



APPROVAL DECISION

**Duralie Coal Extension Project, Stroud, Gloucester Valley, New South Wales
(EPBC 2010/5396)**

This decision is made under sections 130 and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

person to whom the approval is granted Duralie Coal Pty Ltd
ACN 070 318 259

proposed action To expand the Duralie Coal Mine, Gloucester, New South Wales as described in the referral received under the EPBC Act on 11 March 2010.

approval decision The approval has effect for listed threatened species and ecological communities (sections 18 & 18A)

conditions of approval This approval is subject to the conditions specified below.

expiry date of approval This approval has effect until 31 December 2020

Person authorised to make decision

name and position Mary Colreavy
A/g First Assistant Secretary
Approvals and Wildlife Division

signature

date of decision 22 December 2010

Conditions attached to the approval

Proposed Conditions:

Footprint

1. The person taking the action must ensure that no more than
 - a) 209 hectares is disturbed as a result of surface development within the Duralie Coal Extension Project area; and separately,
 - b) 140 hectares is subject to excess mine water irrigation activities within the Duralie Coal Extension Project area.

Note: the areas set out in Condition 1 a) and b) are separate limits, and apply respectively to disturbance arising from mining-related development and irrigation activities. The maximum allowable area to be impacted by surface development and irrigation activities (combined) is 349 hectares.

2. Exploration drilling activities as described in the Referral received on the 11 March 2010 must not occur within areas of known or potential Giant Barred Frog habitat, or within 60m of the Mammy Johnsons River (MJR), unless otherwise approved in writing by the Department.

Water Management

3. The person undertaking the action must ensure that all irrigation and run-off from the Project Area is managed in accordance with the *Duralie Coal Mine Irrigation Management Plan* (DCPL, 2008) as set out in Referral received on the 11 March 2010 (or as per any amendments approved by this Department, in consultation with the NSW Department of Planning, the NSW Department of Environment and Climate Change and Water and NSW Office of Water), and not otherwise discharged into the MJR
4. The release of water into the MJR catchment must only occur when Electricity Conductivity levels do not exceed 400 Micro Siemens ($\mu\text{S}/\text{cm}$) in the MJR at the "High Noon" monitoring site and 1,326 $\mu\text{S}/\text{cm}$ in the Main Water Dam diversion drain sumps; or alternative thresholds as may be advised in writing by the Department.
5. In the event that the results of Giant Barred Frog monitoring required under Condition 8 identify a decline of 20% or more (in comparison with the highest average results obtained from September to April 2010-11 surveys and then subsequently in combination with 2011-2012 surveys) in the Giant Barred Frog population, the proponent may only release water into the MJR catchment when Electrical Conductivity levels are less than 400 $\mu\text{S}/\text{cm}$ in Mammy Johnsons River (as measured at the High Noon monitoring site) and less than 810 $\mu\text{S}/\text{cm}$ in Coal Shaft Creek (as measured at Coal Shaft Creek monitoring site SW2(RC)), until otherwise advised by the Department.

Note: For clarity regarding Condition 5, the mine water to be released during this time must not exceed 810 $\mu\text{S}/\text{cm}$, as measured at monitoring site point SW2 (RC).

Giant Barred Frog Surveys and Management

6. By the end of April 2011 and prior to undertaking Irrigation Activities, the person undertaking the action must conduct baseline frog surveys in order to investigate the local population of the Giant Barred Frog in the MJR. The surveys must:
 - a) be undertaken by a qualified ecologist approved in writing by the Department;
 - b) be conducted in accordance with DSEWPaC Survey guidelines for Australia's threatened frogs (<http://www.environment.gov.au/epbc/publications/pubs/survey-guidelines-frogs.rtf>) and/or DECCW survey guidelines (DECC 2009, Threatened Species Survey and Assessment Guidelines: Field Survey Methods for Fauna- Amphibians);
 - c) be undertaken during the known breeding season (September to March);
 - d) assess the condition of identified and potential Giant Barred Frog habitat on the MJR and control sites, including the riparian ecosystem condition, stream characteristics (pool, riffles) and water quality 500m upstream and downstream of the confluence of MJR and Coal Shaft Creek;
 - e) provide analysis of the frog populations including tadpoles and any observations of amplexus/oviposition/egg masses; and,
 - f) determine the presence of chytrid fungus within the MJR.. This may include locations at sites below the confluence of the MJR and Coal Shaft Creek, and at other sites accessed for Duralie Coal Pty Ltd activities situated on the MJR above the confluence of Coal Shaft Creek, such as water quality monitoring locations.

7. The surveys undertaken for Condition 6 must be repeated one year later between September 2011 and April 2012.
8. In order to protect the Giant Barred Frog from impacts associated with the project, the person undertaking the action must within 3 months of the commencement of the Irrigation Activities, submit a Giant Barred Frog Management Plan. This plan must include:
 - a) results of completed baseline surveys;
 - b) description of the measures undertaken to control and prevent the spread of the amphibian chytrid fungus as a result of activities associated with the project;
 - c) a mark-recapture-monitoring program to measure and detect changes to Giant Barred Frog populations over the life of the mine. The monitoring methodology must have the ability to detect up to at least a 20% decline in the frog population;
 - d) management measures to mitigate and avoid adverse impacts to the Giant Barred Frog, including the management and reduction of identified threats to the species (such as feral animals), measures to monitor and manage relevant water quality parameters including pH, heavy metals and aromatic hydrocarbons, and measures to address and respond to the risk of overflow from mine water voids and seepage of potentially contaminated groundwater;
 - e) analysis of all aquatic invertebrate monitoring data using the Australian Rivers Assessment System (AusRivAS), and integration of AusRivAS modelling results into monitoring and management activities for the Giant Barred Frog, and for water quality, where relevant; and
 - f) a Giant Barred Frog contingency plan that would be implemented if monitoring indicates a decline of 20% or more (in comparison with the results of surveys conducted in 2009 and surveys required under Condition 6 and 7) in the frog population within 500m of the project area. This should include, for example, a revision of first flush salinity trigger levels or the implementation of additional or alternative water quality controls.

Note: to avoid doubt, this contingency plan is in addition to the requirement at Condition 5 regarding the reduction of salinity trigger levels for released water in the event of an identified frog population decline of 20% or more.

9. The approved Giant Barred Frog management plan must be implemented. Any changes to the Giant Barred Frog management plan must be approved by the Minister and approved variations to the Plan must be implemented. The approved plan must be made publicly available on the internet by the person undertaking the action.
10. The person undertaking the action must provide a report on the implementation of the Giant Barred Frog management plan annually for the first 5 years and then every 5 years thereafter.

Note: The management plan should include sufficient detail to inform field development decisions and ongoing management, to minimise adverse impacts on the Giant Barred Frog through the life of the project.

Mitigation Measures

11. In order to minimise the impacts of the project on listed threatened species, the person taking the action must implement all measures in the following plans/documents or their subsequent revisions as approved by the Minister :
 - a) The DCM Vegetation Clearance Protocol (DCPL, 2002);
 - b) The DCM Irrigation Management Plan (DCPL, 2008);
 - c) The DCM Site Water Management Plan (DCPL, 2008); and,
 - d) The DCM Rehabilitation Management Plan (DCPL, 2007).
12. Other Fauna Protection and Management Measures as set out in Appendix E - Terrestrial Flora and Fauna Assessment of the Environmental Assessment (DCPL 2010).

Offset Measures

13. Within 12 months of the commencement of the action the proponent must permanently protect and secure an offset area to compensate for the approved disturbance relating to MNES within the project area. This offset area must include:
- a minimum of 1.5 kilometres (in streamside length) of known or suitable Giant Barred Frog habitat (including a minimum width of 80 metres on either side of stream or river edges); and,
 - 177 ha of Swift Parrot habitat.

Note: For clarity, offset areas to be provided to meet the requirements of the NSW Government, which meet all of the requirements of this approval, will be adequate for the purpose of these conditions.

14. To offset the impacts on the habitat of the Giant Barred Frog and Swift Parrot, the person taking the action must, by December 2011, obtain the Minister's approval of an Offset Management Plan. This plan must include:
- the desired outcomes/objectives of implementing the plan;
 - details of the offset area, clearly defining the location and boundaries of the offset area, through maps and / or textual descriptions as well as an accompanying *shapefile*;
 - a detailed description of the Swift Parrot and Giant Barred Frog habitats in the offset area;
 - management actions to protect and enhance the Swift Parrot habitat, for example, weed control and fire management measures;
 - management actions to protect and enhance the Giant Barred Frog habitat including implementing a buffer zone approximately 60m from the creekline along areas of the MJR and relevant tributaries; appropriate fencing of the riparian corridor; weed control; rehabilitation and enhancement of degraded riparian zone vegetation; and establishment of riparian vegetation in cleared areas alongside the MJR and relevant tributaries to improve habitat connectivity;
 - a monitoring plan including the undertaking of ecological surveys to assess the success of the management measures against identified milestones and objectives;
 - performance measures and reporting requirements against identified objectives, including trigger levels for corrective actions, and actions to be taken to ensure performance measures and objectives are met;
 - a process to report to the Department the offset area management actions undertaken and the outcome of those actions, identifying any need for improved management.
 - For the five years after the commencement of operations, reports are to be submitted annually on or before the anniversary of the commencement of operations. Subsequently reports are to be submitted every fifth year on or before the anniversary of the commencement of operations;
 - a description of the potential risks to successful management and rehabilitation in the offset areas, and a description of the contingency measures that would be implemented to mitigate these risks; and,
 - details of parties responsible for monitoring, reviewing and implementing the plan.

Note: the monitoring plan for offset areas required in Condition 13. f) above and the monitoring plan for the Giant Barred Frog required in Condition 7. c) may be combined where appropriate.

15. The approved Offset Management Plan must be implemented. Any changes to the Offset Management Plan must be approved by the Minister and approved variations to the Plan must be implemented. This report may be made publicly available on the internet by the Department.
16. Within one year of the commencement of the action, the person taking the action must demonstrate in writing to the satisfaction of the Minister that a conservation covenant or similar instrument has been registered on the title/s of land containing the offset area required in Condition 12. This must provide for the protection of this offset area in perpetuity, through one of the following means:
- a Conservation Agreement under s 69 of the *National Parks and Wildlife Act 1974 (NSW)*,
 - placing a restrictive or public positive covenant over the offset land under s.88B-E of the *Conveyancing Act 1919 (NSW)*, or
 - a Planning Agreement under s 93F(1) of the *Environmental Planning and Assessment Act 1979 (NSW)*.

Note: to avoid doubt, the proponent may develop single plans to align with the requirements of the NSW Government and of this approval, where there are species or ecological communities covered by both NSW Government requirements and this approval.

Publication of plans

17. All plans approved by the Minister under these conditions must be published on the proponent's website within 1 month of approval by the Minister.
18. The department may request the proponent to publish a plan in a specified location or format and specified accompanying text. The proponent must comply with any such request.

Reporting and Auditing

19. Within 30 days of commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.
20. Within 3 months of every 12 month anniversary of the commencement of the action, the person taking the action must submit to the Department a report addressing compliance with the conditions of this approval. Annual Reports must be provided until the Minister is satisfied that the proponent has complied with all conditions of the approval and has implemented all commitments made in plans/programs approved by the Minister.
21. Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report is submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.
22. If, at any time after five years from the date of this approval, the Minister notifies the person taking the action in writing that the Minister is not satisfied that there has been substantial commencement of the action, the action must not thereafter proceed without the written agreement of the Minister.
23. If the person taking the action wishes to carry out any activity otherwise than in accordance with the plans/programs referred to in these conditions, the person taking the action must submit for the Minister's approval a revised version of any such plan/program. If the Minister approves such a revised plan/program, that plan/program must be implemented in place of the plan/program originally approved.
24. If the Minister believes that it is necessary or desirable for the better protection of threatened species and threatened ecological communities (s.18 & s.18A) to do so, the Minister may request that the person taking the action make specified revisions to the plans or programs approved under these conditions of approval and submit the revised plan or program for the Minister's approval. The person taking the action must comply with any such request. The revised approved plan or program must be implemented in place of the plan or program originally approved.
25. The person taking the action must maintain accurate records of all activities associated with or relevant to the above conditions of the approval, and make them available on request by the Department. Such documents may be subject to audit by the Department and used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department website. The results of audits may also be publicised through the general media.

Definitions:

1. The **EPBC Act** is the *Environment Protection and Biodiversity Conservation Act 1999*.
2. The **Minister** means the Minister responsible for the administration of the EPBC Act.
3. The **Department** means the Commonwealth department responsible for administering the EPBC Act.
4. **Commencement of the action** means any preparatory works required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for mining, buildings or infrastructure.
5. **Shapefile** means an ESRI Shapefile, containing '.shp', '.shx.' and '.dbf' files and other files capturing attributes including at least the EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.
6. **Irrigation Activities** means the expansion of mine water irrigation and other water management activities associated with the proposed action, as described in the Referral.
7. **MNES** means Matters of National Environmental Significance.

