporus australiacus*) - vulnerable
 - Green and Golden Bell Frog (*Litoria aurea*) – vulnerable
 - Australian Grayling (*Prototroctes maraena*) – vulnerable
25. In addition, at the time of the controlled action decision, the delegate considered that the following listed threatened species and communities (or their habitat) may be impacted by the activities associated with the proposed action on the basis that they are known or considered likely to occur in or downstream of the area of the proposed action:
- Lowland Grassy Woodland in the South East Corner Bioregion – critically endangered
 - Natural Temperate Grassland of the South Eastern Highlands – critically endangered
 - Littoral Rainforest and Coastal Vine Thickets of Eastern Australia – critically endangered
 - Araluen Gum (*Eucalyptus kartzoffiana*) – vulnerable
 - Stuttering Frog (*Mixophyes balbus*) – vulnerable

- Spot-tailed Quoll (*Dasyurus maculatus* subsp. *Maculatus*) (SE mainland population) – endangered
- New Holland Mouse (*Pseudomys novaehollandiae*) – vulnerable
- Brush-tailed Rock Wallaby (*Petrogale penicillata*) - vulnerable

Listed threatened species and communities on which the proposed action would have no significant impact

26. When considering the potential impacts of these identified listed threatened species and communities, I considered and accepted the analysis in the Departmental brief (including the recommendation report) and the analysis in the final preliminary documentation submitted by the proponent that concludes that Lowland Grassy Woodland in the South East Corner Bioregion, Natural Temperate Grassland of the South Eastern Highlands, Littoral Rainforest and Coastal Vine Thickets of Eastern Australia, Araluen Gum (*Eucalyptus kartzoffiana*), Littlejohn's Tree Frog (*Litoria littlejohni*), and Stuttering Frog (*Mixophyes balbus*) are communities or species (or their habitat) that may occur downstream of the proposed action site but are unlikely to be significantly impacted by the proposed action.
27. This conclusion was based on consideration of the types of habitats present downstream of the proposed action site, known habitat requirements of species or communities, the distribution of historical records, existing records of the species, a desktop analysis of the presence of these species, and assessments of significance included in the final preliminary documentation.
28. On this basis, I was satisfied that the proposed action would not have a significant impact on (or on the habitat of) the Lowland Grassy Woodland in the South East Corner Bioregion, Natural Temperate Grassland of the South Eastern Highlands, Littoral Rainforest and Coastal Vine Thickets of Eastern Australia, Araluen Gum (*Eucalyptus kartzoffiana*), Littlejohn's Tree Frog (*Litoria littlejohni*), or the Stuttering Frog (*Mixophyes balbus*).

Listed threatened species and communities which the proposed action may significantly impact

29. I then considered the potential impacts of the proposed action on the remaining listed threatened species and ecological communities that were identified in the controlled action decision, being:
- Giant Burrowing Frog (*Heleioporus australiacus*) – vulnerable
 - Green and Golden Bell Frog (*Litoria aurea*) – vulnerable
 - Australian Grayling (*Prototroctes maraena*) – vulnerable
 - Spotted-tailed Quoll (*Dasyurus maculatus* subsp. *maculatus*) (SE mainland population) – endangered
 - New Holland Mouse (*Pseudomys novaehollandiae*) – vulnerable
 - Brush-tailed Rock Wallaby (*Petrogale penicillata*) – vulnerable.
30. In addition, I considered whether there were any other listed threatened species or communities that were likely to be significantly impacted by the proposed action.
31. In doing so, I noted that a more recent ERT report dated 29 November 2016 identified four additional listed threatened species as potentially occurring in or downstream of the project area: the Curlew Sandpiper (*Calidris ferruginea*), Eastern Curlew, Far Eastern Curlew

(*Numenius madagascariensis*), Greater Glider (*Petauroides volans*) and Stiped Legless Lizard (*Delma impar*).

32. I considered and accepted the analysis in the Departmental brief (which took into account the final preliminary documentation submitted by the proponent) that no important or critical breeding or foraging habitat for these four species will be significantly impacted by the proposed action.
33. I also considered the information provided in the proponent's final preliminary documentation, and the information provided in the NHCA. Based on this information, as well as the analysis in the Department brief, I was satisfied that the listed threatened species listed at paragraph 29 are the only listed threatened species (or their habitat) or communities likely to be significantly impacted by the proposed action.

Impacts of the proposed action and proposed mitigation strategies

34. In assessing the potential impact of the proposed action on the listed threatened species set out at paragraph 29 above, I considered the analysis provided in the Departmental brief, particularly the recommendation report, as well as the final preliminary documentation submitted by the proponent. I also considered additional documents in relation to specific species – these are set out below.
35. Based on the analysis in the Departmental brief (including the recommendation report) and the proponent's final preliminary documentation, I found that during construction of the Spring Creek Crossing and the Eastern Waste Rock Emplacement, potential mobilization and erosion of soils on the site as a result of the proposed action has the potential to degrade downstream habitat. Potential impacts include loss and degradation of habitat through siltation of the rocky creek bed and loss or degradation, through sand / gravel deposition, of deeper pools that may provide refugial habitat or water resources for all listed threatened species at paragraph 29.
36. I noted that the proponent has committed to the implementation of a number of avoidance, mitigation and management measures to be implemented during the construction of the proposed action (specifically the Spring Creek Crossing and Eastern Waste Rock Emplacement) for the purpose of reducing impacts to the listed threatened species listed at paragraph 29. These measures include:
- ensure that best-practice sediment and erosion control measures are implemented during the construction and operation of the proposed action, including detailed management and mitigation measures identified by SEEC (2015b¹, 2015c² and 2015d³);
 - ensure that water accumulated within sediment basins is treated and tested prior to discharge;
 - ensure that topsoil is shallow ripped with gypsum (at a rate of 5f/ha) prior to stripping and stockpiling to limit dispersion once stockpiled;

¹ Strategic Environment and Engineering Consulting (SEEC) (2015b). *Sediment and Erosion Control Plan for Eastern Waste Rock Emplacement*.

² Strategic Environment and Engineering Consulting (SEEC) (2015c). *Sediment and Erosion Control Plan for the Spring Creek Crossing*.

³ Strategic Environment and Engineering Consulting (SEEC) (2015b). *Sediment and Erosion Control Plan for Tailings Storage Facility*.

- ensure stabilization of exposed surfaces occurs progressively;
- ensure that in the event that rainfall is forecast during construction, measures are implemented to 'bed down' disturbed areas;
- implement a self-auditing program at least weekly and retain a record of all inspections that identify the performance of design features, and general erosion and drainage conditions.

37. In addition, I noted that the proponent has committed to:

- engaging an expert in the field of sediment and erosion control to undertake monitoring of Spring Creek and Majors Creek during construction of the Spring Creek Crossing and Eastern Waste Rock Emplacement;
- collect specified information to assist with determining whether any identified impacts are a result of constructions activities; and
- continue employing the approved BMP for the Dargues Gold Mine in order to further monitor aquatic ecology on and surrounding the proposed action site.

38. I was satisfied that these management measures would reduce the impacts on the listed threatened species at paragraph 29.

39. However, I also considered and accepted the analysis and recommendation in the Departmental brief that to mitigate the likely adverse impacts on the relevant listed threatened species and their habitats, the proponent prepare and implement a Construction Environmental Management Plan (CEMP) and an Water Management Plan (WMP) including measures to minimise erosion and potential sedimentation impacts on potential foraging / breeding or refugial habitat for listed species downstream of the proposed action site.

40. For this reason, exercising my power under s 134(1) of the EPBC Act I decided to impose conditions 2 and 3 on the approval.

41. I also considered and accepted the analysis and recommendation in the Departmental brief that the proponent prepare a monitoring program to monitor, evaluate and improve the implementation of the CEMP and the WMP and to ensure that the program further detects potential impacts on downstream listed threatened species arising from erosion or sediment loads generated within the development site, as a result of the action.

42. For this reason, exercising my power under s 134(1) of the EPBC Act, I decided to impose condition 2(f) and 3(g) on the approval.

43. I further considered and accepted the analysis and recommendation in the Departmental brief that no action be undertaken (or permitted to be undertaken) outside the project site layout.

44. For this reason, exercising my power under s 134(1) of the EPBC Act, I decided to impose condition 1 on the approval.

Specific analysis of impacts to each threatened species

Giant Burrowing Frog (*Heleioporus australiacus*) - vulnerable

45. When assessing the potential impact of the proposed action on the Giant Burrowing Frog (GBF), I considered the analysis in the Departmental brief, the information in the NHCA and the final preliminary documentation submitted by the proponent.
46. I also considered the *Approved Conservation Advice for Heleioporus australiacus* (giant burrowing frog) (Threatened Species Scientific Committee, 2014).
47. In addition, I considered the following threat abatement plans that are relevant to GBF:
- *Threat Abatement Plan for predation by Feral Cats* (Commonwealth of Australia, 2015)
 - *Threat Abatement Plan for Predation by the European Red Fox* (Commonwealth of Australia, 2008)
 - *Threat Abatement Plan for infection of amphibians with chytrid fungus resulting in chytridiomycosis* (Commonwealth of Australia, 2016)
48. On the basis of this information I was satisfied that the proposed action would potentially impact the GBF in the manner described above at paragraph 35.
49. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.
50. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the GBF, provided that it is undertaken in accordance with the management measures committed to by the proponent and the conditions I decided to impose on the approval.

Green and Golden Bell Frog (*Litoria aurea*) - vulnerable

51. When assessing the potential impact of the proposed action on the Green and Golden Bell Frog (GGBF), I considered the analysis in the Departmental brief, the information in the NHCA and the final preliminary documentation submitted by the proponent.
52. I also considered the *Approved Conservation Advice for Litoria aurea* (green and golden bell frog) (Threatened Species Scientific Committee, 2014).
53. I also considered the following threat abatement plans relevant to GGBF:
- *Threat Abatement Plan for infection of amphibians with chytrid fungus resulting in chytridiomycosis* (Commonwealth of Australia, 2016)
 - *Threat Abatement Plan for predation by Feral Cats* (Commonwealth of Australia, 2015)
 - *Threat Abatement Plan for Predation by the European Red Fox* (Commonwealth of Australia, 2008)
54. On the basis of this information I was satisfied that the proposed action would potentially impact the GGBF in the manner described above at paragraph 34.
55. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.

56. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the GGBF, provided that it is undertaken in accordance with the management measures committed to by the proponent and the conditions I decided to impose on the approval.

Australian Grayling (*Prototroctes maraena*) - vulnerable

57. When assessing the potential impact of the proposed action on the Australian Grayling (AG), I considered the analysis in the Departmental brief and the final preliminary documentation submitted by the proponent.

58. I also considered the *National Recovery Plan for Australian Grayling* (Department of Environment, Water, Heritage and the Arts, 2008).

59. I noted there are no threat abatement plans relevant for this species.

60. On the basis of this information I was satisfied that the proposed action would potentially impact the AG in the manner described above at paragraph 35.

61. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.

62. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the AG, provided that it is undertaken in accordance with the management measures committed to by the proponent and the conditions I decided to impose on the approval.

Spotted-tailed Quoll (*Dasyurus maculatus* subsp. *Maculatus*) (SE mainland population) - endangered

63. When assessing the potential impact of the proposed action on the Spotted-tailed Quoll (STQ), I considered the analysis in the Departmental brief and the final preliminary documentation submitted by the proponent.

64. I considered the *National Recovery Plan for the Spotted-tailed Quoll* *Dasyurus maculatus* (Department of Environment, Land, Water and Planning, 2016).

65. I also considered the following threat abatement plans relevant to GBF:

- *Threat Abatement Plan for predation by Feral Cats* (Commonwealth of Australia, 2015)
- *Threat Abatement Plan for Predation by the European Red Fox* (Commonwealth of Australia, 2008)

66. On the basis of this information I was satisfied that the proposed action would potentially impact the STQ in the manner described above at paragraph 34.

67. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.

68. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the STQ, provided that it is undertaken in accordance with the management measures committed to by the proponent and the conditions I decided to impose on the approval.

New Holland Mouse (*Pseudomys novaehollandiae*) - vulnerable

69. When assessing the potential impact of the proposed action on the New Holland Mouse (NHM), I considered the analysis in the Departmental brief, the information in the NHCA and the final preliminary documentation submitted by the proponent.
70. I also considered the *Commonwealth Conservation Advice on Pseudomys novaehollandiae (New Holland Mouse)* (Threatened Species Scientific Committee, 2010) is considered relevant to NHM.
71. In addition, I considered the *Threat Abatement Plan for predation by feral cats* (Commonwealth of Australia, 2015) is considered relevant for this species.
72. On the basis of this information I was satisfied that the proposed action would potentially impact the NHM in the manner described above at paragraph 35.
73. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.
74. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the NHM, provided that it is undertaken in accordance with the management measures committed to by the proponent and conditions I decided to impose on the approval.

Brush-tailed Rock Wallaby (*Petrogale penicillata*) – vulnerable

75. When assessing the potential impact of the proposed action on the Brush-tailed Rock Wallaby (BRW), I considered the analysis in the Departmental brief, the information in the NHCA and the final preliminary documentation submitted by the proponent.
76. I also considered the *National Recovery Plan for the Brush-tailed Rock-wallaby Petrogale penicillata* (Menkhorst, P. & E. Hynes, 2011).
77. In addition I considered the following threat abatement plans:
- *Threat Abatement Plan for predation by Feral Cats* (Commonwealth of Australia, 2015)
 - *Threat Abatement Plan for Predation by the European Red Fox* (Commonwealth of Australia, 2008)
 - *Threat Abatement Plan for competition and land degradation by unmanaged goats* (Commonwealth of Australia, 2008)
 - *Threat Abatement Plan for competition and land degradation by rabbits* (Commonwealth of Australia, 2008)
78. On the basis of this information I was satisfied that the proposed action would potentially impact the BRW in the manner described above at paragraph 35.
79. On the basis of this information I was also satisfied that the potential impacts would be mitigated by the imposition of conditions 1, 2 and 3 described above.
80. For this reason I was satisfied that the proposed action would not have an unacceptable impact on the BRW, provided that it is undertaken in accordance with the management

measures committed to by the proponent and the conditions I decided to impose on the approval.

Conclusion on listed threatened species and communities

81. On the basis of the above analysis, I found that the proposed action would not have any unacceptable impacts on EPBC listed threatened species and communities provided that it is undertaken in accordance with the management measures committed to by the proponent (described above at paragraphs 36-37) and with conditions I decided to impose on the approval (described above at paragraphs 39-44).

Social and economic matters – section 136(1)(b)

82. In making my decision to approve the proposed action subject to conditions, I also considered economic and social matters as required by section 136(1)(b) of the EPBC Act. In doing so, I considered the analyses on these matters in the Departmental brief and the final preliminary documentation submitted by the proponent.

83. I noted that the proponent's Environment Assessment Report for the Dargues Gold Mine Report include a social and economic assessment prepared by R.W. Corkery & Co. Pty. Limited.

84. I noted that the proposed action would provide several economic benefits to the local and regional socio-economic setting, including the following:

- a. Direct full-time employment for approximately 120 full-time equivalent positions, during the site establishment and approximately 100 full-time equivalent positions during the operational phase of the project.
- b. The proposed action will result in a longer time frame for employment positions associated with the operational phase of the mine, and additional employment and economic benefits for the local community.

85. I also noted that increased employment opportunities associated with the proposed action would have additional flow-on benefits including:

- a. The provision of new employment would provide an impetus to other local businesses
- b. Contribution of \$6 million to \$10 million per year to the local and regional economy through wages and purchases of local goods and services
- c. Support of local community services and projects
- d. Approximately \$10 million to \$31 million per year to the State and national economy through purchases of goods and services within NSW and Australia
- e. Approximately \$1 million \$8 million per year to the local, State and national governments through the payment of rates, taxes and royalties.

86. I noted that the proposed action has an estimated capital investment value of \$42 million.

87. Based on the conclusions of the Environment Assessment Report for the Dargues Gold Mine Report, the analysis in the Departmental brief and the proponent's preliminary

documentation, I was satisfied the economic and social benefits of the proposed action would outweigh its costs.

Additional considerations

Considerations in deciding on conditions – section 134

88. Under section 134(1) of the EPBC Act, 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).

89. I was satisfied that all the recommended conditions attached to approval were necessary or convenient to protect, repair and/or mitigate impacts on a matter protected by a provision of Part 3 for which the approval has effect, being the listed threatened species at paragraph 28.

90. Under section 134(4), in deciding whether to attach a condition to an approval, the Minister must consider the following:

a. Section 134(4)(aa) – information provided by the person proposing to take the proposed action or by the designated proponent of the proposed action;

i. In deciding what conditions to attach to the approval, I took into account the proponent's referral documentation and attachments, final preliminary documentation and additional information, and correspondence with the Department attached to the approval decision briefings. In accordance with section 131AA, I also took into account the proponent's comments on the draft approval and conditions.

b. Section 134(4)(a) – any relevant conditions that have been imposed, or that 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 proposed action;

i. In deciding on what conditions to attach to the approval, I considered the conditions attached under the NSW approval, and the extent to which these adequately avoided and mitigated the impacts of the proposed action on relevant EPBC listed threatened species and communities.

c. Section 134(4)(b) – the desirability of ensuring as far as practicable that the conditions are a cost effective means for the Commonwealth and the person taking the proposed action to achieve the object of the conditions.

i. I found that, as far as possible, the conditions rely on commitments made by the proponent and/or on measures already required under the conditions of the NSW approval. The Department considered that these expenses, under the recommended conditions, are necessary for the protection of matters protected under the EPBC Act.

Principles of ecologically sustainable development and precautionary principle – sections 136(2)(a) and 391

91. In deciding whether or not to approve the taking of the proposed action, and what conditions to attach to the approval, I took into account the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.

92. Each principle of ecologically sustainable development was taken into account, including the precautionary principle, in the following ways:

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

I considered that the assessment documentation provided adequate information on the long-term and short-term economic, environmental, social and equitable considerations that are relevant to the decision.

- 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 (also known as the precautionary principle).*

I considered that any lack of certainty related to the potential impacts of the project is addressed by conditions that restrict environmental impacts and impose strict monitoring and/or adopt environmental standards which, if not achieved, will trigger the Department's compliance monitoring and enforcement mechanisms to avoid adverse impacts and provide for remedies.

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.

I considered the proposed conditions will ensure protection of EPBC listed species and communities, and the environment of Commonwealth land. Those conditions allow for the project to be delivered and operated in a sustainable way to protect the environment for future generations and preserve EPBC listed species and communities in perpetuity.

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

I considered the importance of conserving biological diversity and ecological integrity in relation to listed threatened species and ecological communities (sections 18 and 18A of the EPBC Act) for this project.

- d. *Improved valuation, pricing and incentive mechanisms should be promoted.*

I found the Department's advice, and attached assessment documentation included reference to, and consideration of, information on the economic costs, benefits and impacts of the project. I took this information into account in deciding whether to approve the proposed action. I noted that based on the reference to relevant NSW Government planning and policy documents in the preliminary assessment documentation, the project has given consideration to evaluation, pricing and incentive mechanisms relevant to the project.

Preliminary documentation and recommendation report – section 136(2)(bc)

93. In making the decision to approve the proposed action, I took into account the preliminary documentation prepared by the proponent under section 95B(1).
94. In making the decision to approve the proposed action, I also considered the recommendation report that was prepared by the Department under section 95C(1).

Any relevant comments given to the Minister in accordance with an invitation under section 131, 131A or 131AA – sections 136(2)(f) and 131AA(6)

95. Under section 136(2)(f) of the EPBC Act, the Minister must take into account any relevant comments given to the Minister under sections 131 (from other Commonwealth ministers) or 131A (from members of the public). Under section 131AA, the Minister must also take into account relevant comments from the proponent if invited under section 131(1)(b).
96. As noted in paragraph 15, comments on the proposed decision were received from the proponent in January 2017. I considered these comments in making my decision to approve the proposed action, including in deciding conditions attached to the approval.
97. As noted in paragraphs 16 and 17, no comments on the proposed approval decision were received from Commonwealth Ministers.
98. In accordance with section 131A, the delegate decided not to publish the proposed approval decision on the internet for public comment.

Environmental History – section 136(4)

99. Under section 136(4) of the EPBC Act, the Minister may consider whether the person proposing to take the proposed action is a suitable person to be granted an approval, having regard to:
- a. the person's history in relation to environmental matters;
 - 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 history of the parent body and its executive officers in relation to environmental matters.
100. I noted that the referral stated that during initial construction operations of the original action (as approved under EPBC 2010/5770) in February and March 2013, inadequate sediment and erosion control measures were implemented and sediment-laden water was discharged from the project site.
101. I noted that on 26 August 2014, the proponent pleaded guilty in the NSW Land and Environment Court to three pollution-related incidents, with a range of penalties and fines issued for each as follows:
- 23 to 25 February 2013 - \$78,000
 - 28 February 2013 - \$10,000
 - 1 March 2013 - \$15,000

102. I noted that in the Environment Assessment Report for the Dargues Gold Mine Report, the proponent noted that following these incidents, a number of measures were implemented as part of a Pollution Reduction Program to prevent a recurrence of the incidents, including:

- Increase the design capacity of sediment basins for both construction and operational phases of the project.
- Engagement of a professional sediment and erosion control specialist to supervise all significant earthworks within the project site.
- Preparation and implementation of updated sediment and erosion control plans for key aspects of the project.
- Implement revised and comprehensive training of all operational staff in relation to the importance of sediment and erosion control and associated procedures as well as reporting requirements associated with pollution events.
- Implemented changes to standard contract arrangements to better ensure that any contractors engaged within the project site are aware of their obligations under the Environment Protection License and the project approval conditions (EPBC 2010/5770).

Listed threatened species and communities considerations – section 139

103. Section 139(1) of the EPBC Act requires that in deciding whether to approve a proposed action for which sections 18 or 18A are the relevant controlling provisions, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Biodiversity Convention, the APIA Convention or CITES, nor a recovery plan or threat abatement plan.

104. Additionally, section 139(2) requires the Minister to have regard to any approved conservation advice for a species or community that is likely to be significantly impacted by the proposed action.

Biodiversity Convention

105. The objectives of the Convention on Biological Diversity (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.

106. I agreed with the Department's assessment that consideration had been given to an appropriate combination of avoidance and mitigation measures for the management of species potentially impacted by the proposed action.

107. I noted also that the recommended approval requires information related to the proposed action to be publically available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

108. As a result, I was satisfied that approving the proposed action (including the conditions of approval) was not inconsistent with Australia's obligations under the Biodiversity Convention.

APIA Convention

109. I noted that 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.
110. While the APIA Convention was suspended from 13 September 2006, I took into account Australia's obligations under the Convention, which has the general aim of conserving of biodiversity.
111. I was satisfied that approving the proposed action (including the conditions of approval) was not inconsistent with Australia's obligations under the APIA Convention.

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

112. 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.
113. I found the proposed action does not directly involve, and is considered unlikely to have any indirect impacts on, trade in wildlife.
114. I was satisfied that approving the proposed action (including the conditions of approval) was not inconsistent with Australia's obligations under CITES.

Recovery Plans

115. I found that the following recovery plans are relevant to the proposed action:
- Blackhouse, G., Jackson, J., and O'Connor, J (2008a). *National Recovery Plan for Australian Grayling* *Prototroctes maraena*. Department of Sustainability and Environment, Melbourne. Available at: <http://www.environment.gov.au/system/files/resources/184f9f43-1f10-441d-a918-5df406b2cd2c/files/australian-grayling.pdf>
 - Menkhorst, P. & E. Hynes (2011). *National Recovery Plan for the Brush-tailed Rock-wallaby* *Petrogale penicillata*. Department of Sustainability and Environment, East Melbourne. Available at: <http://www.environment.gov.au/system/files/resources/55148790-484f-4413-9a06-90e6d985c267/files/brush-tailed-rock-wallaby.pdf>
 - Department of Environment, Land, Water and Planning (2016). *National Recovery Plan for the Spotted-tailed Quoll* (*Dasyurus maculatus*). Commonwealth of Australia, Canberra. Available at: <http://www.environment.gov.au/biodiversity/threatened/recovery-plans/spotted-tailed-quoll>
116. I was satisfied that approval of the proposed action would not be inconsistent with these recovery plans.

Threat Abatement Plans

117. In accordance with section 139(1)(b) of the EPBC Act, I found that the following threat abatement plans are relevant to the management of the listed threatened species and ecological communities listed at paragraph 21:
- Department of the Environment (2015) *Threat abatement plan for predation by feral cats*. Commonwealth of Australia, Canberra. Available from: <http://www.environment.gov.au/biodiversity/threatened/publications/tap/threat-abatement-plan-feral-cats>.
 - Australian Government Department of the Environment and Energy (2016). *Threat Abatement Plan Infection of amphibians with chytrid fungus resulting in chytridiomycosis*. Commonwealth of Australia, Canberra. Available from: <http://www.environment.gov.au/biodiversity/threatened/publications/tap/infection-amphibians-chytrid-fungus-resulting-chytridiomycosis-2016>.
 - Department of the Environment, Water, Heritage and the Arts (DEWHA) (2008) *Threat Abatement Plan for Predation by the European Red Fox*. Commonwealth of Australia, Canberra. Available from: <http://www.environment.gov.au/biodiversity/threatened/publications/tap/foxes08.html>.
 - Department of the Environment, Water, Heritage and the Arts (DEWHA) (2008). *Threat abatement plan for competition and land degradation by unmanaged goats*. DEWHA, Canberra. Available from: <http://www.environment.gov.au/system/files/resources/2109c235-4e01-49f6-90d0-26e6cb58ff0b/files/tap-goat-report.pdf>
 - Department of the Environment, Water, Heritage and the Arts (DEWHA) (2008) *Threat abatement plan for competition and land degradation by rabbits*. Commonwealth of Australia, Canberra. Available from: <http://www.environment.gov.au/biodiversity/threatened/publications/tap/rabbits08.html>.
118. I was satisfied that approval of the proposed action would not be inconsistent with these threat abatement plans.
119. I noted that the Department's Species Information and Policy section was consulted about any changes to the listing status of relevant species or ecological communities and any new, revised or imminent conservation advices, recovery plans or threat abatement plans that may be relevant to my decision. The advice and reports indicated that on 6 January 2017, a revised *Threat Abatement Plan for competition and land degradation by rabbits* (2016) was registered on the Federal Register of Legislation (effective from 7 January 2017). The Department reviewed the proposed action in light of this revised Plan and considered that the approval of the proposed action is not inconsistent with this plan. I accepted the Department's advice.
120. Having regard to the relevant briefing material provided to me by the Department, I found that the proposed action would not have any unacceptable impacts on listed threatened species and communities in view of all relevant avoidance and mitigation measures to be adopted.

Conservation advices

121. I found that the following approved conservation advices are relevant to the proposed action:

- Threatened Species Scientific Committee (2014). *Approved Conservation Advice for Litoria aurea* (green and golden bell frog). Commonwealth of Australia, Canberra. Available from:
<http://www.environment.gov.au/biodiversity/threatened/species/pubs/1870-conservation-advice.pdf>
- Threatened Species Scientific Committee (TSSC) (2014). *Approved Conservation Advice for Heleioporus australiacus* (giant burrowing frog). Commonwealth of Australia. Available from:
<http://www.environment.gov.au/biodiversity/threatened/species/pubs/1973-conservation-advice.pdf>
- Threatened Species Scientific Committee (TSSC) (2010). *Approved Conservation Advice on Pseudomys novaehollandiae (New Holland Mouse)*. Department of the Environment, Water, Heritage and the Arts. Canberra, ACT: Department of the Environment, Water, Heritage and the Arts. Available from:
<http://www.environment.gov.au/biodiversity/threatened/species/pubs/96-conservation-advice.pdf>

122. In accordance with section 139(2) of the EPBC Act, I took those conservation advices into account in approving the proposed action, including consideration of the likely impacts of the proposed action on listed threatened species and communities and information provided in the NHCA in relation to the priority actions to support the recovery of listed threatened species and communities.

Bioregional plans

123. 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.

124. The proposed action is not located within or near any area designated by a bioregional plan. The Department considered that there are no bioregional plans relevant to the proposed action. I accepted the Department's advice.

Reasons for decision

125. In light of the findings in paragraphs 16 - 124, I decided to approve, subject to conditions, the taking of the proposed action for the purposes of sections 18 and 18A of the EPBC Act.

126. My approval will remain valid until 31 August 2025, to allow for the proposed 7 year extension of the life of the mine, from 31 August 2018 to 31 August 2025. I considered this is an appropriate timeframe for the proponent to undertake the project and their obligations under the proposed conditions.

Signed



Mike Smith

Director

Southern NSW and ACT Assessments

Assessments (NSW, ACT) and Fuel Branch

(Acting Assistant Secretary, Assessments (NSW, ACT) and Fuel Branch, at the time of making section 130(1) and section 133 decision)

13 April 2017

Annexure A

Section 130 of the EPBC Act relevantly provides:

Basic rule

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

Notice of extension of time

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

Section 131 of the EPBC Act provides:

- (1) Before the Minister (the *Environment and Energy 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 and Energy Minister believes has administrative responsibilities relating to the proposed action of the decision the Environment and Energy Minister proposes to make; and
 - (b) invite the other Minister to give the Environment and Energy 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 proposed action; and
 - (b) may be considered by the Environment and Energy Minister consistently with the principles of ecologically sustainable development.

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

Section 131AA of the EPBC Act relevantly provides:

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

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

Section 131A of the EPBC Act provides:

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

- (a) the proposed decision and, if the proposed decision is to approve the taking of the proposed action, any conditions that the Minister proposes to attach to the approval; and

- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

Section 133 of the EPBC Act relevantly provides:

Approval

- (1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the proposed action by a person.
- (1A) If the referral of the proposal to take the proposed 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 proposed action.

Content of approval

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

Persons who may take action covered by approval

- (2A) An approval granted under this section is an approval of the taking of the proposed 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 proposed action.

Notice of approval

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

Notice of refusal of approval

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

Section 134 of the EPBC Act provides:

Condition to inform persons taking action of conditions attached to approval

- (1A) An approval of the taking of an action by a person (the **first person**) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the proposed 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 proposed 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 proposed 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 proposed 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 proposed action).

Conditions to protect matters from the approved action

- (2) The Minister may attach a condition to the approval of the proposed action if he or she is satisfied that the condition is necessary or convenient for:
 - (a) protecting from the proposed 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 proposed 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 proposed 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 proposed action); and
- (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
- (a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and
 - (iii) to meet any liability of a person whose taking of the proposed 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 proposed 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 proposed 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 proposed action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the proposed action is approved; and
- (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the proposed action covered by the approval (as permitted by subsection 133(1A)).

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

** Certain conditions require consent of holder of approval*

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
- (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the proposed 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 proposed action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
- (a) as in force at a particular time; or
 - (b) as is in force or existing from time to time;
- even if the instrument does not yet exist at the time the approval takes effect.

Considerations in deciding on condition

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:
- (a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the proposed action; and
 - (aa) information provided by the person proposing to take the proposed action or by the designated proponent of the proposed 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 proposed 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 proposed action to comply with conditions (the **other conditions**) specified in an instrument of a kind referred to in that paragraph; and
 - (b) the other conditions are in excess of the power conferred by subsection (1);

the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

Validity of decision

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

Section 136 of the EPBC Act provides:

Mandatory considerations

- (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
- (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the proposed 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 proposed action; and
 - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the proposed action—the finalised recommendation report relating to the proposed action given to the Minister under subsection 93(5); and
 - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the proposed 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 proposed action; and
 - (ii) the recommendation report relating to the proposed action given to the Minister under section 95C; and
 - (c) if Division 5 (public environment reports) of Part 8 applies to the proposed action:
 - (i) the finalised public environment report relating to the proposed action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the proposed action given to the Minister under section 100; and
 - (ca) if Division 6 (environmental impact statements) of Part 8 applies to the proposed action:
 - (i) the finalised environmental impact statement relating to the proposed action given to the Minister under section 104; and

- (ii) the recommendation report relating to the proposed action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the proposed action—the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the proposed action (including information in a report on the impacts of actions taken under a policy, plan or program under which the proposed action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (g) if a notice relating to the proposed action was given to the Minister under subsection 132A(3)—the information in the notice.

Person's environmental history

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

Minister not to consider other matters

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

Section 139 of the EPBC Act provides in part:

- (2) If:
 - (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the proposed 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 proposed action, have regard to any approved conservation advice for the species or community.

