

**LEGAL CONSIDERATIONS RELATING TO THE PROPOSED DECISION UNDER
PART 9 OF THE EPBC ACT**

General Considerations

Various matters must be considered when deciding whether or not to approve the taking of an action and what conditions to attach to an approval.

Mandatory Considerations

In accordance with section 136 the Minister must consider the following, so far as they are not inconsistent with any other requirement of Subdivision B, Division 1 of Part 9 of the EPBC Act:

- (a) matters relevant to any matter protected by the controlling provisions;
 - See Recommendations Report at Attachment B.
- (b) economic and social matters.
 - See Recommendations Report at Attachment B.

Factors to be taken into account

In considering those matters, the Minister must take into account:

- (a) the principles of ecologically sustainable development (set out in section 3A of the EPBC Act);
 - See Recommendations Report at Attachment B.
- (b) the Recommendations Report relating to the action;
 - See Attachment B
- (c) if the action was assessed under Division 5 or 6 of Part 8 – the report or statement about the action finalised by the designated proponent;
 - N/A
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action – the report of the commissioners;
 - N/A
- (e) any other information the Minister has on the relevant impacts of the action; and
 - N/A
- (f) any relevant comments given to the Minister by another Minister in accordance with an invitation under section 131.
 - N/A at this stage

Person's environmental history

- See Recommendations Report at Attachment B.

Minister not to consider other matters

In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by Subdivision B, Division 1, Part 9 of the EPBC Act to consider.

Considerations in deciding on conditions

In accordance with section 134(4) the Minister must consider the following, so far as they are not inconsistent with any other requirement of Subdivision B, Division 1 of Part 9 of the EPBC Act:

- (a) any relevant conditions that have been or the Minister considers are likely to be imposed under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action.
 - Conditions that are likely to be imposed under State law are outlined in *Assessment of the Gunns Limited Bell Bay Pulp Mill against the Environmental Emissions Limit Guidelines, Sweco Pic June 2007* is provided as an attachment to the brief.
- (b) information provided by the person proposing to take the action or by the designated proponent of the action
 - See the Preliminary Documentation and Response to Submissions at Attachment C.
- (c) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition.
 - The proponent will be consulted to ensure the cost-effectiveness of the measures proposed.

Requirements for decisions about listed threatened species

These proposed approval conditions are seen as appropriate for minimising impacts on listed threatened species. If the action is taken in accordance with the recommended conditions we consider that it will not be inconsistent with:

- (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
- (b) a recovery plan or threat abatement plan that applies to the relevant species.

See Recommendations Report at Attachment B.

Requirements for decisions about migratory species

Provided the proponent complies with the proposed approval conditions, we consider that the action will have no unacceptable adverse impact on listed migratory species and the approval will therefore not be inconsistent with Australia's obligations under:

- (i) the Bonn Convention,
- (ii) CAMBA,
- (iii) JAMBA.

See Recommendations Report at Attachment B.

Requirement to consider the precautionary principle in making decisions under section 391

Provided the proponent complies with the proposed approval conditions, we consider that the action will not have unacceptable impacts on the controlling provisions.