

**Statement of Reasons for approval of Modules I and J 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 I and J 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 are 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 I and J for my approval on 20 October 2008.
7. Modules I and J of the EIMP described the construction of the solid waste disposal facility and the local reservoir, located adjacent to the pulp mill construction site and separated by the East Tamar Highway.
8. On 20 October 2008 I received a brief from my Department recommending that I approve Modules I and J of the EIMP.
9. I approved Modules I and J of the EIMP on 5 January 2009.

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

10. The evidence or other material upon which my findings were based is listed below:

- A brief from the Department of the Environment, Water, Heritage and the Arts, dated 20 October 2008, presenting a final draft of Modules I and J of the EIMP for my consideration, which included the following relevant attachments:
  - Modules I and J of the EIMP
  - Advice to me from the Independent Expert Group relating to the modules
  - Assessment by the Department of whether the modules satisfied the relevant conditions.

### Findings on material questions of fact

11. Modules I and J of the EIMP describes the activities to be undertaken relating to the construction of the solid waste disposal facility and local reservoir site.
12. Modules I and J of the EIMP also contain environmental commitments by Gunns Ltd in relation to the project.
13. The following conditions are relevant to Modules I and J.

*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.*

14. Attached to the brief of 20 October 2008 recommending my approval of the Modules I and J was advice from the IEG recommending I approve these modules. Modules I and J had been developed in consultation with the IEG and the IEG had assisted in their design and approval. Accordingly the requirements of condition 6 had been satisfied.

*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.*

15. Modules I and J of the EIMP contain the following which satisfied the requirements of condition 14:

- Measures to prevent the carrying out of construction during the breeding season within the exclusion buffers of 500 m or within a 1 km line of sight from any active nest.
- Information that the only known nest of the Wedge-tailed Eagle – Tasmanian (*Aquila audax fleayi*) in the vicinity of the solid waste disposal facility and local reservoir was outside both buffer distances specified by the approval conditions.
- Measures to ensure that if a new active nest was found within 500 m or within 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 ensure that my Department would be notified should a new active nest be found.
- That the specified breeding season buffer must be applied from 1 August to 31 January inclusive.

*Condition 17: To protect potential habitat for the listed threatened species: Tasmanian Devil; Spot-tailed Quoll – Tasmanian population; Eastern Barred Bandicoot – Tasmanian and, as part of the EIMP, Gunns Limited must:*

- a) Within 12 months of the date of this approval, develop in the EIMP management strategies to establish a network of reserves totalling at least 150 ha within the Bell Bay pulp mill site;*
- b) The EIMP must include details of the reserves at the site including a map, description of the flora and fauna, connectivity and mechanisms for long-term protection, conservation and management.*

16. Modules I and J of the EIMP contained the following which relevantly satisfied the requirements of condition 17:

- Specification that part of the area set aside for the 150ha reserve on the pulp mill site will be in proximity to the solid waste disposal facility and local reservoir site. (Further detail of this reserve network was included in Module O of the EIMP to further address this condition.)

*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:*

- a) *No disturbance must occur until such time as the relevant pre-construction and construction requirements of the EIMP have been approved by the Minister;*
- 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.*

17. Modules I and J of the EIMP contained the following which satisfied the requirements of condition 20:

- Measures to delineate all construction areas, by providing for inspections of the project footprint and identification of all construction areas with flagging tape.
- A measure for all construction activities and materials to remain within the construction areas.
- A measure to ensure that vehicle access to project areas would be confined to existing roads and tracks that had been subject to flora and fauna surveys, and a requirement that permanent access tracks located in native vegetation areas must be as narrow as practicable in order to minimise the clearance of native vegetation.

*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.*

- f) *Access to project areas must be via established roads or access tracks located on areas that have been subject to surveys.*

18. Modules I and J of the EIMP contained the following which relevantly satisfied the requirements of condition 25 (other elements of this condition being addressed in Module B (Appendix I, report 2), and Module FGHK):

- Information that two individuals of the *Caladenia caudata* species were located adjacent to the local reservoir site.
- A report (in Appendix C of Modules I and J) prepared by a qualified person which provided background information on the conservation and reservation status of *Caladenia caudata* in Tasmania with commentary on the significance of the population adjacent to the local reservoir site.
- A commitment that construction will be confined within the construction footprint.
- Information that the proposed access road route has been modified since the initial surveys were undertaken, and that a new access road route was surveyed for *Prasophyllum secutum* and *Caladenia caudata* in October 2008 and a supplementary survey report submitted to my Department.

*Condition 26: To manage the risks to listed threatened species associated with roadkill, Gunns Limited must, in accordance with the EIMP:*

- a) Immediately following the date of this approval, establish baseline monitoring of roadkill along the East Tamar highway and other major access routes for construction.*
- b) Monitor roadkill and implement response strategies, as necessary, in accordance with the EIMP if the number of road killed mammals exceeds the trigger levels in the EIMP.*

19. Modules I and J of the EIMP contain the following which satisfy the requirements of condition 26:

- Adoption of a trigger level referred to in condition 26(b) of 'zero'.
- Commitment to adopt upon commencement of construction measures relevant to the solid waste disposal facility and local reservoir access road. These measures include:
  - Speed restrictions;
  - Monitoring the access road for roadkill and removal of carcasses;
  - Worker traffic minimisation measures;

- Bus transport measures;
- Requirements for heavy vehicle construction traffic to avoid daylight hours;
- Site inductions to inform workers of roadkill risks; and
- A traffic counter to be installed on the access road.

**Reasons for Decision**

In light of my findings above, I was satisfied that Modules I and J met the requirements specified in the relevant conditions. I therefore decided on 5 January 2009 to approve Modules I and J of the EIMP.



PETER ROBERT GARRETT  
/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;