



## Statement of Reasons for a Decision to Vary the Conditions Attached to an Approval Granted Under the *Environment Protection and Biodiversity Conservation Act 1999*

I, GRAEME GROSSE, Branch Head of the Compliance and Enforcement Branch, Department of Climate Change, Energy, the Environment and Water (the department), delegate for the Minister for the Environment and Water (the Minister), provide the following statement of reasons for my decision of 15 November 2024, under section 143(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to vary the conditions attached to the s 146B EPBC Act approval for urban development and biodiversity conservation activities taken in accordance with the endorsed Program Report – Urban Development at West Belconnen (AT Adams Consulting, April 2017) (the Program).

### Legislation

- 1) Relevant legislative extracts are set out at **Annexure A**.

### Background

#### *Approval*

- 2) On 1 September 2017, Riverview Projects (ACT) Pty Ltd (the approval holder) received approval under section 146B of the EPBC Act to undertake a class of actions in accordance with the Program, subject to 20 approval conditions (the approval). The approved class of actions includes all actions associated with urban development and biodiversity conservation in the West Belconnen Strategic Assessment area as described in the Program.
- 3) Under section 146D of the EPBC Act, if the taking of actions in accordance with an endorsed program has been approved under section 146B, then the Minister is taken to have approved the action under Part 9 of the EPBC Act.
- 4) On 8 November 2024, the department notified the approval holder of non-compliance with conditions 3, 5, 6 and 20 attached to the approval and that a directed variation would be recommended to the Minister or delegate. These findings were made following a notification of non-compliance received by the department in July 2022.

#### *Consultation*

- 5) The department consulted on the proposed variation with the approval holder and relevant areas of the ACT and NSW governments.

#### *Proposed variations*

- 6) In summary, the proposed variations to the approval conditions were to:
  - a) Delete and substitute conditions 1 to 10, 12, 13, 15 to 18 and 20, and certain definitions attached to the approval.
  - b) Add conditions 5A, 8A, 9A, 9B, 10A, 12A, 13A, 13B, 15A to 15C, 16A to 16G, 18A to 18G and 21, and certain definitions to the approval.

- c) Revoke condition 17 and certain definitions attached to the approval.

**Evidence or other material on which my findings were based**

- 7) In making my decision, I considered the departmental briefing and recommendations (Briefing) provided to me on 12 November 2024, which contained the following:
  - a) The variation notice, for me to sign if I agreed with the recommendations.
  - b) The letter to the approval holder of my decision, for me to sign if I agreed with the recommendations.
  - c) A copy of the conditions attached to the approval at the time.
  - d) A copy of the Program.
  - e) Compliance Assessment Report, which I had signed on 8 November 2014, including findings in relation to the contravention of conditions attached to the approval and the approval holder's EPBC Act compliance history. This report also attached:
    - i) A 2022 third party audit of compliance with EPBC SA024 West Belconnen Strategic Assessment.
    - ii) The Ginninderry Development Offset Management Plan, dated 21 September 2022.
    - iii) A request from the department to the approval holder for information, and the approval holder's response to that request.
    - iv) A matrix of evidence for an alleged offence under section 142(1) of the EPBC Act.
    - v) Correspondence from the department notifying the approval holder of its intended compliance response, and the approval holder's response to that correspondence.
  - f) A table comparing the current and proposed varied conditions.
  - g) Responses from the approval holder to the department's proposed varied conditions.
  - h) Responses from the ACT Government to the department's proposed varied conditions.
  - i) Responses from the NSW Government to the department's proposed varied conditions.
- 8) My decision and findings were based on the information contained in the Briefing. I considered that there was adequate information before me to decide whether or not to vary the conditions of approval.

**Findings on material questions of fact**

- 7) Section 143(1)(a) provides for the Minister to revoke, vary or add any conditions (other than the condition referred to in section 134(1A), which is not relevant here) attached to an approval, if any condition attached to approval has been contravened.
- 8) As a delegate of the Minister, I considered the Compliance Assessment Report, and agreed with the departments finding, that conditions 3, 5, 6, 9 and 20 attached to the approval had been contravened.
- 9) I accepted the department's advice that the conditions, as varied:


- a) addressed the contravention of approval conditions and allowed the approval holder to maintain future compliance with the conditions;
- b) reduced ambiguity and improved the enforceability of the conditions; and
- c) standardised and contemporised administrative conditions, including the addition of standard independent audit requirements, which facilitated improved compliance monitoring.

10) In accordance with section 143(3), in deciding whether or not to vary the conditions of the approval, I was permitted to have regard to the approval holder's environmental history. I noted that there was no evidence of the approval holder otherwise being non-compliant with the requirements of the EPBC Act.

**Reasons for decision**

11) In light of my findings, I decided to vary the conditions of the approval as set out in the decision instrument.

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<b>name and position</b>	Graeme Grosse Division Head (A/g) Environmental Permitting and Compliance Division
<b>signature</b>	
<b>date of decision</b>	07 January 2025

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## Annexure A – Relevant Legislative Extracts

### 143 Variation of conditions attached to approval

(1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:

(a) any condition attached to the approval has been contravened; or

...

(2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.

(3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have 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.

(4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

Note: If the holder is not satisfied with changed conditions attached to the approval of the holder's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

(6) However, the Minister must not publish so much of the instrument 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 publish.

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.

**146B Minister may approve taking of actions in accordance with endorsed policy, plan or program**

(1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

(2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:

- (a) be in writing; and
- (b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and
- (c) specify each provision of Part 3 for which the approval has effect; and
- (d) specify the period for which the approval has effect; and
- (e) set out the conditions attached to the approval.

...

**146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program**

(1) If an approval under section 146B is in force, the following provisions have effect:

- (a) the Minister is taken to have decided under Division 2 of Part 7 that:
  - (i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of actions specified in the approval under that paragraph, is a controlled action; and
  - (ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;
- (b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:
  - (i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;

(ii) any other person who may take the action in accordance with the endorsed policy, plan or program.

(2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.

(3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).

Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.

(4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:

(a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and

(b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.