Friends of the Gippsland Lakes, Parks and Reserves Inc.

Submission to the Inquiry and Advisory Committee

Hazelwood Rehabilitation Project Environment Effects Statement

12 November 2026.

The Hazelwood mine void is to become a 637 GL pit lake, filled with river water from Moondarra Reservoir and pumped groundwater, then topped up, for as long as it exists, from Moondarra and, when that is unavailable, groundwater. FoGL supports a safe and stable closure of the mine. Its concern is the water: the rules it is taken under, and what its loss does downstream, to the Tyers and the Latrobe, to Lake Wellington and the lower Latrobe wetlands, and to the fish, birds, frogs and cultural values of a Ramsar site of international importance.

FoGL asks that the river take (the take) be governed by the kinds of rule the State has given legal force for Loy Yang, a cap, a season, a low-flow rule and an end date, and that its effects be assessed in full: together with the other two mines' takes, on the Lakes as they are now, and under the dry climate projection and the drier climate of recent decades, as well as the medium climate the EES relied on. FoGL reserves its position on the pit lake's final level until the stability studies are exhibited. This document sets out its case in nineteen points, by the four controlling provisions under the EPBC Act, with the findings and conditions it seeks; the Supporting evidence holds the analysis.[1]

1. In brief

The take would be 20 to 30 GL a year from Moondarra Reservoir on the Tyers River, a tributary of the Latrobe, for about 9 to 16 years, then top-up from Moondarra and groundwater averaging 2.7 to 8.2 GL in the years it is needed. Lake Wellington, the first of the Gippsland Lakes, depends on the Latrobe more than on any other river: about 57 per cent of its freshwater inflow on average, and about three-fifths in the driest quarter of years ([2], [52]; Annex 1, section 1.3). One chain of effects runs from the take, through fewer and shorter freshes and floods, to lost cues for fish to migrate and spawn, weaker connections between river, wetlands and estuary, longer-drying wetlands, a more saline lake, and the species that depend on them. It engages all four of the provisions on which the Commonwealth decides whether to approve the project (Evidence, A5).

FoGL's case, by controlling provision:

Provision	FoGL's case	Points
A water resource (ss 24D, 24E)	The take has no rules of its own, unlike Loy Yang's: no cap, season, low-flow rule or end date. The EES assessed the downstream effects of only its last 10 GL a year, kept the dry case and the three mines' combined effect out of its conclusions, and the pit lake needs top-up in perpetuity from sources that expire, with no one bound to pay	1 to 8
A Ramsar wetland (ss 16, 17B)	The take reduces the freshes and floods that cue the site's fish, among them the eel, a Gunaikurnai species of significance, and that fill and flush its wetlands; the EES's flow tests cannot see the loss; salinity rises most in dry years, and "less than six months" has no calculation; the limits used are superseded, and no monitoring will detect the change; and a likely change in the site's ecological character is one Australia must report to the Ramsar Convention (Article 3.2)	9 to 14

[1] Paragraph references in square brackets, such as [29], are to the Supporting evidence, and references such as D3 to its sections; its Bibliography lists every source cited, with web links where available. The take is the project's surface water take from Moondarra Reservoir, for filling and for top-up; groundwater is named separately. MNES are the matters of national environmental significance protected under the EPBC Act. Salinity is given in practical salinity units (PSU), as EPA reports it; the EES reports parts per thousand (ppt), which at these salinities are numerically almost the same.

Provision	FoGL's case	Points
Listed threatened species (ss 18, 18A)	The bittern and the Growling Grass Frog depend on wetlands the take dries, and recovery plans that bind the decision rate changed water regimes a Very High risk to them and to the painted snipe; none is assessed for it. The Grayling spawns on the flows the take reduces	15, 16
Listed migratory species (ss 20, 20A)	Latham's Snipe loses most of the important habitat the EES assumes on site, habitat the Commonwealth's advice says "must be avoided"; the listed shorebirds are not assessed at the Ramsar site, where drying matters most to them	17
Avoidance, mitigation and offsets	Avoidance the EES and the IESC identify is not taken; the only offset is a general native vegetation offset; and the measures the conclusion of no material impact on MNES relies on fail the 2012 Offsets Policy	18
The Victorian levers	A capped river take plus manufactured water, the option that would avoid most of this, was never assessed	19

FoGL asks the Committee, in this order: first, to obtain before the Hearing the information in section 8, which the EPBC Act requires and the EES does not provide; second, to make the findings in section 6, by provision; and third, if it recommends that the project proceed, to recommend it only without the Morwell River connection, as the IESC advised, and subject to the nine conditions in section 7. If the Committee does not recommend the cap in condition 1, FoGL asks it to recommend at least the slow fill, unconnected, with the drought pause in condition 1: the option nearest the cap that the EES has assessed. If the Commonwealth approves the project despite all this, FoGL asks that the approval also carry the fallback controls in section 7.

2. FoGL's position

The EES has not shown that the project's effects on the Lakes are acceptable. Its conclusion of no material impact on the Ramsar site rests on four things: a baseline that already assumes ENGIE takes 20 GL a year from Moondarra Reservoir until the void is full, and 5 GL a year after that [24]; Ramsar limits the State revised in 2023, so the drying durations the current limits turn on were never computed [95]; a claim that the project hastens Lake Wellington's salinisation by "less than six months", for which no calculation is given ([108]; Annex 1, section 1.4); and a dry-climate scenario the EES ran and then kept out of its conclusions [51].

The Latrobe is already short of water for the environment. It carries the 129 GL a year environmental water shortfall the EES itself records [40], and it supplies about 57 per cent of Lake Wellington's freshwater inflow, more in dry years [2]. The State's 2022 assessment found every current Ramsar limit met or likely met [104], but WGCMA's 2022 review found Lake Wellington's 2010 limit on wetland type exceeded; the 2023 revision then removed it, leaving the lake with no limit of its own [105]. The State's own reports describe "a longer term trend of increasing salinity, largely in response to reductions in freshwater inflows" in Lake Wellington, and a salt wedge "increasingly pushed upstream above the water inflow points for wetland watering" ([100], [106]). FoGL's analysis of the EPA record and BirdLife East Gippsland's surveys show the same shift ([113]; Annex 1). The regional waterway manager, the West Gippsland Catchment Management Authority, says "The two most significant threats to the waterways of the Latrobe system are the combined effects of mine rehabilitation and climate change on hydrology" [1].

FoGL supports a safe and stable closure that ends the fire risk the 2014 mine fire exposed. Its concern is how the void is filled: it asks that the river take be capped, and paused in drought. A slower fill need not reopen that risk: the State's rehabilitation authority found that intermediate lake levels carry "a low risk of batter failure if all ground controls are in place and working", and the EES itself relies on supply being "reduced or suspended" in drought to protect the Tyers ([188], [193]). FoGL asks that a capped fill be modelled for stability and fire, not assumed either way (Point 19). Rehabilitation must not add to the Latrobe's environmental water shortfall, or proceed on weaker rules than the State has set for Loy Yang and Yallourn. When filling ends, the water used for it should go back to the Tyers, the Latrobe and the Lakes, as the State has signalled for Moondarra's entitlements once the voids are filled [29], not to the next large industrial customer.

FoGL does not speak for the Gunaikurnai, and defers to GLaWAC on these values. The Gunaikurnai cultural water objectives in the State's 2020 flow study call the lower Latrobe wetlands a Quarenook (meeting place), and name biocultural values that depend on the flows the take reduces: Noy yang (eels), Kine (black bream), Gidai (black swans) nesting at Sale Common and Heart Morass, the rookery at Dowd Morass, and Balagen (platypus) (Point 10; [119], [165]). The EES's own sources record a risk to Traditional Owner values that its conclusions leave out, and the Cultural Heritage Management Plan has not been exhibited ([166], [170]).

3. The legislative and policy framework

The EES is the accredited assessment under the EPBC Act, but approval is not devolved to the State: the Commonwealth Minister will decide whether to approve the project, and on what conditions, after considering the Minister for Planning's assessment, which the Committee's report informs, and the IESC's advice (EPBC Act, ss 47(4), 130, 131AB, 136; Scoping Requirements, p. 9). The Committee reports on the controls the Commonwealth can impose (cl 28(g)):

Element	What it means for this project	Evidence
Four controlling provisions	The project is a controlled action for a Ramsar wetland (ss 16, 17B), listed threatened species and communities (ss 18, 18A), listed migratory species (ss 20, 20A) and a water resource, in relation to a large coal mining development (ss 24D, 24E): decision of 20 February 2023	[13]
What the Commonwealth found in 2023	That "a substantial and measurable change in the hydrological regime of the Gippsland Lakes is likely", and that the site "is already under threat" and "any further reduction in freshwater flows and reduced water quality will exacerbate that threat". The EES has not answered those findings	[88], [89]
Indirect consequences	An indirect consequence is an impact of the action if the action is a substantial cause of it (s 527E). The take's effects downstream, on the Ramsar site and the species of the lower Latrobe, are of that kind	[14]
Cumulative effects	A large coal mining development is defined by its impact on water resources, "including any impacts of associated salt production and/or salinity", in its own right or "when considered with other developments, whether past, present or reasonably foreseeable developments" (s 528); "an apparently small impact may still be a significant impact if there are substantial cumulative effects" (Significant Impact Guidelines 1.3, p. 9)	[16]; [71] to [75]
The significance tests	Guidelines 1.3 for the water resource, which reach native species dependent on it; Guidelines 1.1 for the Ramsar site, whose test covers native fish whether or not they are listed, for vulnerable species' important populations, and for migratory species' important habitat	[16]
The decision	At approval the Minister must consider every relevant impact on the protected matters, significant or not (ss 82, 136); significance decides whether an offset is required and whether conservation advice must be considered (s 139(2)). The Minister must not act inconsistently with the Ramsar Convention (s 138), a recovery plan (s 139(1)(b)) or the agreements under which migratory species are listed (s 140), and must take the precautionary principle into account (ss 3A, 136(2)(a), 391). Those Ramsar obligations include passing to the Convention, without delay, information on any human-induced change, actual or likely, in a listed site's ecological character (Article 3.2; Point 12)	[16]
Listings after 2023	Do not change this decision (s 158A), so FoGL, like the EES, uses the statuses at 20 February 2023. Since then: Swamp Skink Endangered (March 2023); Dwarf Galaxias uplisted and Martin's Toadlet Endangered (November 2023); Latham's Snipe, Sharp-tailed Sandpiper and Common Greenshank listed as threatened, and other shorebird categories revised (January 2024); Southern Giant	[15]; [127], [131]

Element	What it means for this project	Evidence
	Burrowing Frog Endangered (March 2025); Glossy Grass Skink Vulnerable (February 2026); Australian Mudfish Endangered (August 2026). Later Commonwealth advice remains the best evidence on their sensitivity. Recovery plans are not listing events: those for the bittern, the painted snipe and the Growling Grass Frog bind the decision (s 139)	
Threatening processes	Victoria and New South Wales list flow alteration, and Victoria wetland loss through changed water regimes, as threatening processes. There is no Commonwealth listing, but its tests apply to the impacts. The EES names neither for the take	[21]
Offsets	The 2012 EPBC Offsets Policy applies (Scoping Requirements, p. 21). The 2025 reforms' net gain test does not apply to a 2022 referral, so FoGL cites it only as a benchmark; any restoration contribution charge should be on top of like-for-like offsets	[17]
Conditions	EPBC conditions can protect only MNES (s 134), so conditions for the four FFG-listed species belong in the Victorian approvals	[18]

4. What is at stake

The Gippsland Lakes are the largest estuarine lagoon system in Australia and a Ramsar site since 1982. They regularly support more than 20,000 waterbirds, hold internationally significant numbers of Chestnut Teal, Fairy Tern and Little Tern, and are listed for the drought refuge they provide and, under criterion 8, for "important habitats, feeding areas, dispersal and migratory pathways, and spawning sites for numerous fish species" (EES Chapter 25, Table 25-4, p. 25-8). BirdLife East Gippsland's twelve-year survey shows what that refuge means: duck and herbivore numbers on the Lakes rise after dry months, the reverse of the pattern elsewhere in eastern Australia [114]. The lower Latrobe wetlands, Sale Common, Dowd Morass and Heart Morass, are the part of the site the Latrobe feeds directly.

The State has already asked whether the Latrobe can afford more extraction for mine rehabilitation. Its 2020 ecological study answered that "more fresh water for the environment is required", not less, and that harvesting floods to fill pit lakes "will be detrimental to the system, particularly for Lake Wellington and the Lower Latrobe Wetlands" [3], [69]. The Lake Wellington catchment is home to about 160,000 people and produces about $750 million a year in agriculture. Tourism and recreation on the Lakes are "critical to the regional economy": domestic visitors spent $753 million in 2024 in East Gippsland and Wellington, the two shires around the Lakes, and tourism supports 11,800 jobs across Gippsland [171].

The take reaches those values through the flow regime, not salinity alone. The size, timing, duration and frequency of freshes and floods cue the site's fish to migrate and spawn, connect the river with its wetlands and the estuary, fill and flush the lower Latrobe wetlands on which the bittern, the Growling Grass Frog and the migratory shorebirds depend, and push the salt wedge out of the estuary and Lake Wellington (Point 9; [117] to [121]). Salinity is the most measurable result. Lake Wellington was fresh, below 0.5 ppt, before the permanent entrance was opened in 1889; it has averaged about 8 ppt in recent decades (EES Chapter 25, p. 25-12). The State's 2024 Ramsar Site Management Plan attributes the decline of common reed since listing to falling inflows, tidal exchange and rising salinity, and rates increased salinity a High risk to the fringing wetlands' vegetation and frogs and to black bream breeding. It left Latrobe Valley mine rehabilitation out of its risk assessment, recognising that such projects "may represent significant threats to the ecological character of the Ramsar site", and deferred to "a separate, rigorous process": this one ([106], [129], [153]).

Freshwater inflow explains about 70 to 80 per cent of the variation in the Lakes' salinity [113]. Figure A shows a dry year at 17 PSU, three wet years that reset Lake Wellington to 1 PSU, and a return to double figures within three years; its 6 PSU line is a reporting benchmark, not a Ramsar limit.

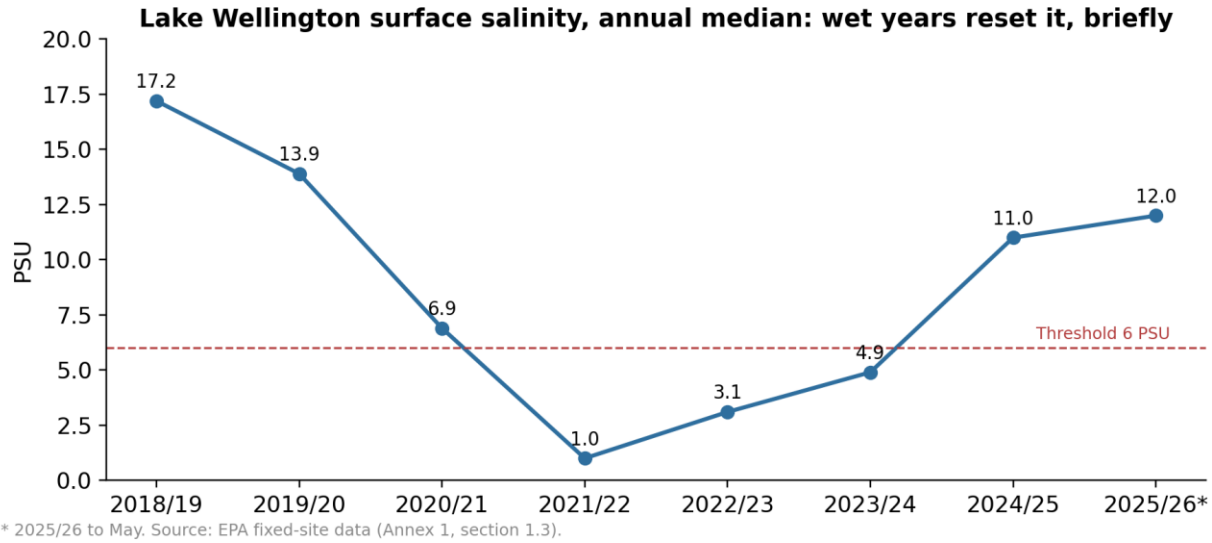


Figure A. Lake Wellington surface salinity, annual median, 2018/19 to 2025/26 (Annex 1, section 1.3).

5. The case by controlling provision

A. A water resource (ss 24D, 24E)

Point 1. The State has already set the benchmark for this take: net historic use, restricted or halted in dry conditions. Between 2017 and 2023 the State examined whether the river could supply all three mines. Its 2020 answer was that water should be "limited to the power stations' current annual net usage" and "restricted or halted under dry conditions". Its 2023 guidance allows up to gross historic use, but only with conditions, and in December 2025 it gave conditions of that kind legal force for Loy Yang: a maximum annual volume, a June to November season, no take of unregulated flow while the river is low, and an end date. Hazelwood's net historic use was 10.3 GL a year; the State records 14.0 GL gross, which may be a contract volume rather than metered use. The principle behind the State's answer is in the Latrobe Valley Regional Rehabilitation Strategy: "Any water used for mine rehabilitation should not negatively impact on Traditional Owners' values, environmental values of the Latrobe River system or the rights of other existing water users" (2023 Amendment, p. 16). Technical Report B calls it "a key principle of the LVRRS", and the Strategy has statutory force under Part 7B of the Mineral Resources (Sustainable Development) Act 1990, so it is policy to which the Committee must have regard (cl 28(b)). The Strategy also says how to test it: plans "that change the volume, timing or quality of water in the Latrobe River or the physical form of the waterway should be carefully evaluated", using "metrics that reflect these factors, such as the environmental flow recommendations for the Latrobe River" (2020, p. 20).

Evidence: [3], [4]; [29]; Table 1.

Point 2. The EES measured the last 10 GL of a 30 GL take. The rivers baseline already contains 20 GL a year of filling that began under emergency approvals in 2021 and has no final landform approval. Every conclusion of "no change" or "not consequential" therefore compares a 30 GL take with a 20 GL take. The IESC said so: the downstream results "are only assessed for the additional 10 GL/y take". FoGL does not say the baseline is unlawful; it says the take in it is the project, because it is filling the void. The State's own counterfactual has no such take: in its 2020 water study the "do-nothing scenario" is one "whereby surface water use for power generation declines over time as each mine site is closed", and filling is a separate demand ([24]). And the take was built to fill the void: ENGIE's 2021 referral says the fire service water is "thereafter retained in the Mine lake", and a second pipeline runs from Moondarra directly to an inlet in the void. Even measured from that baseline, the fast fill reduces flow in the Tyers below Moondarra: on Technical Report D's results under the medium climate, its mean annual flow falls 15 per cent, and its flow in a dry year (the 5th percentile) 47 per cent, from 15 to 8 GL. The IESC found the EES's conclusions give "the impression that even severe ecological impacts are acceptable if they are restricted to individual reaches".

Evidence: [24] to [28]; [61].

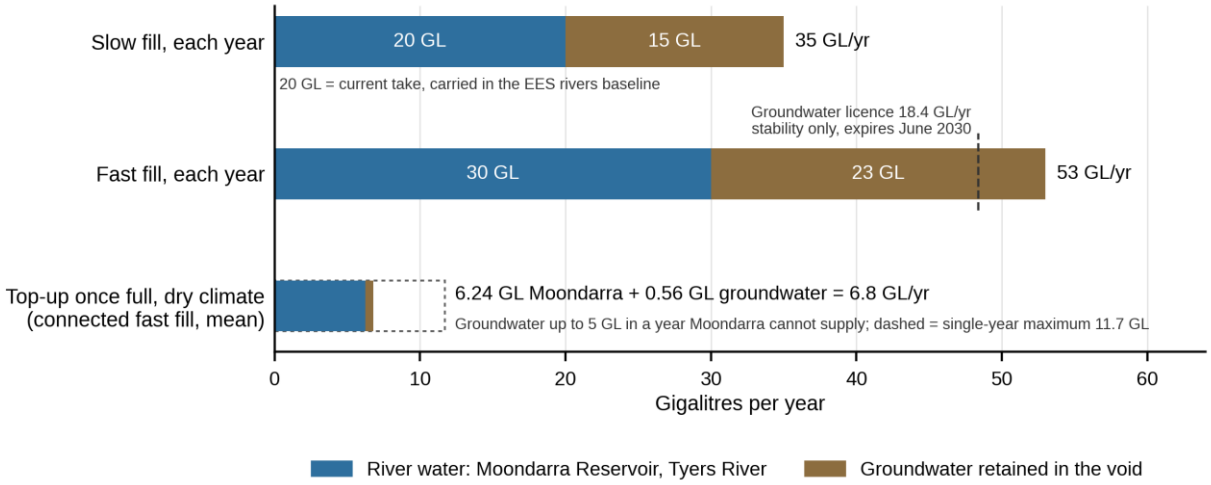


Figure B. Where the water comes from: the fill, and the top-up that follows it (EES Chapter 4, Table 4-4; Technical Report C1, Tables 10-4 and 10-6; [25]).

Point 3. Hazelwood is the only mine taking river water for rehabilitation with no instrument or conditions of its own. Its supply is a commercial agreement with "no minimum supply commitment", valid until 2035, under which Gippsland Water serves its other customers first. The clause that governs reduction or suspension has not been exhibited. The water comes from Gippsland Water's bulk entitlement, and its passing flows apply, but that entitlement was converted in 1997, before any demand to fill a mine void existed ([34], [220]). An entitlement is not the State's measure of what may safely be taken. The State records that "The environment and other water users have benefited from these under-used water entitlements and return flows", and set the other mines' access about 35 per cent below their entitlement volumes (Strategy Amendment, pp. 16-17). Its 2020 water study found that minimum environmental flows "are typically higher than the passing flows that were specified in bulk entitlements" (DELWP Water Availability Technical Report, p. 20), and that supplying entitlement volumes for filling rather than historic use would have "unacceptable impacts on the reliability of supply to other existing water users and the environment" (p. 29). Every other route to rehabilitation water is public: an application under section 36 or 51 of the Water Act "would be advertised and submissions invited" (Strategy Amendment, p. 21). Hazelwood's commercial route has no such step, so this inquiry is the only public assessment of the take ([32], [34]).

Condition	Loy Yang (Gazette S 703)	Hazelwood
Instrument	Bulk entitlement under the Water Act	Private supply agreement
Volume	Up to 35.8 GL a year, gross, in the final phase	No statutory limit
Season	Take only June to November	None
Low-flow floor	No take of unregulated river flow while the Latrobe at Willow Grove is below 447 ML/day; stored water can still be released, within an annual cap	None of its own; the passing flows on Gippsland Water's entitlement apply
End date	1 December 2065 at the latest	None; top-up in perpetuity
Reporting	Annual report to the Minister	None

Evidence: [30] to [35].

Point 4. The water supply the fill relies on is not secure. The EES assumes "100% compliance" with a 30 GL a year demand. Gippsland Water's own planning puts the supply available nine years in ten under a dry climate at 2.48 GL a year by 2040, and leaves Hazelwood out of its planning because the water is provided "only when it is available". The Mine Land Rehabilitation Authority warned in 2022 that filling "may exceed 30 years if water supplies are limited by drought and/or climate change". The Commonwealth's Office of Water Science found the Latrobe system "already in deficit if all demands were to be met". The 35-year worst case the Scoping Requirements name was never run. The EES cannot rely on both: if the supply holds in drought, the take removes the largest share

of flow in the years when Lake Wellington is most saline (Point 11); if it does not, the fill runs longer than the EES assumes, the very risk it held against the slower alternatives (Part F).

Evidence: [43] to [48]; Q3.

Point 5. The dry case was run, then kept out of the conclusions. The proponent says no climate scenario is more likely than another, then bases its conclusions on the medium case only, because making the worst case the focus is "not considered to be a reasonable approach". The Scoping Requirements require the worst case to be assumed where mitigation is uncertain. CSIRO records that half the time since 1990 has been drought. The fast-fill benefit the EES relies on exists only under the medium climate; under the dry climate (the EES's high climate change scenario) Technical Report D rates the flushing risk "high for all project scenarios". The IESC asked for the dry results too. Technical Report A cites the State's 2023 Strategy Amendment for licensees being "well placed" to plan; the same page says the risk of a drier future "remains current and real", with runoff projected to fall "by up to 42% by 2065 (for a high projection)" (p. 14). WGCMA's strategy says "it would be more correct to call current climate post-1997", and its staff note that extraction took almost half the Latrobe system's flow in the 2006/07 drought ([49], [52]).

Evidence: [49]; [51] to [56]; Q12.

Point 6. Three mines, one river, no cumulative scenario. Yallourn's and Loy Yang's filling is placed in the baseline of every rivers run, so their combined effect cancels out of every reported result. The Mine Land Rehabilitation Authority warned that assessing a single mine "ignores the cumulative regional water needs and potential impacts from mine rehabilitation for all three Latrobe Valley mines". WGCMA's staff and expert panel put the three pit lakes at about 2,200 GL, "4.5 times the average annual flow in the Latrobe River", and WGCMA lists their cumulative effect on the river's hydrology as a key knowledge gap [72]. For the water trigger, cumulative effects are part of the test itself (section 3).

Evidence: [71] to [75]; Table 6.

Point 7. The connected pit lake manages its quality by exporting it. Lake copper is predicted to reach 33 times the aquatic guideline at year 100 and still be rising, and under the median climate Technical Report D puts downstream copper above background 98 per cent of the time. The lake becomes eutrophic, with total dissolved solids more than four times the river objective. It would export nitrogen as well as phosphorus to Lake Wellington, where nitrogen generally limits algal growth, yet the EES carries only four metals into its risk assessment and assesses neither nutrient. The IESC found nitrogen and phosphorus in the pit lake "well-exceed" the guidelines in the connected scenarios, increasing the likelihood of blooms spreading downstream. Mercury, the clearest bioaccumulation risk, is not modelled. The EES states no discharge criteria; the draft DMRP's criteria test only pH, salinity and turbidity, and its test of water "suitable for discharge" is that it matches the model; and the lake model let water spill the moment the lake exceeded RL +45 m, so the gate's withholding was never modelled. The receiving wetland, Heart Morass, already carries mercury and a PFAS consumption advisory.

Evidence: [76] to [85]; Q7.

Point 8. A pit lake that needs top-up water in perpetuity, with no secured source and no one bound to pay. Once full, the lake loses more to evaporation than it gains. Top-up is needed in most years and increases with time: from Moondarra and groundwater, it averages 2.7 to 8.2 GL in the years it is needed, and reaches 12.9 GL in a single year. Yet the EES holds the climate flat after 2065 (2075 for the lake) and continued the trend in only one run, a wet one, though its climate peer reviewer saw continuing it as the likely dry bound. For uncertain, irreversible, high-consequence decisions reaching past 2050, the State's 2025 climate guidelines point to the high emissions scenario, and they propose stress tests with droughts worse than any on record ([57]). The groundwater licence expires in June 2030 and the supply agreement in 2035. The draft DMRP calls the lake the "passive" landform and, thirteen pages later, says its inlet and outlet "will require active management and maintenance into perpetuity". The Mine Land Rehabilitation Authority estimated that, without imported river water, the lake would balance at about +16 to +29 m AHD, 16 to 29 m below the proposed level.

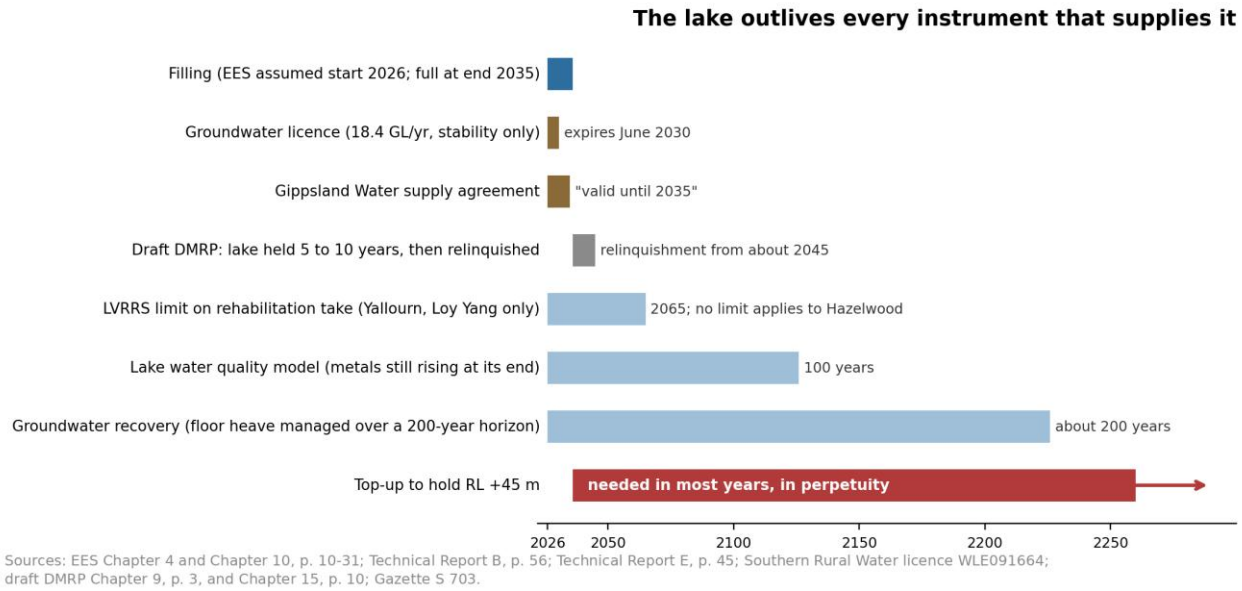


Figure E. The lake outlives every instrument that supplies it ([48], [203]).

Who pays is unresolved. The A$289 million rehabilitation bond is returned in full at closure. The contribution to the Declared Mine Fund is not yet set, and the draft DMRP's cost criterion runs for ten years, against groundwater recovery over 200 years and lake metals still rising at the end of the 100-year model. The draft DMRP names the Mine Land Rehabilitation Authority as interim manager of the lake after relinquishment; the Authority was abolished in 2026. Even at Loy Yang's water price of $230/ML, which FoGL does not accept, top-up alone would cost about $0.6 to $1.9 million a year, a cost the draft DMRP says is "not currently known". FoGL does not ask the Committee to examine the draft DMRP (cl 8): whether the top-up, gate operation and monitoring the EES relies on are funded for as long as the pit lake exists goes to whether acceptable outcomes can be achieved (cl 28(b), (c), (f)). Under the water trigger, significance must be assessed "in both the short and the long term", which "may be beyond the life of the action", and Commonwealth approvals have typically conditioned the "management and monitoring of the final void of open cut mines" (Significant Impact Guidelines 1.3, p. 14; Independent Review of the Water Trigger Legislation, 2017, p. 28).

Evidence: [203] to [207]; [187]; Q10, Q19.

B. A Ramsar wetland (ss 16, 17B)

Point 9. The site's fish and wetlands depend on the flows the take reduces, and the EES's flow tests cannot see the loss. The Lakes are listed under criterion 8 for their fish, and the Ramsar test covers the "habitat or lifecycle of native species, including invertebrate fauna and fish species", listed or not. The EES itself names the estuarine-dependent freshwater fish, among them Grayling, eels and lampreys, and the estuarine residents, among them Black Bream and Estuary Perch, "all of which depend on freshwater inflows for survival". The State's 2020 flow study sets a flow criterion for them in every month, from autumn freshes for Grayling spawning to estuary salinities of 15 to 20 ppt for Bream and Estuary Perch breeding from September to December. Freshes cue migration and spawning and connect the river, estuary, wetlands and sea, and the larger ones cannot be made with environmental water, because the channel cannot carry them without flooding private land. The same freshes and floods fill and flush the lower Latrobe wetlands, and keep the salt wedge below the inlets through which they are watered ([117]; [100]). Yet the EES's flow tests count only runs of years with no event: if freshes fell from three a year to one, nothing would be triggered; its baseflow tests register only compliance below 0.001 per cent; and Technical Report D tests the Swing Bridge against the study's recommendations for the river, not the estuary's own. It concedes that higher flows at Thoms Bridge become less frequent, then scores the risk to listed fish "unchanged". Technical Report D accepts that losing the estuary-flushing flows for a whole lifecycle "could lead to their loss from Lake Wellington". Because no season protects every species, condition 1 stops the take while a winter or spring fresh is running, until it has run the duration the study recommends.

Evidence: [1]; [60]; [115] to [121]; [214], item 6.

Point 10. The short-finned eel needs the flows at both ends of its life, and the Gunaikurnai name it a species of significance. Eels live for decades in the rivers and wetlands, leave on freshes between October and May to spawn in the Coral Sea, and return as glass eels from July to November; in low-flow years recruitment "may be zero". The Gunaikurnai cultural water objectives in the State's 2020 flow study name Noy yang (eels) first among the fish species of significance, with the objective to "Maintain abundance of Noy yang (eel) populations", and the Ramsar description values native fish partly for "indigenous cultural values". Eels are prey for the bittern and have been fished commercially in Lake Wellington. The EES tests their migration only as runs of years without a seasonal fresh. FoGL defers to GLaWAC on what the eel means to the Gunaikurnai.

Evidence: [119]; [118]; [165].

Point 11. The salinity increase is largest when Lake Wellington is already most saline, and "less than six months" has no calculation. On Technical Report D's own model the project raises Lake Wellington's salinity by 0.67 ppt on average and by 1.8 ppt in 2019, the lowest-inflow year in its record. In calendar 2019 the lake's median salinity was 19 PSU against a threshold of 6. The chart shows why: years of low flow at Rosedale are years of high salinity in Lake Wellington, and the project is modelled taking its full volume whatever the year. The 7.2 per cent fall in Lake Wellington's inflow behind them is more than five times the 1.3 per cent fall at the Swing Bridge, and the proponent needs to explain it (Q9).

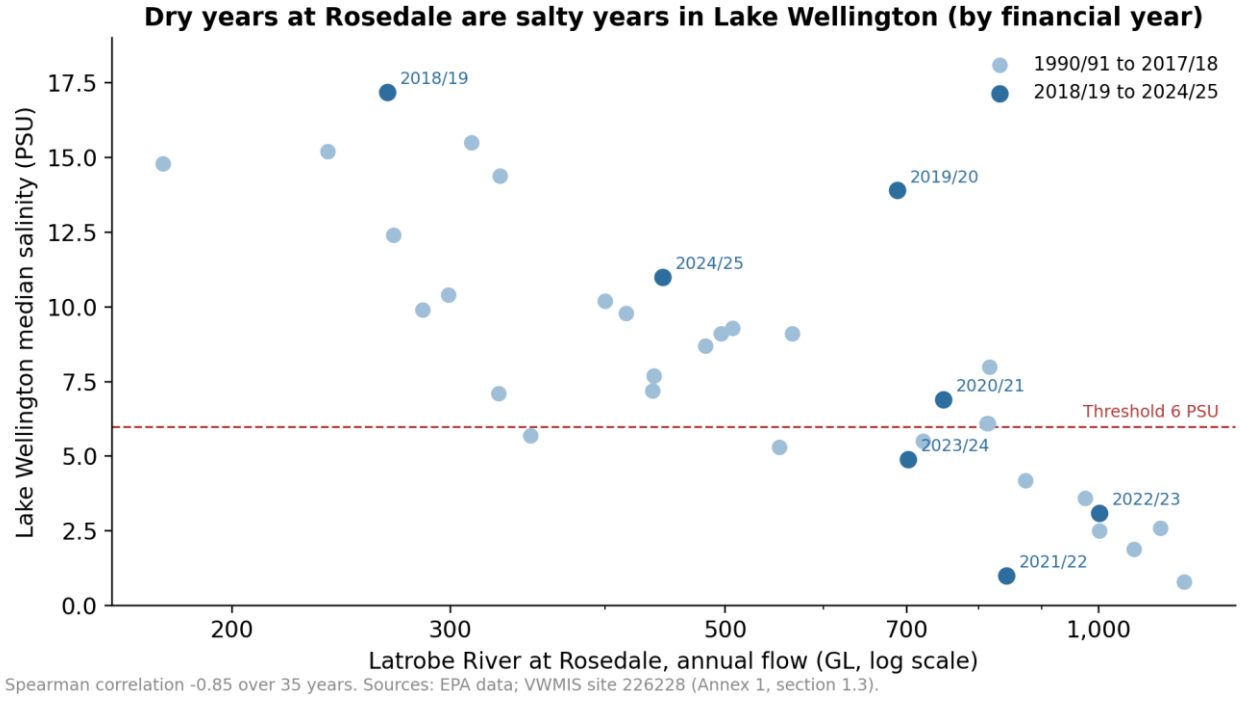
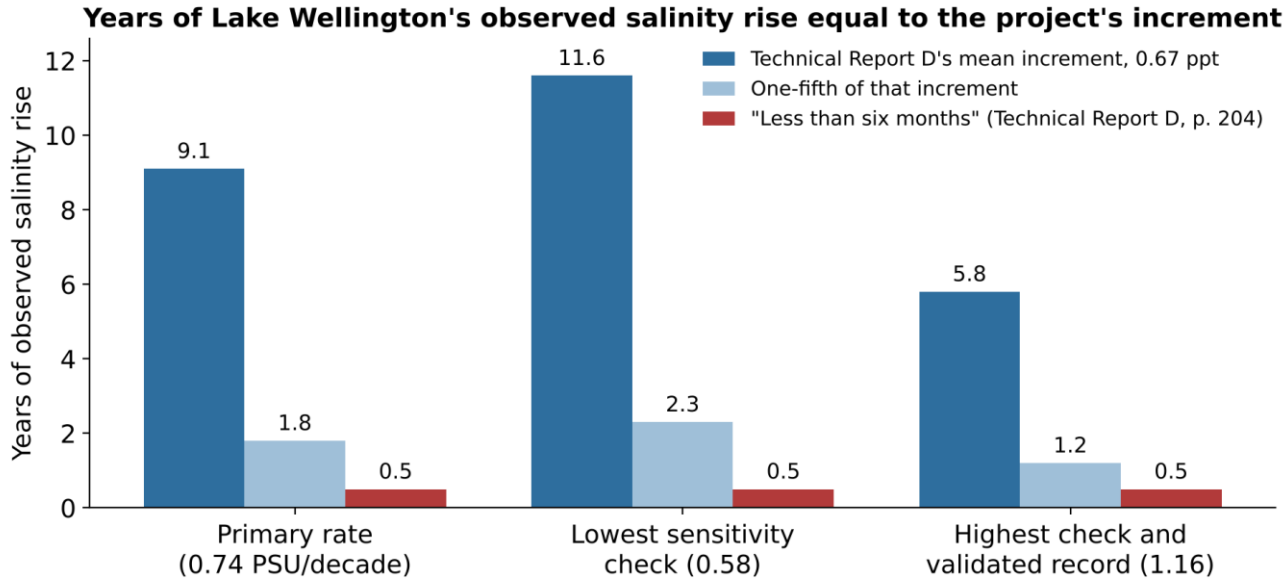


Figure C. Lake Wellington salinity against Latrobe flow at Rosedale, 1990/91 to 2024/25 (Annex 1, section 1.3).

"Less than six months" is not supported by the EES's own figures. Technical Report D gives no calculation for it, and applies it to a rise of about 0.7 ppt, where its Attachment 3.2 applied the same figure to 0.09 ppt (Q9). For 0.67 ppt to be less than six months of a salinisation the EES calls "a several-decades long process", the lake would have to be salinising at more than 13 PSU a decade: more than twice its rate over 1990 to 2009, which took in the Millennium Drought. On EPA's 36-year record, once river inflow is allowed for, the lake is salinising at about 0.74 PSU a decade, so the project's increment equals six to twelve years of that rise, and even one-fifth of it one to two years. That rate is the least certain of FoGL's salinity results (Supporting evidence, Annex 1, section 1.10), but a slower rise would make the increment equal more years of salinisation, not fewer. Lake monitoring could not see it either (Point 14).



Source: EPA fixed-site data 1990 to 2026, flow-adjusted (Annex 1, section 1.4); Technical Report D, Attachment 3.2, p. 4, and p. 204.

Figure D. The six-month claim tested against the observed rate of rise (Annex 1, section 1.4). The one-fifth bar allows for Technical Report D's description of its estimates as upper bounds.

Evidence: [107], [108]; Q9; Annex 1, sections 1.3 and 1.4.

Point 12. The Lakes are already becoming more marine, and the bird survey data reflect this. Allowing for inflow, salinity is rising at every main-lake site, most clearly in Lakes Victoria and King, at 1.3 to 1.9 PSU a decade, and the lakes' salinity is 1.8 to 3.3 PSU higher than in the 1990s for the same river flow. Lake Victoria's water column is becoming uniformly marine. BirdLife East Gippsland finds freshwater species declining and saline-tolerant species increasing, "consistent with the increasing salination of the ecological character" of the site. Of the drivers of that change, freshwater inflow is the one the project reduces. WGCMA's 2022 review attributes the change to "the joint effects of water extraction (which has occurred post listing) and rising sea levels". There is a Gippsland precedent: at Lake Corringle, saline back flow destroyed the reedbeds, and the bittern "is no longer found at this location" ([114]).

The Convention. Change of this kind has consequences beyond Australia. Under Article 3.2 of the Ramsar Convention, Australia must "arrange to be informed at the earliest possible time" if a listed site's ecological character "has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference", and "Information on such changes shall be passed without delay" to the Convention's Secretariat, which notifies every party for discussion at the next Conference (Article 8.2(d)). Change in ecological character means "the human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service"; the Commonwealth's own guidance treats change as likely where there is a "reasonable likelihood, under current conditions or certain planned activities", and where a notified matter is under EPBC assessment it reports "the status of any assessment under the EPBC Act" to the Secretariat (National Guidance on Notifying Change in Ecological Character, 2009, pp. 4, 6, 12). Water extraction is a human interference, and WGCMA's review attributes the change already seen partly to it. The Commonwealth has already assessed one third-party notification for this site, finding change "is possible for some critical components since listing in 1982" ([104]). A site where change has occurred, is occurring or is likely may also be added, in consultation with the party, to the Convention's Montreux Record (Recommendation 4.8). An approval that permanently reduces the site's freshwater inflows, tested against limits the State has since revised, therefore risks a change Australia would have to report to the Convention, and the Minister must not approve inconsistently with these obligations (s 138; [125]). Conditions 1, 4 and 6 are how an approval could avoid that.

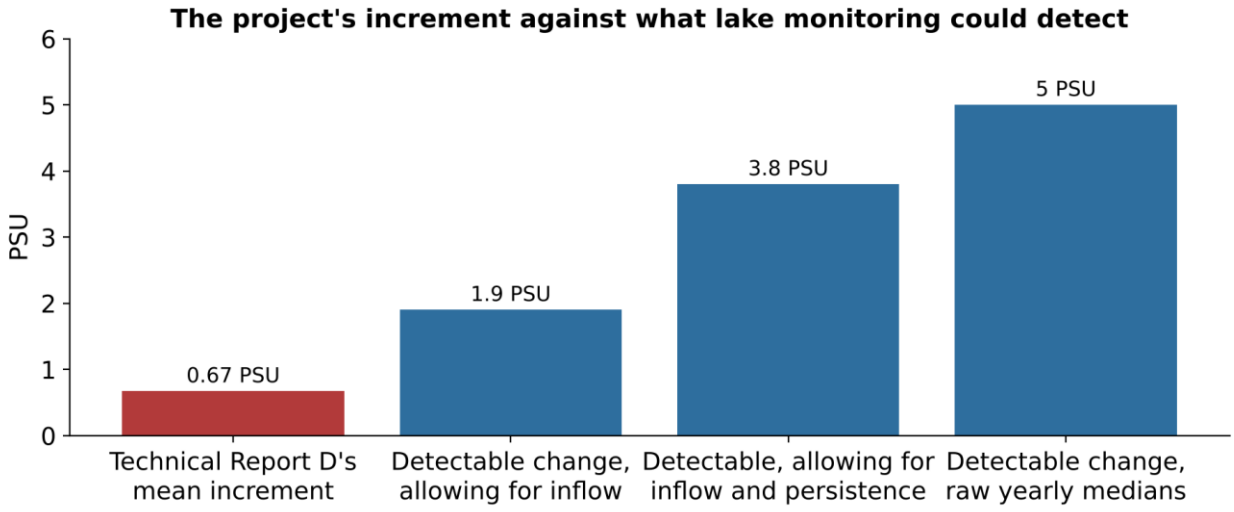
Evidence: [110] to [114]; [104], [125]; Annex 1, section 1.2.

Point 13. The Ramsar site was assessed against limits the State revised in 2023. The revised limits turn on how long the wetlands may stay dry: 36 months at Sale Common, 60 at Dowd and Heart Morass. The 2010 limits remain the formal description in the Commonwealth's record, but the

State's 2024 management plan calls the revision "The current ECD Addendum" ([95]). The EES computes no drying duration, and Chapter 11 concedes that the risk of extended drying "cannot currently be accurately predicted". WGCMA's objective is that "Sale Common will remain a freshwater wetland and within defined Limits of Acceptable Change". It reports concern that river water at the wetland inlets is "increasingly brackish to saline", and says funding "is still being sought" for Sale Common's new inlet, works the EES treats as committed ([99] to [101]).

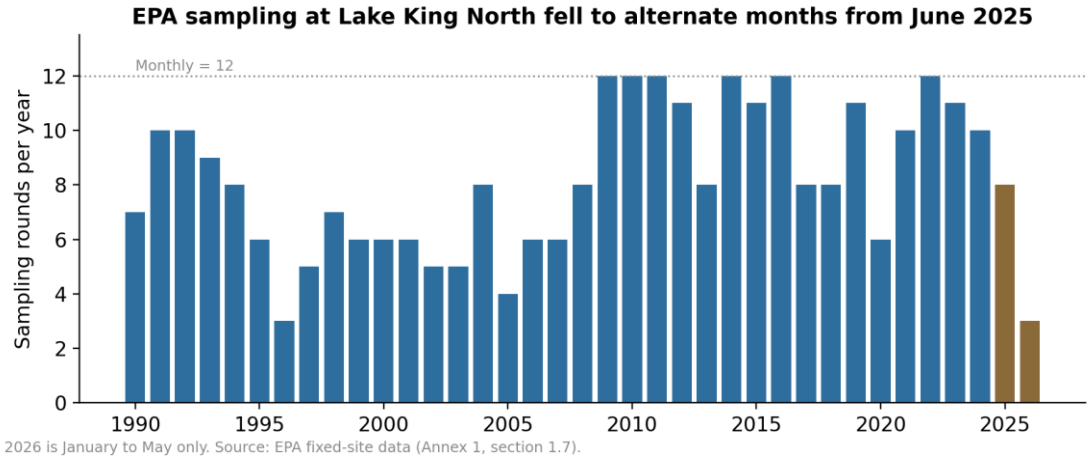
Evidence: [95] to [104]; [105]; [122], [123], [124]; Table 4.

Point 14. No lake monitoring program will detect the predicted salinity increase. After allowing for river inflow, the smallest change in Lake Wellington's salinity that monitoring could reliably detect over two twelve-year periods is 1.7 to 1.9 PSU, two and a half to three times Technical Report D's average increment. EPA's routine sampling was cut to alternate months in June 2025, and Lake Wellington's bottom water has not been sampled since 2018. The EES's downstream triggers are undefined, and the draft DMRP stops monitoring lake level and stream flows at closure. A salinity increase that lake monitoring cannot detect will never trigger a response. It is not speculative: the EES's own models predict it, and it is measurable in the flows that cause it, so protection has to act on the flows, through rules fixed before approval. FoGL also seeks better lake sampling, with nitrogen measured in every round ([200], [223](a)).



Two 12-year periods compared at 80 per cent power. Source: Annex 1, section 1.8.

Figure F. The project's increment against what lake monitoring can detect (Annex 1, section 1.8).



2026 is January to May only. Source: EPA fixed-site data (Annex 1, section 1.7).

Figure G. EPA sampling at Lake King North, 1990 to 2026 (Annex 1, section 1.7).

Evidence: [198] to [201]; [223](a); Annex 1, sections 1.7 and 1.8.

C. Listed threatened species (ss 18, 18A)

Point 15. The bittern and the other flow-dependent wetland species: critical habitat on site and downstream, assessed properly in neither place. The Australasian Bittern is Endangered, and the Minister must not approve inconsistently with its recovery plan (s 139). The plan rates reduced wetland availability from changed water regimes a Very High risk, and asks that new dams be mindful of it, "particularly during extended drought conditions"; the take has no drought trigger. The Growling Grass Frog's and the painted snipe's recovery plans bind the decision too, and the frog's guidelines count "any changes to timing, duration or frequency of flood events" that lower habitat quality as a significant impact ([131]). The EES accepts that the lower Latrobe wetlands are the bittern's critical habitat, then disposes of them in one sentence. On site, it applies a narrower test of critical habitat than the Commonwealth's advice. It relies on alternative habitat the project degrades: the Morwell River wetland's level falls by up to 120 mm, and its contingency is to control the reed growth the EES says would benefit the bittern. There was no targeted survey and no cumulative assessment.

Evidence: [126], [127], [128], [129]; [131]; [132], [133], [138]; Table 8.

Point 16. The Grayling's important population, and the Dwarf Galaxias. The test for a vulnerable species turns on an important population, and the Grayling's recovery plan lists the lower Latrobe among the important rivers for it. The Commonwealth's advice says Grayling "will not release eggs if no, or less than expected, river flow occurs during their expected spawning season"; most spawn only once; the first breeding recorded in the Latrobe followed an environmental water release in 2015; and modelling finds no sustaining Latrobe population by 2050 or 2070 "due to reduced water flows". The EES assesses the Grayling only for the pit lake and Morwell River water quality. The Dwarf Galaxias, recorded in the Morwell River Wetlands, depends on flood connections the advice calls "critical"; the EES accepts that the connected option "might restrict movement between wetlands".

Evidence: [134], [135]; Table 8; Q22.

D. Listed migratory species (ss 20, 20A)

Point 17. Latham's Snipe on site, and the shorebirds at the Ramsar site. The EES assumes more than 18 snipe use the works area, the Commonwealth's threshold for nationally important habitat, so their habitat is important, then removes most of it: about 16 ha of Tall Marsh, about 19 ha of grassland, the Works Effluent Pond and the Cooling Pond. It relies on "similar habitat available in the surrounding landscape", which is not mapped. The Commonwealth's advice says such habitat "is considered habitat critical to the survival of the species", whose loss "must be avoided". No clearing window in the EES avoids the birds: the snipe is present from August to early March and the bittern breeds from October to February, so only March to July is clear. At the Ramsar site, the listed migratory shorebirds the Commonwealth found at risk in 2023 are not assessed at all, though BirdLife East Gippsland records them at Heart Morass, which has held more than 18 snipe on several occasions. There, drying matters more to them than salinity, and the shorebird guidelines treat "changes to the water regime" as "highly likely to have a significant impact".

Evidence: [130], [131], [140], [141], [142], [143] to [145].

E. Avoidance, mitigation and offsets

Point 18. Avoidance identified and not taken; no offset strategy; the complementary measures fail the 2012 Offsets Policy. The IESC applied the mitigation hierarchy and strongly recommended the unconnected option, and the EES says keeping the reedbeds would avoid impacts on several species; the proponent takes neither. The only offset is 1.0130 General Habitat Units of native vegetation, which can come from anywhere in the region, with no species offset for the four FFG-listed species whose local populations may be lost, and no offset strategy or management plan, though the Scoping Requirements asked for both. Technical Report D's conclusion of no material impact on MNES holds "subject to" two complementary measures: CM1, an offset whose mechanism "has not been explored", and CM2, State commitments for existing shortfalls that have not started. Against the 2012 Policy they are neither like-for-like, additional, timely nor legally secured.

Evidence: D5, [146] to [158].

F. The Victorian levers

Point 19. A capped river take plus manufactured water was never assessed. Every alternative the proponent scored draws on a single dominant source; none combines a river take at the State's cap with manufactured water. The Factory cannot speed the fill, and its water is least available in dry years, so the combined option rests on the river at the cap with stability groundwater, which, on a proportional estimate from the EES's own figures rather than modelling, would fill the void in about 21 years, within the 10 to 35 years the Minister described. Uncertainty of supply was scored against the manufactured option and not against the river. FoGL asks that the option be modelled, including for batter stability and fire risk, rather than adopted on that estimate ([214], item 9).

Evidence: Part F; [185] to [188].

6. Findings sought

These findings go to the information on which acceptability depends, not to the EES process (cl 7); FoGL refers to the draft Declared Mine Rehabilitation Plan (cl 8) only for the obligations the project relies on. Under clause 28, FoGL submits that the Committee should make these findings, by provision:

Provision	The Committee should find that	Evidence
All (cl 28(b))	the EES assesses an increment over a baseline that already contains the take, so the first 20 GL a year is not assessed as an effect of the project	[211]
	information the Scoping Requirements identified as necessary has not been provided: the worst case where mitigation is uncertain, a fill of up to 35 years, cumulative effects with the other two mines, assessment against the current Ramsar plan and limits, surveys for the wetland birds, an offset strategy, and downstream monitoring with thresholds for action	[212]; [158]
A water resource (cl 28(g))	the sustainable-level limb of Guidelines 1.3 has not been applied against the 129 GL a year shortfall; the Tyers below Moondarra has not been assessed as a reach in its own right, though the fast fill cuts its dry-year flow by almost half; and the flow tests cannot detect fewer flow events	[224](a), (b); [61]
A Ramsar wetland (cl 28(g))	there is a real chance of a substantial and measurable change in the site's hydrology and water quality, which the EES has not shown otherwise; the site's fish have not been assessed against the flows and salinity their life cycles depend on; and approval without conditions 1, 4 and 6 would risk a change in ecological character of the kind Australia must report to the Convention (Article 3.2)	[224](c) to (e)
Listed threatened species (cl 28(g))	the bittern, the painted snipe, the Growling Grass Frog, the lower Latrobe Grayling and the Dwarf Galaxias's flood connections have not been assessed against the project's flow effects, though recovery plans that bind the decision rate changed water regimes a Very High risk	[224](f) to (h)
Listed migratory species (cl 28(g))	Latham's Snipe loses important habitat the Commonwealth's advice says must be avoided, and the listed shorebirds are not assessed at the Ramsar site against the drying the take causes	[224](i)
Avoidance, mitigation and offsets (cl 10(d), 28(b), (g))	the connected scenario should not proceed, as the IESC recommended; avoidance was not taken; and the conclusion of no material impact on MNES cannot rest on complementary measures that fail the 2012 Offsets Policy	[213]; [224](j) to (l)
The Victorian levers (cl 28(b), (c), (e))	no licence should be recommended for the above-cap Morwell flood flows unless the Water Act's tests for protecting the environmental water reserve are met; and acceptable outcomes depend on the perpetual obligations being secured, and the take being brought within a Water Act instrument, before approval	[216]; [222], [223](f)

The Commonwealth Minister can impose the controls at [225] as conditions of any EPBC approval (EPBC Act, s 134; cl 28(g)).

7. The conditions FoGL seeks

These are the conditions on which, in FoGL's view, the project could proceed without the Morwell River connection. FoGL asks the Committee to recommend them; the last column names who would give effect to each. Each is set out at [227] to [235], with the Terms of Reference clause it answers at [239].

Most are prescriptive, and the downstream triggers are set on flows rather than lake salinity. The Commonwealth's Outcomes-based Conditions Policy (2016) expects prescriptive conditions where an action "is likely to contribute to cumulative impacts" (p. 9), and allows a condition on "something which directly supports conservation outcomes for the protected matter and is capable of specific measurement" (p. 7): here, the flows. A salinity increase lake monitoring cannot detect is not measurable (Point 14).

No.	Condition	What it does	Detail; who gives effect
1	The take (water resource; Victorian lever)	Caps the Moondarra take at net historic use, 10.3 GL a year. Take above that, up to gross historic use of 14 GL, only under conditions modelled on Loy Yang's: June to November only, and never while a winter or spring fresh is running in the Tyers, at Rosedale or at the Swing Bridge (stopping until the fresh has run the duration the State's 2020 flow study recommends), a Tyers passing flow, no Latrobe Reserve water, no take for filling after 2065, and water priced at full environmental opportunity cost. A drought pause with a defined trigger, the lake held in a level band shown to be safe, and no water for the project in a dry sequence until Moondarra has spilled. The State notes that rehabilitation does not have "the same demands for reliability and continuity as power generation, so there is greater flexibility around when water can be extracted from the system" (Strategy Amendment, p. 16)	[227]; Minister for Water (an instrument for the take) and EPBC approval
2	The connection (water resource; avoidance)	Recommends against the Morwell River interconnection, as the IESC advised, and any licence for above-cap flood flows	[228]; Minister for Water and EPBC approval
3	Environmental water first (water resource)	Delivers the remaining Latrobe and Tyers environmental water returns before any take above the cap	[229]; Minister for Water
4	Downstream triggers (water resource; Ramsar)	Flow and condition triggers at the Tyers below Moondarra, Rosedale, the Swing Bridge, Lake Wellington and the wetlands, set before approval on published measures (the 100 ML/day Tyers summer baseflow, the 3,200 ML/day flow that waters the wetlands, the 130 GL/month flow that flushes Lake Wellington, and the 36 and 60 month drying limits), with graded responses, an independent auditor and annual public reporting, backed by lake sampling at least twice monthly at a consistent state of tide	[230]; the Environmental Management Framework, carried into the DMRP and EPBC approval
5	Top-up (water resource)	Manufactured water from a source shown before approval to be reliable in drought (the Gippsland Water Factory alone is not) as the top-up source, with a secured supply for after 2035, and financial assurance for perpetual top-up, gate operation and monitoring lodged before relinquishment	[231]; Department Head, through the DMRP and post-closure plan
6	Ramsar (Ramsar wetland)	An EPBC condition requiring annual assessment against the current limits of acceptable change, with pre-agreed responses	[232]; EPBC approval

No.	Condition	What it does	Detail; who gives effect
7	Cumulative governance (water resource)	Counts Hazelwood's supply within the reduced Latrobe permissible consumptive volume, so that all three mines fit within the historic average take	[233]; Minister for Water
8	The combined supply (Victorian lever)	Fills at the net-use cap with stability groundwater and any available manufactured water, the option the alternatives analysis never scored, once modelled for stability and fire	[234]; a modification for the Minister for Planning's assessment (cl 28(d))
9	Discharge (water resource)	No discharge except under an Environment Protection Act instrument with numerical limits: the 95 per cent species protection values, and 99 per cent for toxicants that bioaccumulate; limits for nitrogen, phosphorus and chlorophyll-a; the withholding rule and maximum lake level stated before approval	[235]; EPA

Fallback controls. If the Commonwealth approves the project despite FoGL's primary position, FoGL asks that the approval also carry these controls, in addition to conditions 1 to 9 (detail at [236]):

No.	Control	Provision
B1	Survey before clearing: a full season of targeted surveys for the bittern, with acoustic recorders for booming males, and for Latham's Snipe, with habitat mapped by species	Threatened; migratory
B2	Keep the reedbeds wherever the EPA clean-up allows	Threatened; migratory
B3	If the bittern or snipe impact is significant, a like-for-like, actively managed reedbed wetland offset, secured on title before clearing	Threatened; migratory
B4	Existing EPBC and net gain offsets on the land identified and protected	Threatened
B5	No reed removal or levee lowering at the Morwell River Southern Wetland without assessment	Threatened (bittern)
B6	Groundwater and tree condition monitored at the retained Strzelecki Gums	Threatened
B7	No reliance on CM1 and CM2; no flood water until CM1 is designed and secured	Water resource; Ramsar
B8	Any restoration contribution charge only on top of direct offsets	All
B9	An independent ecological audit, and all monitoring data published	All
B10	Financial assurance for offsets and monitoring through relinquishment and after	All
B11	If connected, no flood take from February to May, or when it would cut a fresh below the 2020 flow recommendation	Threatened (Grayling); Ramsar
B12	Estuary salinity and salt-wedge triggers from October to December, and for flows above 4,100 ML/day	Ramsar (native fish)
B13	One clearing window, March to July	Threatened; migratory

For the Victorian approvals, FoGL seeks a recalculated native vegetation offset, species offsets for the four FFG-listed species, translocation success criteria, one clearing-window rule and monitoring beyond the works (V1 to V5, [237]).

8. Before the hearing

Each item goes to an impact the Commonwealth Minister must consider before deciding (EPBC Act, ss 82, 136(1)(a)), including indirect consequences downstream (s 527E) and, for the water trigger, impact "when considered with other developments" (s 528). The Scoping Requirements asked the EES for "key information that will be required to support statutory decision-making" (p. 9); this is that information. FoGL's letter of 11 November 2026 asks the Committee to obtain six things before the

Hearing, each drawing on existing material or models, with reasons for any that cannot be provided ([214]):

1. the full take: one further run with no project take, under the medium and dry climates, on the State's wetland flow measures and as flow events per year (the project as referred, [24]), and the dry climate continued past 2065 as a stress test ([57]);
2. a cumulative scenario for all three mines against current conditions, with Loy Yang and Yallourn at their own figures (s 528; Significant Impact Guidelines 1.3, pp. 9, 14);
3. survey data for the bittern and Latham's Snipe, or a statement that there is none; the habitat removed for each listed species; and the flow changes assessed for the Grayling, the bittern, the painted snipe and the Growling Grass Frog (Scoping Requirements, p. 20; s 139);
4. the calculation behind "less than six months", on which the EES's Ramsar conclusion rests, and the basis of the 7.2 per cent fall in Lake Wellington's inflow (ss 16, 17B);
5. the supply agreement's clause on reducing or suspending supply, the EES's only measure on the take, whether the take sits within Gippsland Water's 62 GL entitlement, and annual supply to the site since 2017 (cl 9(a)); and
6. an interrupted fill, year by year, on Gippsland Water's reliability figures and the licensed groundwater volume, with GHD's 2024 stability study (Scoping Requirements: up to 35 years), and a stress test with the three driest Millennium Drought years back-to-back ([57]).

Where information is not provided, the uncertainty it leaves is no reason to defer the conditions in section 7 (s 391), and FoGL asks the Committee to recommend that the Commonwealth Minister consider requesting it under s 132 before deciding, and publish any proposed decision and conditions for comment (s 131A). The letter also seeks the proponent's position on the connected scenario, a response to Annex 1, agency invitations, a site inspection and use of Part I's questions.

9. About FoGL

Friends of the Gippsland Lakes, Parks and Reserves Inc. (A0047246N – founded in 2005) made submissions on the draft Declared Mine Rehabilitation Plan in 2025 and is an active member group of the Concerned Waterways Alliance (CWA) and Coastal Wetlands and Waterways Alliance (CWWA).

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