

**Statement of Reasons for the decision to vary Gunns Limited's conditions of approval for the Bell Bay Pulp Mill Project 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 of 5 January 2009, under section 143(1)(c)(i) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to vary the maps at Schedule 1, under condition 1, of the approval decision for the proposed action by Gunns Limited to construct and operate a bleached Kraft pulp Mill at Bell Bay, Tasmania, and associated infrastructure (EPBC 2007/3385).

**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 Limited.
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.
5. Condition 1 of the approval states that the action shall be as per the site maps at Schedule 1.
6. In May 2008 Gunns informed my Department that they proposed to vary the pipeline route from that specified in Schedule 1. On 4 August 2008, my Department wrote to Gunns informing them that if they wished to vary the pipeline route they would need to request a variation to the approval conditions to ensure that the maps provided at Schedule 1 accurately depict the pipeline corridor and mill footprint.
7. On 21 August 2008, I received correspondence from Gunns requesting that I give consideration to vary the conditions of approval by replacing the maps at Schedule 1 of the approval decision with new maps showing changes to the pipeline and mill footprint.
8. On 17 October 2008, my Department provided a brief for my consideration regarding approval of the requested variation.
9. On 5 January 2009 I agreed to the proposed variation and wrote to Gunns Ltd to, among other things, advise of that decision and provide Gunns with a copy of the instrument of variation. My Department also published the instrument of variation on the public notices page of the departmental website on 9 January 2009, and in the Commonwealth Notices Gazette on 14 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 dated 17 October 2008 from my Department, incorporating advice from the IEG and including the following attachments:
  - A letter from Mr Calton Frame, Gunns Limited, of 21 August 2008 to me requesting I give consideration to varying the maps at Schedule 1 of the conditions of approval;
  - A summary of the pipeline deviations and impacts on landholders;
  - A draft instrument of variation; and
  - Maps of the proposed deviations.

### Findings on material questions of fact

11. The following were my findings on material questions of fact, on which my decision was based.

#### Pipeline corridors

12. The letter of 21 August 2008 from Mr Calton Frame requested revisions to the approved pipeline routes.

13. The request specifically identified five areas where the originally approved route could not be taken, and identified the reasons why each deviation was necessary, in the following terms:

**Dilston Bypass** – Subsequent to the approval, the new Dilston Bypass project has commenced. The bypass creates an additional linear corridor across private land, and at landowner request the pipeline route has been adjusted to run adjacent to the bypass corridor.

**Egg Island Creek** – The landholder on the original route has not agreed to the pipeline route running through their property requiring Gunns to deviate the route onto a property they own.

**Bell Bay Power Station** – Subsequent to the approval the Alinta power station has been built over the pipeline route requiring a deviation of the route around the power station.

**George Town** - After earlier agreement with the George Town Council, the council is now requiring that the pipeline route be in a corridor further to the east of the town so as not to impede town development. Both options are still provided for in the revised maps.

**Shore Crossing** - Subsequent to the approval the owners of Basslink has required Gunns to cross the high voltage cable above-ground rather than a tunnel underneath it. This necessitates the relocation of pipe stringing infrastructure associated with construction of the ocean outfall and requires a variation to the pipeline corridor.

14. The letter of 21 August 2008 from Mr Calton Frame stated that the pipeline deviations had been subjected to ecological surveys and on this basis none of the deviations would cause any significant impacts on matters of national environmental significance.
15. The IEG considered the proposed revised pipeline route at its meeting on 29 August 2008 and noted no objections to the pipeline route as proposed.
16. My Department informed me of the IEG findings in the brief to me of 17 October and noted that the IEG had reported no scientific issues of concern with the revised route.
17. Based on the information presented by the Department in consultation with the IEG, the variations would not adversely impact on matters of national environmental significance.
18. Based on information in my Department's brief of 17 October 2008, the proposed variations were of a minor, routine and administrative nature.

### **Pulp mill construction footprint**

19. As outlined in the letter of 21 August 2008 from Mr Calton Frame, Gunns also proposed changes to the pulp mill footprint relative to that shown in the originally approved Schedule 1.
20. Gunns Limited submitted a letter on 3 September 2008 to me, providing a further amended map of the proposed pulp mill site construction footprint.
21. The letter of 21 August 2008 from Mr Calton Frame requested that I consider varying the conditions of approval by varying the maps at Schedule 1 such that the maps at Schedule 1 would provide for the proposed changes in the pulp mill footprint.
22. The letter of 21 August from Mr Calton Frame stated that the proposed changes to the pulp mill footprint were surveyed for Commonwealth listed flora species.
23. Based on the information presented by the Department in consultation with the IEG the variations to the pulp mill footprint would not adversely impact on matters of national environmental significance.

24. Based on the information supplied by Gunns Limited, varying the maps at Schedule 1 to more accurately reflect the proposed pulp mill (and associated infrastructure) construction footprint will more accurately describe the proposed action.
25. Based on information in my Department's brief of 17 October 2008, the proposed variations were of a minor, routine and administrative nature.

**Reasons for Decision**

In light of my findings above, I am satisfied that the relevant conditions attached to the approval, after the variation to the maps at Schedule 1 of the conditions, are necessary to protect the matters protected by the provisions of Part 3 of the EPBC Act for which the approval has effect.



PETER GARRETT  
18/10/2009

## 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;

Section 143 of the EPBC Act relevantly provides:

#### Variation of conditions attached to approval

- (1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134 (1A)) attached to an approval under this Part of an action if:
- (a) any condition attached to the approval has been contravened;
  - or
  - (b) both of the following conditions are satisfied:
    - (i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
    - (ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
  - (ba) all of the following conditions are satisfied:
    - (i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
    - (ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;
    - (iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
  - (c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:
    - (i) protecting a matter protected by any provision of Part 3 for which the approval has effect: 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 has been, will be or is likely to be caused by the action).
- (2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of part 3 for which the approval has effect.
- (3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to:
- (a) the person's history in relation to environmental matters; and
  - (b) if the person is a body corporate - the history of its executive officers in relation to environmental matters; and
  - (c) if the person is body corporate that is a subsidiary of another body or company (the **parent body**) - the history in relation to environmental matters of the parent body and its executive.
- (4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the holder of the approval; and
  - (b) publish the instrument in accordance with the regulations.

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

- (6) However, the Minister must not publish so much of the instrument as:
- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; or
  - (b) the Minister believes it is in the national interest not to publish.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.