



Australian Government

Department of the Environment, Water, Heritage and the Arts Office of the Secretary

Our reference: 2008/11369

Dr Ian Holland
Committee Secretary
Senate Standing Committee on Environment,
Communications and the Arts
Department of the Senate
PO Box 6100
CANBERRA ACT 2600

Dear Dr Holland

I refer to your letter of 22 April 2009 inviting the Department to comment on a submission (extract provided) to the Committee's inquiry into forestry and mining operations on the Tiwi Islands. I thank the Committee for providing this opportunity to respond.

The extract draws attention to alleged breaches of approval conditions for the Tiwi Islands Forestry Plantation Project made under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Department does not accept that it has 'failed to ensure compliance with the [approval conditions]'. Monitoring has been ongoing since approval of the project under the EPBC Act in 2001 and particularly since commencement of the project in April 2004. A voluntary audit of compliance was undertaken in early 2006 and identified partial compliances with several of the 11 approval conditions. The Department worked closely with the proponent(s) to address these deficiencies and to ensure full compliance, including for condition 5 (notifications of tranche plans and surveys for listed fauna) and condition 7 (monitoring requirements). The Department was satisfied that compliance had been achieved, apart from condition 3 which relates to buffer zones (discussed below).

The partial compliances were due to poor ground truthing and availability of information in the early stages of the project, which have since been remedied. Condition 11 requires independent audits of compliance on a triennial basis with the first being undertaken in late 2007, and finding general compliance.

Background

The current Tiwi Islands Forestry Project, providing for the clearing of 26,000ha of native vegetation for *Acacia mangium* plantations on western Melville Island, NT, was approved under the EPBC Act on 12 August 2001 subject to conditions. The approval under the EPBC Act is held jointly by Sylvatech Limited (formerly the Australian Plantation Group Pty Limited and a wholly owned subsidiary of Great Southern Limited (GSL)) and the Tiwi Land Council (TLC). The project commenced in 2004 and the Department understands that the plantation establishment phase is expected to be completed by the 2009 or 2010 dry season.

The approval conditions require certain actions to be taken by the proponents to ensure protection of listed threatened species under the EPBC Act such as the Red Goshawk, Partridge Pigeon, Masked Owl and Butler's Dunnart. Relevantly, condition 3 states that the clearing of native vegetation to establish plantations is prohibited within buffer zones designated to protect key habitats, as follows:

- wetlands – 150m around the wetland perimeter;
- wet rainforest patches – 400m; and
- other rainforest patches – 200m.

In February 2006, a voluntary audit of the forestry project and compliance with the approval conditions was undertaken by the proponents. An interim report was provided to the Department in April 2006 which indicated general compliance with the conditions, except for the buffer zone requirements for some plantation areas. The interim report was also provided to the NT Department of Natural Resources, the Environment and the Arts (NRETA). In November 2006, NRETA produced a report identifying areas of non-compliance with the EPBC Act conditions in respect to the buffer zones. The Department was also contacted by a third party in July 2006 alleging a breach of a required 150m buffer zone around a particular wetland.

The Department commenced formal investigations into the allegations. At about this time, the proponents also self-reported a number of incursions into the required buffer zones.

The investigations included several site visits to inspect on-ground forestry works, conduct limited ground-truthing and meet with the proponents and relevant NT government agencies. The investigation found that breaches into the buffer zones had occurred and appeared to have stemmed from systemic failures in project management procedures in the period from commencement of clearing operations in 2004 up to the end of 2006 (when new procedures were implemented).

The Department worked closely with the proponents to rectify the systemic failures and is satisfied that plantations established since 2007 are compliant. In particular, the proponents acquired digital aerial photography and implemented better on-ground procedures during plantation planning to ensure that rainforest and wetland areas were identified and the correct buffers surveyed and marked.

Outcome of alleged breach

The Department's investigation found, during 2004 to 2006, that the proponents established some 19 000 hectares of plantations and that clearing intruded upon the buffer zones required by conditions 3 in some plantation areas. The precise extent of the incursions could not be accurately quantified without ground-truthing, but was estimated to be up 740 hectares for rainforest buffer incursions and 260 hectares for wetland buffer incursions.

The Department undertook negotiations, over an extended period, with representatives of the proponents to consider an appropriate compliance response. This resulted in an agreed statement of facts (Attachment A). On 13 October 2008, the Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, announced that he had varied the approval conditions under the EPBC Act to provide for identification and remediation of all buffer incursions, posting of a \$1 million bond to ensure completion of the works, and payment of a financial contribution of \$1.35 million to the Tiwi Land Council, over 3 years, for use in the Indigenous Rangers Program in undertaking environmental works and projects (new conditions and media release at Attachment A).

The specific environmental works were identified from the draft *Recovery Plan for the Threatened Plants of the Tiwi Islands 2008-2013* (NRETA, May 2008) as being of high priority and of benefit to listed species, as well as being otherwise unfunded.

The approval conditions were varied pursuant to section 143(1)(c) of the EPBC Act which provides for the Minister to vary or add conditions if agreed by the proponent(s). The section specifically provides for new conditions to repair or mitigate damage to relevant protected matters, as well as for the more general protection of matters of national environmental significance.

Conclusion

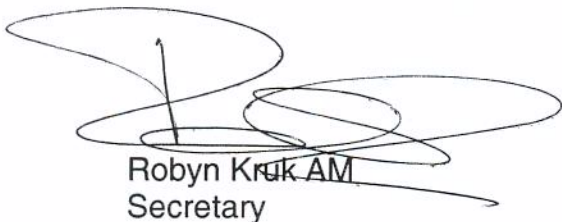
The Department's *Compliance and Enforcement Policy* of August 2004, available at www.environment.gov.au/epbc/publications/compliance, provides for an escalation in compliance response depending upon the severity of a contravention. The EPBC Act provides a number of remedies to address contraventions including criminal prosecutions, civil penalties and administrative penalties such as enforceable undertakings and remediation determinations. Administrative remedies are generally not applicable for breaches occurring before February 2007 (when the remedies were introduced) or for projects that have been approved.

For the Tiwi Islands Plantation Forestry breach, the option of pursuing a civil penalty through the Federal Court, pursuant to section 142 of the EPBC Act, was available and was carefully considered. While the Department will not hesitate to take legal action to enforce the EPBC Act when necessary, such an approach may not necessarily be beneficial in achieving an effective environmental outcome and in promoting compliance. Cooperative alternative approaches may be more effective in some circumstances in achieving good outcomes.

The Department believes that the compliance outcome achieved, as described above, has ensured a good environmental outcome as well as having an appropriate deterrent and punitive effect, as demonstrated by media coverage. The outcome has also ensured that benefits flow back to the Tiwi Islands' community through funding for engagement in environmental projects.

I trust that the above information will be of assistance to the inquiry in its deliberations.

Yours sincerely



Robyn Kruk AM
Secretary

5 May 2009



Australian Government

Department of the Environment, Water, Heritage and the Arts

AGREED STATEMENT ON TIWI ISLANDS FORESTRY PROJECT

Background

The following matters have been agreed between Sylvatech Limited (**Sylvatech**) and the Department of the Environment, Water, Heritage and the Arts (**the Department**) in respect to rainforest and wetland buffer issues arising from the Tiwi Islands Forestry Project on Melville Island, in the Tiwi Islands group of the Northern Territory.

EPBC Act Approval

On 12 August 2001 the then Minister for the Environment and Heritage approved the taking of certain forestry action by Sylvatech¹ (**the Approval**). The Approval was given pursuant to s 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). It permitted Sylvatech to establish and operate up to 26 000 hectares of hardwood plantations on western Melville Island.

Condition 3 of the approval relevantly states:

[Sylvatech] must not clear the treeless plains or riparian areas near springs or watercourses (including intermittent watercourses) or rainforest. [Sylvatech] also must not clear vegetation within the following buffer zones:

- ...
- wetlands – 150m around wetland perimeter;
- wet rainforest patches – 400m; and
- other rainforest patches – 200m. ...

Breach of Approval conditions

During 2004 to 2006 Sylvatech, in accordance with the Approval, undertook land clearing and planting for its forestry operations totaling about 19,397 hectares. However, in respect of certain plantations established, the clearing intruded upon the buffer zones required by the Approval.

The Department and Sylvatech have worked to ascertain the scope and effect of the incursions into the buffer zones. The precise extent of the incursions cannot be accurately quantified in the absence of detailed ground-truthing (a process which effectively requires the careful traversing and mapping of large areas of the island).

The Department and Sylvatech have estimated the potential incursions using the desktop mapping data available in the period 2004 – 2006 (eg when the incursions occurred) and more accurate mapping data and interpretations now available. Based on mapping data used by Sylvatech at the time of the incursions, Sylvatech admits that incursions of 197.5 hectares into the rainforest buffers have occurred. More recent mapping data indicates that the incursions into rainforest patch buffers is in the range of 197 to 740 hectares. The estimate of incursions into wetland area buffers is 60 to 260 hectares. The variation in the estimates is due to differences by the Department and Sylvatech in interpreting and defining wetland communities.

¹ The approval expressly relates to the Australian Plantation Group (Pty) Limited, which has since become Sylvatech Limited.

Sylvatech and the Department have agreed on the definitions of features and the latest mapping data available as the basis for remediation.

Sylvatech accepts that in the period 2004 and 2006 it failed to take adequate steps to ensure compliance with condition 3 of the Approval and that this failure led ultimately to the contravention described above. However, the contravention of the Approval was inadvertent and did not result in significant commercial benefits to Sylvatech or evidence of harm to matters of national environmental significance. The incursions occurred as a consequence of definitional issues, limited vegetation and digital mapping used at that time as well as procedural failures in planning and ground truthing of plantation areas. These deficiencies have since been rectified.

Action taken as a result of the breaches

The Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP, has added new conditions to the Approval requiring all incursions into the rainforest and wetland buffers to be remedied according to an auditable schedule of works.

The conditions require ground-truthing to accurately identify all incursions, and rehabilitation of these areas through the establishment of sustainable vegetation communities using local species. A bond of \$1 million must be posted by Sylvatech to ensure that the necessary works are completed.

The conditions also require Sylvatech to pay an annual financial contribution of \$450,000 over three calendar years to contribute to environmental works and projects, including protection of habitats for listed species under the EPBC Act. Specific projects to be undertaken include control of feral pigs and exotic grasses as identified in the draft *Recovery Plan for the Threatened Plants of the Tiwi Islands 2008-2013* (NRETA, May 2008).

Sylvatech's ongoing forestry activities

The Department worked with Sylvatech during late 2006 and 2007 to ensure that procedures were in place to prevent incursions into buffer zones from new plantations. These procedures were implemented and the Department is satisfied that plantations established since 2007 have been based on adequate information, procedures and definitions to ensure that incursions will not occur.



Notification of decision:

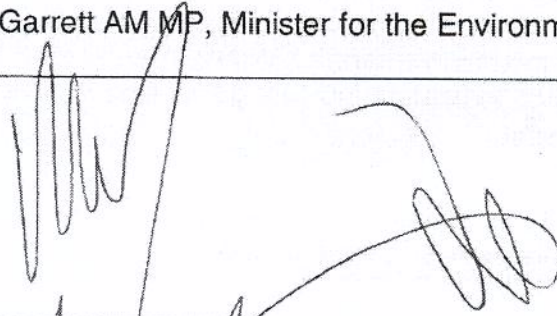
VARIATION TO APPROVAL CONDITIONS

Tiwi Islands Hardwood Plantation Forestry Project (EPBC 2001/229)

This decision to vary a condition of approval is made under Section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Person to whom the approval is granted	Sylvatech Limited ¹ and the Tiwi Land Council.
Proposed action	To establish and operate up to 26,000 hectares of hardwood plantations on western Melville Island in the Tiwi Islands group of the Northern Territory.
Approval decision	
Relevant controlling provisions	The approval has effect for: <ul style="list-style-type: none">• Sections 18 and 18A (Listed threatened species and communities) of the EPBC Act.
Variation of conditions of approval	The variation is: Additions to paragraph 11 of the approval decision dated 12 August 2001 (and varied on 4 December 2002 and 12 September 2005), as specified below. Addition of new paragraphs 12 to 35, as specified below.
Expiry date of approval	This approval has effect until 30 June 2051.

Signed by the Hon Peter Garrett AM MP, Minister for the Environment, Heritage and the Arts.



Signature

Date of decision 13 / 10 / 08

¹ Formerly the Australian Plantation Group Pty Limited.

Conditions attached to the approval

11. ...*(Relating to requirements for independent audits)*...
 - Compliance with the plan required under paragraph 12 (Rehabilitation Management Plan);
 - Compliance with the plans required under paragraph 23 or paragraph 30 (Offset Project management plans).
12. Sylvatech Limited² (Sylvatech) must prepare and submit for the Minister's approval a Rehabilitation Management Plan (RMP) detailing a program of works to identify and rehabilitate all areas in which vegetation has been cleared from rainforest buffers and wetland buffers (the incursions), contrary to paragraph 3.
13. The RMP must include the following elements:
 - A program for accurately identifying the location and area of each of the incursions, including identification of high priority areas taking into account the sensitivity and conservation values of the areas to which the incursions relate (the high priority areas).
 - Performance indicators that will be used to demonstrate when the incursions have been (i) identified and (ii) successfully rehabilitated.
 - Methods for the establishment of sustainable vegetation communities so as to re-establish the buffer zone functionality.
 - Work Plans detailing the on-ground works to be taken at each identified incursion.
14. The RMP and Work Plans for the identified high priority areas must be submitted to the Minister for approval within six months of the date on which this condition takes effect. All other Work Plans must be submitted within twelve months of that date.
15. Sylvatech must provide an annual report to the Department by 31 March each year (commencing in 2010) reporting progress on the identification and rehabilitation of each of the incursions against the Work Plans in the approved RMP. This reporting requirement will cease in respect of a particular incursion when the Minister has agreed that the approved final performance indicators indicating successful rehabilitation have been met for that incursion.
16. All plantations in incursion areas must be removed by 31 December 2015, or as otherwise agreed by the Minister.
17. Once approved by the Minister, the RMP (including each of the Work Plans contained within it) must be implemented according to its terms.

18. The Minister may require that the submitted or approved RMP (including the Work Plans) be amended to provide for the better protection of listed threatened species under the Act. Sylvatech must submit for the Minister's approval an amended RMP or Work Plan, addressing the specified concerns, within twenty business days of receipt of the request. If the Minister approves a revised RMP or Work Plan, it must be implemented instead of that previously approved.
19. The Minister may, if requested by Sylvatech based on expert advice or operational experience, agree that the submitted or approved RMP (including the Work Plans) be amended to provide for the better protection of listed threatened species under the Act. If the Minister approves a revised RMP or Work Plan, it must be implemented instead of that previously approved.
20. Sylvatech must provide a bond of \$1 000 000 to the Commonwealth, within 28 calendar days of the signing of this variation, as security for implementation of the RMP. The bond may be returned in part, or in full, upon application by Sylvatech and subject to the Minister being satisfied that agreed performance indicators for implementing the RMP have been met.
21. Sylvatech must pay an annual financial contribution of \$450,000, in each of the three calendar years 2009 to 2011, to the Tiwi Land Council for use by the Tiwi Ranger Program in implementing projects as specified in this approval (the Tiwi Ranger Funding).
22. The Tiwi Ranger Funding must be provided to the Tiwi Land Council on condition that the following projects are undertaken (the Offset Projects):
 - Control of feral pigs and buffalos, including reducing harm from these ferals to rainforests, wetlands and other important environments where listed species may occur.
 - Control of Guinea grass and Mission grass on Melville Island, particularly infestations that may threaten habitat for listed species.
 - Development and implementation of ecologically sensitive burning regimes with a view to maintaining habitats important for listed species; and
 - monitoring programs aimed at ensuring the protection and conservation of known localities and habitats of the listed flora species *Meitrella tiwiensis* and *Xylopia sp.*.
23. The Tiwi Land Council must submit a management plan for each of the Offset Projects to the Minister for approval within three months of the date of this variation. Each plan must specify the objectives to be achieved for the project within the period 2009 to 2011, and include annual work plans and schedules for implementation to achieve the objectives. The objectives must include measurable performance indicators that can be monitored and reported against annually to determine success or otherwise.

24. Each Offset Project management plan must be prepared by a suitable authority or expert.
25. Once approved by the Minister each Offset Project management plan must be implemented according to its terms.
26. The Minister may require that the submitted or approved Offset Project management plans be amended to provide for the better protection of listed threatened species under the Act. The Tiwi Land Council must submit for the Minister's approval an amended management plan, addressing the specified concerns, within twenty business days of receipt of the request. If the Minister approves a revised Offset Project management plan, it must be implemented instead of that previously approved.
27. The Minister may, if requested by the Tiwi Land Council based on expert advice or operational experience, agree that the submitted or approved Offset Project management plans be amended to provide for the better protection of listed threatened species under the Act. If the Minister approves a revised Offset Project management plan, it must be implemented instead of that previously approved.
28. An annual report, detailing implementation of the Offset Project management plans and achievement against the performance indicators, must be submitted to the Minister by 31 March each year for the duration of the funding period (2009 to 2011).
29. In the event that the Tiwi Ranger Program is discontinued prior to the provision of funds to the Tiwi Land Council by Sylvatech in any funding year, the equivalent funds that would otherwise have been applied to the Tiwi Ranger Program in that year, and any subsequent funding years, must be used by Sylvatech to complete or otherwise undertake the Offset Projects (the Alternative Program).
30. Sylvatech must submit a revised or new management plan for each of the Offset Projects to the Minister for approval within three months of the date of notification of discontinuation of the Tiwi Ranger program. Each plan must specify the objectives to be achieved for the project for the remaining funding year, and any subsequent funding years, and include annual work plans and schedules for implementation to achieve the objectives. The objectives must include measurable performance indicators that can be monitored and reported against annually to determine success or otherwise.
31. Each Offset Project management plan must be prepared and implemented by a suitable authority or expert, to be agreed by the Minister.
32. Once approved by the Minister each Offset Project management plan must be implemented according to its terms.

33. The Minister may require that the submitted or approved Offset Project management plans be amended to provide for the better protection of listed threatened species under the Act. Sylvatech must submit for the Minister's approval an amended management plan, addressing the specified concerns, within twenty business days of receipt of the request. If the Minister approves a revised Offset Project management plan, it must be implemented instead of that previously approved.
34. The Minister may, if requested by Sylvatech based on expert advice or operational experience, agree that the submitted or approved Offset Project management plans be amended if necessary to provide for the protection of listed threatened species under the Act. If the Minister approves a revised Offset Project management plan, it must be implemented instead of that previously approved.
35. An annual report, detailing implementation of the Offset Project management plans and achievement against the performance indicators, must be submitted to the Minister by 31 March each year for the remainder of the funding period (2009 to 2011).



MEDIA RELEASE

The Hon Peter Garrett MP

Minister for the Environment, Heritage and the Arts

The Hon Warren Snowdon MP

Federal Member for Lingiari

PG /153

16 October 2008

TOUGH MEASURES PLACED ON TIWI PLANTATIONS

Environment Minister, Peter Garrett, today announced a raft of tough measures, including up to \$2 million for remediation works, to be imposed on forestry operations at the Tiwi Islands, Northern Territory, following a breach of approval conditions.

Mr Garrett said clearing carried out at the plantations between 2004 and 2006 had encroached on required buffer zones which protected important rainforests and wetlands.

"Any action which impacts on a matter of national environmental significance as defined under the national environment legislation is something which I take very seriously and the new conditions I am announcing today reflect that. In particular, the forestry operator will be required to undertake and pay for comprehensive remedial action.

"My department has undertaken investigations into these breaches, and following an admission by the company involved regarding the detail of the breaches, I have imposed new conditions requiring measures to remedy the damage done, and for additional and ongoing environmental benefits to the area."

Mr Garrett said that as well as adding new conditions to the operator's existing federal approval, a \$1million bond must be posted by the company to ensure the necessary remediation works were completed.

"The new conditions require the operator to fix all incursions into the rainforest and wetland buffers and I have also required the operator to pay a financial contribution of \$1.35 million, over three years, to the Tiwi Land Council for use in the Indigenous Rangers Program. This funding will support the rangers to carry out environmental works and projects, including the control of feral pigs and exotic grasses.

Federal member for Lingiari, the Hon. Warren Snowdon MP, said it was a positive outcome for the people of the Tiwi Islands.

"This extra commitment of funds will help the Tiwi Land Council to manage the environment, and will ensure that jobs will stay," said Mr Snowdon.

The Tiwi Islands plantation project involves clearing native forests to establish up to 26,000ha of hardwood *Acacia mangium* plantations on western Melville Island in the Tiwi Islands group.

The project's approval stipulated that clearing was not to occur within set buffer zones designed to protect important rainforest and wetland habitats used by threatened species protected under the *Federal Environment Protection and Biodiversity Conservation Act 1999*.

The joint initiative of Sylvatech and the Tiwi Land Council was approved in August 2001.