

Statement of Reasons for approval of Modules F, G, H and K of the Environmental Impact Management Plan under conditions of approval under the *Environment Protection and Biodiversity Conservation Act 1999*

I, PETER ROBERT GARRETT, Minister for the Environment, Heritage and the Arts, provide the following statement of reasons for my decision made on 5 January 2009, under conditions attached to the approval granted under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (being the approval of the proposed action to construct and operate a bleached Kraft pulp mill at Bell Bay, Tasmania, and associated infrastructure (EPBC 2007/3385)), to approve Modules F, G, H and K of the Environmental Impact Management Plan (EIMP).

Background

1. The proposed action is to construct and operate a bleached Kraft pulp mill and associated infrastructure, at Bell Bay, Tasmania.
2. On 4 October 2007 the then Minister for the Environment and Water Resources approved the proposed action by Gunns Ltd.
3. The approval has effect for the following controlling provisions in Division 1 of Part 3 of the EPBC Act:
 - Listed threatened species and communities (sections 18 and 18A)
 - Listed migratory species (sections 20 and 20A)
 - Commonwealth marine areas (sections 23 and 24A).
4. Forty-eight conditions were attached to the approval, including a requirement under condition 2 for Gunns Ltd to develop and submit an EIMP for my approval.
5. Condition 7 of the approval recognises that the EIMP may be submitted in sections.
6. Gunns submitted a final draft of Modules F, G, H and K for my approval on 1 December 2008.
7. On 10 December 2008 I received a brief from my Department recommending that I approve Modules F, G, H and K of the EIMP.
8. I approved Modules F, G, H and K of the EIMP on 5 January 2009.

Evidence or other material on which my findings were based

9. The evidence or other material upon which my findings were based is listed below:
 - A brief from my Department, dated 10 December 2008, presenting drafts of Modules F, G, H and K of the Environmental Impact Management Plan for my consideration, which included the following attachments:

- Modules F, G, H and K
- Advice from the Independent Expert Group relating to my decisions to approve the modules
- Assessment by the Department of whether the modules satisfied the relevant conditions
- Shore Crossing Options document.

Findings on material questions of fact

10. Modules F, G, H and K of the EIMP contained environmental commitments by Gunns in relation to the project.

11. Modules F, G, H and K of the EIMP described the activities to be undertaken in the construction of the water and effluent pipelines and the ocean outfall.

12. The following conditions are relevant to Modules F, G, H and K.

Condition 6: The EIMP must be developed in consultation with an independent expert group (“the Independent Expert Group”), appointed by the Minister, drawn from leading national and international scientists with relevant expertise, to advise the Minister and the Department as required and assist in the design, implementation and approval of the EIMP.

13. Attached to the brief recommending my approval of Modules F, G, H and K of the EIMP was advice from the IEG recommending I approve these modules. Modules F, G, H and K had been developed in consultation with the IEG. The IEG had assisted in the design and approval of Modules F, G, H and K of the EIMP. Accordingly, Modules F, G, H and K of the EIMP satisfied condition 6.

Condition 14: To minimise impacts on the Wedge-tailed Eagle – Tasmanian (Aquila audax fleayi) Gunns Limited must put in place and implement, as part of the EIMP, measures including:

- a) *Not carrying out construction during the breeding season within the exclusion buffers of 500 m or a 1 km line of sight from any active nest.*
- b) *If a new active nest is found within 500 m or a 1 km line of sight of clearing or construction activities, construction during the breeding season within the exclusion buffers must cease immediately. Gunns Limited must immediately notify the Department if a new active nest is found.*
- c) *The breeding season buffer must be applied from 1 August to 31 January inclusive.*

14. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 14:

Information identifying that there were no wedge tailed eagle nests within the exclusion buffers of 500 m or a 1 km line of sight from any construction on the pipeline.

- Measures to ensure that if a new active nest is found within 500 m or a 1 km line of sight of clearing or construction activities, construction within the specified buffers would be ceased during the breeding season for this species.
- Measures to notify my Department should a new active nest be found.
- Information identifying that the specified breeding season buffer must be applied from 1 August to 31 January each year.

Condition 19: To minimise impacts during pipeline construction on the Tasmanian Devil, Spot-tailed quoll and Eastern Barred Bandicoot, and as part of the EIMP, Gunns Limited must:

- a) Install trench ramps and trench plugs in open trenches to enable fauna to escape from the pipeline trench.*
- b) Ensure that a suitably qualified person, agreed to by the Department, checks all open trenches for trapped fauna each morning. Surviving fauna are to be relocated to suitable habitat by an ecologist trained in fauna handling procedures. Records must be kept of all live and dead fauna, including amphibians, removed from the trench.*
- c) These records must be provided to the Department within three months of commencement of trench construction and progressively each month until all trenches have been filled.*
- d) If at any time the number of fauna found in the trenches, reaches or exceeds the trigger levels defined in the EIMP, then response strategies must be implemented within the stipulated timeframes.*

15. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 19:

- A commitment to install trench ramps and plugs to enable fauna to escape from the pipeline trench.
- A commitment to checking the trenches for trapped fauna each morning before work commences.
- A commitment that the person to check the trenches will be approved by my Department.
- A commitment to having a trained person remove any trapped fauna and relocate them to suitable habitat. A commitment to recording all dead and live fauna found in the trenches and reporting to my Department within 3 months of commencement of trench construction.

- A trigger level of one animal trapped in trenches to review their preventative measures.
- A commitment to reviewing the preventative measures within 12 hours of an animal being trapped and enhancing the preventative measures within 24 hours.

Condition 20: Disturbance of vegetation at the site must be confined to the construction corridors of the pipelines and the pulp mill site and associated infrastructure and in accordance with the EIMP, including:

...

- b) All areas to be cleared must be clearly marked to prevent damage to listed species outside the project area;*
- c)...Access to project areas must be via established roads or access tracks located on areas that have been subject to flora and fauna surveys as required in the EIMP and described in the preliminary documentation.*

16. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 20:

- A commitment that all areas to be cleared will be clearly marked to prevent damage to listed species outside the project area.
- A commitment that access to project areas will be via established roads or access tracks located on areas that have been subject to flora and fauna surveys.

Condition 21: To minimise impacts on potentially suitable habitat for the Green and Golden Bell Frog (Litoria raniformis) and to manage risks associated with the amphibian Chytrid fungus, and as part of the EIMP, Gunns Limited must:

-b) Avoid impact on areas of identified habitat through micro-siting of the pipeline route.*

17. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 21:

- A commitment that micro-siting the pipeline will be undertaken to avoid any areas of potential habitat for this species.
- Measures to ensure that the amphibian Chytrid fungus is not spread to areas of potential habitat of the Green and Golden Bell Frog.
- A commitment to micro-site around any additional Green and Golden Bell frog habitat should its presence become apparent within the construction corridor.

Condition 22: All areas of the pipeline corridors, with the exception of access tracks and roads, are to be progressively rehabilitated as each 10 km of pipeline is constructed and revegetated with endemic species sourced from local seed stocks with the aim of providing habitat for listed threatened species in the area.

- a) *Rehabilitation activities and timeframes must be approved as part of the EIMP.*
- b) *Rehabilitation performance must be reported in the EIMP annual report.*

18. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 22:

- Details of rehabilitation activities and timeframes.
- A commitment to revegetate using species commensurate with the surrounding vegetation.
- A commitment that the pipeline corridor will be rehabilitated with seeds sourced from local stocks.
- A commitment that the pipeline corridor will be rehabilitated progressively as each ten kilometre section of the pipeline is constructed.
- A commitment to report on the effectiveness of rehabilitation in the EIMP annual report to my Department.

*Condition 24: To minimise impacts on the listed *Xanthorrhoea aff. bracteata* species, as part of the EIMP, Gunns Limited must:*

- a) *Not commence construction of the onshore component of the effluent pipeline until such time as the relevant pre-construction and construction requirements of the EIMP have been approved by the Minister;*
- b) *Use an ecologist, agreed to by the Department, to conduct surveys and mark out the location of the *X. aff. bracteata* on the effluent pipeline route.*
- c) *Protect this site from disturbance, through micro-siting of the pipeline.*
- d) *Completely prevent disturbance of the habitat of the species by boring under the dune where the *X. aff. bracteata* is located.*
- e) *Develop and implement management procedures to minimise the risk of spreading the fungus *Phytophthora cinnamomi*.*
- f) *Ensure all access tracks to this site are located to avoid all localities of *X. aff. bracteata* species.*
- g) *Report on performance of effectiveness of these mitigation measures in the EIMP annual report.*

19. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 24:

- Information that an ecologist approved by my Department had surveyed for *Xanthorrhoea bracteata*.

- Map 5 of Appendix C which marked the location of *Xanthorrhoea bracteata*.
- A statement that this was the only occurrence of *Xanthorrhoea bracteata* in the area, and the plants on the dunes initially thought to be *Xanthorrhoea bracteata* were re-surveyed and found to be the common species *Xanthorrhoea australis*.
- There is no evidence of *Xanthorrhoea bracteata* present on the dune area of the shore crossing, therefore boring under the dune to avoid *Xanthorrhoea bracteata* is no longer required.
- Measures to minimise the risk of spreading the fungus *Phytophthora cinnamomi*.
- A commitment to marking the area that does contain *Xanthorrhoea bracteata* with flagging tape and ensuring that no personnel, vehicles or equipment enter the area.
- A commitment that the access roads would avoid locations of *Xanthorrhoea bracteata*.
- A commitment that the effectiveness of mitigation measures will be reported in the EIMP annual report to my Department.

Condition 25: To minimise the risk of non-detection of listed flora, Gunns Limited must:

- a) Conduct pre-construction surveys for *Prasophyllum secutum*, *Caladenia caudata*, *Epacris exserta* and *Glycine latrobeana* within the area of potential habitat for these species at appropriate times.*
- b) Conduct these surveys at all construction sites associated with the pulp mill and at 'comparative sites', where populations are known to occur.*
- c) Record both positive and negative search outcomes. An estimate should then be provided of the confidence in detection of these species. Methods for this estimation should follow those described by Keith (2000)5.*
- d) If populations are detected at construction sites associated with the action, then their population size and area of occupancy should be measured as described by Keith (2000) and the management procedures included in the EIMP.*
- e) Disturbance of vegetation at the site must be confined to the construction corridors of the pipelines and the pulp mill site and associated infrastructure. All areas to be cleared must be clearly marked to prevent damage to listed species outside the project area. Access to project areas must be via established roads or access tracks located on areas that have been subject to surveys.*

20. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 25:

- Information that an ecologist, approved by my Department, surveyed for the listed orchid species required by this condition, and the findings of this survey are submitted at Appendix E of these modules.
- Measures to be implemented if any of these listed species are located during construction of the pipelines.
- A commitment to flagging all construction areas to ensure that vegetation outside the footprint is not disturbed.
- A commitment to confining vehicular access to existing roads and tracks that have been subject to flora surveys.

Condition 27: To minimise impacts during onshore effluent pipeline and wharf construction on listed threatened and migratory birds, Gunns Limited must, in accordance with the EIMP:

- a) Carry out a pre-construction survey of the shoreline for breeding shorebirds for a distance of 200 m on either side of the onshore effluent pipeline construction corridor.*
- b) In the event that nests are located within this area, they will be clearly marked and construction activities managed in accordance with the agreed requirements of the EIMP.*
- c) Restore the beach profile to its original shape within two months of completion of the onshore effluent pipeline construction;*
- d) Within two months of completion of the onshore effluent pipeline construction commence rehabilitation of vegetation in the impacted areas of the pipeline construction corridor in accordance with the requirements of the EIMP*
- e) Report on performance of effectiveness of these mitigation measures in the EIMP annual report.*

21. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 27:

- A commitment that a survey of the shoreline for breeding shorebirds will be conducted one week before construction activities commence in the area.
- A commitment that if any breeding shore birds were found within the construction corridor, construction would be delayed until after breeding has finished.
- A commitment to regularly monitor for shore birds and if any are found, the nest will be marked from a distance that will not disturb the birds and the area avoided by construction vehicles and personnel.
- A commitment to restoring the beach profile to its original shape within 2 months of construction being completed in the area.

- A commitment to commencing rehabilitation of the pipeline progressively as construction activities are completed and within 2 months of completion of a particular area.
- A commitment to reporting on the effectiveness of the mitigation measures in the EIMP annual report to my Department.

*Condition 28: To minimise impacts during onshore effluent pipeline and wharf construction on the White-bellied Sea-eagle (*Haliaeetus leucogaster*) Gunns Limited must put in place and implement, as part of the EIMP, measures including:*

- a) Conducting pre-construction surveys, by a suitably qualified person, agreed to by the Department;*
- b) Not carrying out construction during the breeding season within the exclusion buffers of 500 m or a 1 km line of sight from any recorded nest except in accordance with this condition.*
- c) If a new active nest is found within 500 m or a 1 km line of sight of clearing or construction activities, construction within exclusion buffers during the breeding season must cease immediately.*
- d) Gunns Limited must immediately notify the Department if a new active nest is found.*
- e) Applying a breeding season buffer from 1 August to 31 January inclusive.*

22. Modules F, G, H and K of the EIMP contained the following which satisfied the requirements of condition 28:

- Information that a suitably qualified person, agreed to by my Department, had surveyed for White Bellied Sea Eagles and that no nests were located. (This survey was submitted with the previously approved Module B.)
- A commitment to notify my Department if any new, previously unrecorded eagle nests are found during clearing or construction activities.
- A commitment to maintaining the required buffer zones around the nest should a new one be found.

Condition 30: To minimise impacts on listed threatened and migratory marine species during construction of the wharf and the ocean outfall, Gunns Limited must put in place and implement, as part of the EIMP, measures, including:

- a) Prior to wharf or ocean outfall construction, a desktop study must be conducted by a suitably qualified person, agreed to by the Department, to estimate the likely upper limits of the sound impacts at various distances from the relevant construction site.*
- ...*
- c) If necessary, bubble curtains or other agreed response strategies must be implemented if trigger levels in the EIMP are exceeded.*
- d) No night construction or under-water blasting is permitted.*
- e) A suitably qualified person, agreed to by the Department, must visually monitor for marine mammals within the areas defined in the EIMP;*

f) *Radius zones as follows must be implemented:*


- i. A 2 km radius alert zone for whales, with a 1 km radius safety zone, within which noise-generating activities will be ceased if a whale approaches; and*
- ii. A 1 km radius alert zone for seals and dolphins with a 0.5 km radius safety zone, within which noise-generating activities will cease if a seal or dolphin approaches.*

23. Modules F, G, H and K of the EIMP contained the following which satisfied the relevant requirements of condition 30:

- A desktop study into the likely underwater noises from construction activities, undertaken by a suitably qualified person agreed to by my Department.
- The findings of this study and the likely upper limits of the sound impacts on dolphins, seals and whales at various distances from the ocean outfall construction site.
- A commitment to monitor noise levels at various distances, and low and high tide to validate the findings of the study.
- A commitment to extending the safety zones if necessary to ensure that activities that cause underwater noise will cease if a marine mammal is within a distance where their hearing could be affected.
- A commitment to not undertake night construction or underwater blasting.
- A commitment that marine mammal observers will be solely dedicated to observing marine mammals at all times during any activity that generates underwater noise.
- A commitment that the marine mammal observers will be people agreed to by the Department.
- A commitment that when construction activities that generate underwater noise are occurring at the wharf, regular visual surveillance at ten to fifteen minute intervals will be conducted within the alert zones.
- A commitment that underwater noise generating activities will cease if a whale approaches within the 1km radius safety zone.
- A commitment that underwater noise generating activities will cease if a seal or dolphin approaches the 0.5km radius safety zone.

Reasons for Decision

In light of my findings above, I was satisfied that Modules F, G, H and K of the EIMP met the requirements specified in the relevant conditions.



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PETER ROBERT GARRETT
18/12/2009

Legislation

Section 133 of the EPBC Act relevantly provides:

Approval

- (1) After receiving an Assessment Report relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.

Section 134 of the EPBC Act provides:

Generally

- (1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
 - (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

- (2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
 - (a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or
 - (b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

- (3) The conditions that may be attached to an approval include:
 - (aa) conditions requiring specified activities to be undertaken for:
 - (i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and
 - (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;