

**Statement of Reasons for approval of Module O 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 O 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 Ltd submitted a final draft of Module O for my approval on 21 October 2008.
7. Module O relates to the establishment and management of habitat offsets, which provides habitat compensation for that lost as a result of the proposed action, and reserves to provide ongoing protection for existing potential habitat for listed threatened species.
8. On 14 November 2008 I received a brief from my Department recommending that I approve Module O of the EIMP.
9. I approved Module O 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 14 November 2008, presenting a draft of Module O of the EIMP for my consideration, which included the following relevant attachments:
  - Module O 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 O of the EIMP describes the activities to be undertaken in rehabilitating, maintaining and monitoring the habitat offsets and reserves.
12. Module O of the EIMP also contains environmental commitments by Gunns Ltd in relation to the project.
13. The following conditions are relevant to Module O.

*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. Module O was considered by the IEG, as indicated in their letter to me dated 22 October 2008. Module O had been developed in consultation with the IEG and that the IEG had assisted in the design and consideration of Module O of the EIMP. Accordingly, Module O satisfied the requirements of condition 6.

*Condition 15: To ensure effective monitoring of impacts on the Wedge-tailed Eagle - Tasmanian and as part of the EIMP, Gunns Limited must:*

- c) *Should nest #130 ‘Tippogoree Hills’ be abandoned during construction or in the first breeding season after the commencement of construction, Gunns Limited must, within six months of becoming aware of the abandonment, submit an offset response strategy to the Department for approval. The response strategy must provide for the protection of a minimum of 20 ha surrounding an eagle nest that is not protected in a ‘formal reserve’. This response strategy and its timing must be included in the EIMP and detail a site description, connectivity with other habitats and mechanisms for long term protection, conservation and management. The Department may request that the response strategy be revised or amended before approval; any such request must be responded to within the time frame specified in the request.*

15. Module O contained the following which satisfied the requirements of condition 15(c):

- A commitment that if nest #130 is not used during construction expert advice will be taken from an independent eagle expert approved by my Department, to determine whether lack of use of the nest constitutes abandonment, and if so, whether that abandonment may have been due to the pulp mill construction activities.
- A commitment that if nest #130 is abandoned, Gunns Ltd will submit detailed information regarding a proposed offset to my Department within 6 months of becoming aware of the abandonment.
- A commitment from Gunns to providing a 40 hectare offset with two known eagle nests, #107 and #572, and that this offset will be situated on Gunns freehold land.
- A detailed site description of the 40 ha offset and description of connectivity with other habitats.
- A mechanism for the long term protection of the offset, by committing to enter into a covenant for the protection of the 40 ha offset if it becomes required.
- A commitment that the 40 ha offset would also be declared a private nature reserve under Part 3 of the *Nature Conservation Act 2002* (Tas).
- Identified mechanisms for the long term management of the offset, including monitoring for weeds and rubbish.

*Condition 16: To offset the loss of 200ha of land at the pulp mill site and as part of the EIMP, Gunns Limited must:*

- a) Within 12 months of the date of this approval, develop in the EIMP the management strategies to rehabilitate an area of at least 200ha of potential habitat for the listed threatened species Tasmanian Devil (*Sarcophilus harrisii*); Spot-tailed Quoll – Tasmanian population (*Dasyurus maculatus maculates*); Eastern Barred Bandicoot – Tasmanian (*Perameles gunnii gunni*); Swift Parrot (*Lathamus discolor*); and Southern Bell Frog (*Litoria raniformis*).*
- b) The EIMP must include details of the 200 ha offset to be rehabilitated, including a map, site description, connectivity with other habitats, appropriate buffer zones, a rehabilitation program and mechanisms for long-term protection, conservation and management.*
- c) Implementation of the offset rehabilitation elements of the EIMP must commence within two years of the date of this approval.*

16. Module O contained the following which satisfied condition 16:

- A proposed area of 200 hectares, with buffers amounting to 26 hectares, to be provided as an offset for rehabilitation from plantation and degraded native forest as potential habitat for listed threatened species.
- Maps of the offset location and of the distribution of different vegetation types within the offset.
- A description of the offset's connectivity with other native vegetation and the 40m buffer zones around the 200 ha area to be rehabilitated.
- A detailed rehabilitation program, including a timeline that includes monitoring until 2023.
- A mechanism for the long term protection of the offset, by placing it under a covenant in perpetuity under Part 5 of the *Nature Conservation Act 2002* (Tas).
- A commitment that the offset would also be declared a private nature reserve under Part 3 of the *Nature Conservation Act 2002* (Tas).
- Mechanisms for long-term conservation and management by monitoring for occurrences, including weeds, rubbish and uncontrolled access, and that management responses to emergent threats will be implemented in consultation with my Department.
- A commitment to implement elements of the rehabilitation requirements by 4 October 2009.

*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.*

17. Module O contained the following which satisfied condition 17:

- A commitment regarding 150 ha of reserves to be maintained on the pulp mill site.
- Appropriate maps and descriptions of the vegetation types present as well as identifying the Commonwealth listed fauna species for which the reserve represents potential habitat.

- A description of the reserve's connectivity with other areas of native forest.
- A mechanism for the long term protection of the offset, by placing it under a covenant in perpetuity under Part 5 of the *Tasmanian Nature Conservation Act 2002*.
- A commitment that the reserve would be declared a private nature reserve under Part 3 of the *Nature Conservation Act 2002* (Tas).
- Mechanisms for long-term conservation and management by monitoring for occurrences, including weeds, rubbish and uncontrolled access, and that management responses to emergent threats will be implemented in consultation with my Department.

*Condition 18: To protect potential habitat for the listed threatened species Swift Parrot and as part of the EIMP Gunns Limited must:*

- a) Within 12 months of the date of this approval, confirm arrangements to establish a reserve of at least 34 ha of *Eucalyptus ovata* and/or *Eucalyptus globulus* subsp. *globulus* to maintain foraging habitat.*
- b) Include details of the reserve including a map, description of the flora and fauna, appropriate buffer zones, connectivity and mechanisms for long-term production, conservation and management.*
- c) The Department may request that the arrangements be revised or amended before approval; any such request must be responded to within the time frame specified in the request. The approved arrangements must be part of the EIMP and must be implemented.*

18. Module O contained the following which satisfied condition 18:

- A proposal to protect three patches of *Eucalyptus ovata* totalling 35 hectares as a reserve.
- Appropriate maps of each patch, and a description of the flora and fauna species present at each of the three patches.
- A description of the connectivity of the three patches with each other and surrounding vegetation, and the buffer zones implemented to protect each of the patches making up the reserve.
- Maps to illustrate the connectivity and buffer zones.
- A mechanism for the long term protection of the reserves, by placing them under a covenant in perpetuity under Part 5 of the *Nature Conservation Act 2002* (Tas).
- A commitment that the reserves would be declared as private nature reserves under Part 3 of the *Nature Conservation Act 2002* (Tas).

- Mechanisms for long-term conservation and management by monitoring for occurrences, including weeds, rubbish and uncontrolled access, and management responses to emergent threats will be implemented in consultation with my Department.

**Reasons for Decision**

In light of my findings above, I was satisfied that Module O 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;