

Statement of Reasons for approval of Module C1 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 Module C1 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 Module C1 for my approval on 20 October 2008.
7. Module C1 of the EIMP describes the construction of the pulp mill plant, including excavation and drainage, concrete foundations, structural steel and buildings, land based activities for the wharf construction, and all related electrical and mechanical work.
8. On 20 October 2008 I received a brief from my Department recommending that I approve Module C1 of the EIMP.
9. I approved Module C1 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 my Department, dated 20 October 2008, presenting a draft of Module C1 of the EIMP for my consideration, which included the following relevant attachments:
 - Module C1 of the EIMP
 - Advice to me from the Independent Expert Group relating to my decision to approve the module
 - Assessment by the Department of whether the module satisfied the relevant conditions

Findings on material questions of fact

11. Module C1 of the EIMP described the mill construction activities to be undertaken on the project site.

12. Module C1 of the EIMP also contained relevant environmental commitments by Gunns in relation to the project.

13. The following conditions are relevant to Module C1.

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 Module C1 of the EIMP was advice from the IEG recommending I approve this module. Module C1 had been developed in consultation with the IEG and the IEG had assisted in its design and approval. Accordingly, Module C1 satisfied the requirements of 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.*

15. Module C1 of the EIMP contained the following which satisfied the requirements of condition 14:

- Information that the only known nest of the Wedge-tailed Eagle – Tasmanian (*Aquila audax fleayi*) in the vicinity of the project footprint 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 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. Module C1 of the EIMP contained the following which relevantly satisfied the requirements of condition 17:

- A commitment to provide a network of reserves totalling 150 ha within the pulp mill site and this reserve system was to be established within 12 months of the date of the approval.
- A commitment that there would be no further degradation of the reserves network as a result of the mill construction.

- Further detail of this reserve network was to be included in Module O of the EIMP to further address this condition. (That detail was included in Module O which I separately approved.)

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. Module C1 of the EIMP contained the following which satisfied the requirements of condition 20:

- Management measures to delineate all construction areas, by inspecting the project footprint and identifying all construction areas with flagging tape.
- A management measure for all construction activities and materials to remain within the construction boundaries.
- A management 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 noted 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 23: To minimise impacts on, the Central North Burrowing Crayfish (Engaeus granulatus) and the Mt Arthur Burrowing Crayfish (Engaeus orramakunna) and as part of the EIMP, Gunns Limited must:

- b) If any of these species are identified during surveys, detailed management procedures must be included in the EIMP and approved prior to continuing relevant construction. Management procedures may include but not be limited to:*
 - i) Micro-siting of the pipeline alignment to avoid populations;*
 - ii) Exclusion zones around the pulp mill site as necessary; and*
 - iii) Translocation of individuals.*

18. Module C1 of the EIMP stated that no evidence of the listed *Engaeus granulatus* or *Engaeus orramakunna* was found, but that in the event that they were discovered during mill construction, work in the immediate 100 metre vicinity would cease and advice on appropriate management measures would be taken from an expert approved by my Department .

19. Therefore Module C1 contains measures satisfying condition 23(b).

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

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. Module C1 of the EIMP contained the following which satisfied the requirements of condition 25(e):

- Information addressing the issue of confining disturbance of vegetation to pulp mill site by limiting activities to the approved footprint via the construction of a security fence around the footprint.
- That access to the pulp mill site would be via existing roads and tracks on areas that have been subject to surveys.

Reasons for Decision

In light of my findings above, I was satisfied that Module C1 met the requirements specified in the relevant conditions.



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PETER ROBERT GARRETT

18/ 2 /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;