

Statement of Reasons for approval of Module D 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 D 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 to me in sections.
6. Gunns submitted a final draft of Module D for my approval on 20 October 2008.
7. Module D of the EIMP described the construction of the wharf facility necessary to tie up bulk carrier vessels to load with the pulp bales produced by the pulp mill.
8. On 20 October 2008 I received a brief from my Department recommending that I approve Module D of the EIMP.
9. I approved Module D 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 draft of Module D of the EIMP for my consideration, which included the following relevant attachments:
 - Module D of the EIMP
 - Advice from the Independent Expert Group relating to my decision to approve the module
 - Assessment by the Department of whether the modules satisfied the relevant conditions.

Findings on material questions of fact

11. Module D of the EIMP described the construction of the wharf facility.

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

13. The following conditions are relevant to Module D.

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.

Attached to the brief of 20 October 2008 was advice from the IEG recommending I approve Module D of the EIMP. Module D had been developed in consultation with the IEG and the IEG had assisted in its design and approval. Accordingly, Module D 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.*

14. Module D of the EIMP contained 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 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 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 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:

- c) *If a new nest is found within 500m or a 1km line of sight of clearing or construction activities, construction within exclusion buffers 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.*

15. Module D of the EIMP contained the following which satisfied the relevant requirements of condition 28 (other requirements in conditions 28(a) and (b) are satisfied by Module B):

- A commitment to apply exclusion buffers for construction activities in the breeding season.
- A commitment to record previously unrecorded eagle nests, cease construction activities immediately within the exclusion buffers in the breeding season if a new active nest is located, and inform the Department immediately if either of these situations arise.

Condition 29: To minimise impacts on the Australian Grayling (Prototroctes maraena) Gunns Limited must put in place and implement, as part of the EIMP, measures including:

- a) Prior to wharf 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 wharf construction site.*
- b) The sound fields of the pile-driving activities should be monitored in accordance with the EIMP to re-evaluate the findings of the desk study.*
- 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.*

16. Module D of the EIMP contained the following which satisfied the requirements of condition 29:

- A commitment to undertake an appropriate study by a suitably qualified person agreed to by my Department.
- A commitment to provide a report on the findings of this study and the likely upper limits of the sound impacts on fish at various distances from the wharf construction site.
- A commitment to monitor the underwater noise during the initial pile driving to re-evaluate the findings of the study, by measuring underwater noise using a hydrophone lowered to mid-water depth at maximum interval distances of 100 metres from the pile driving out to a distance of 500 metres, at both low and high tide.
- Adoption of a noise related trigger level determined by the expert study.
- A commitment that if the trigger level is exceeded, then bubble curtains will be installed.

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.;*
- b) The sound fields of the pile-driving activities should be monitored in accordance with the EIMP to re-evaluate the findings of the desktop study.*


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

17. Module D of the EIMP contained the following which satisfied condition 30:

- A commitment to undertake an appropriate study by a suitably qualified person agreed to by my Department.
- A commitment to provide a report on the findings of this study and the likely upper limits of the sound impacts on dolphins, seals and whales at various distances from the wharf construction site.
- A commitment to monitor the underwater noise during the initial pile driving to re-evaluate the findings of the study, by measuring underwater noise using a hydrophone lowered to mid-water depth at maximum interval distances of 100 metres from the pile driving out to a distance of 500 metres, at both low and high tide.
- Adoption of a noise related trigger level determined by the expert study.
- A commitment that if the trigger level is exceeded, then bubble curtains will be installed.
- A commitment that the marine mammal observers will be people agreed to by the Department.
- 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 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 Module D 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;