



NSW GOVERNMENT
Department of Planning

***MAJOR PROJECT ASSESSMENT:
Australian Bay Lobster Facility -
Pipeline Amendment Project***



Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979

December 2008

Cover photo: Site location of ABLP aquaculture facility
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EXECUTIVE SUMMARY

In December 2005, the Minister for Planning approved an application by Australian Bay Lobster Producers Pty Ltd (ABLP) to establish a commercial bay lobster aquaculture facility at Cudgen in the Tweed local government area. The facility would include a combined hatchery, grow-out and processing facility and two underground pipelines – one to transfer seawater from Kingscliff Beach to the main site, and the other to dispose of wastewater to the Kingscliff sewage treatment plant discharge pipe.

In finalising its plans for the construction of the facility, ABLP proposes to realign approximately 2 kilometres of the 5.5 kilometre pipeline route. The amended pipeline route is subject to a new project application which was lodged under Part 3A of the *Environmental Planning and Assessment Act, 1979*.

The proposal has a capital investment value of \$150,000 and would employ 1 worker during the installation of the pipelines.

During the exhibition period, the Department received 5 submissions on the project, four from public authorities and one from a special interest group. None of these submissions objected to the project. Government agencies provided recommended conditions of approval, however, the submission from the special interest group raised concerns about wastewater discharge and heritage impacts.

The Department has assessed the merits of the project in accordance with the relevant requirements in the *Environmental Planning and Assessment Act, 1979*, and is satisfied that the impacts of the project are relatively minor and can be mitigated and/or managed to ensure an acceptable level of environmental performance.

The Department is also satisfied that the project would assist in the delivery of the commercial bay lobster aquaculture facility, which would be a significant employer in the Tweed region and broaden Australia's export market.

Consequently, the Department believes the project is in the public interest and should be approved, subject to conditions.

1. PROPOSED PROJECT

1.1 Background

Australian Bay Lobster Producers Pty Ltd (ABLP) proposes to establish a commercial bay lobster aquaculture facility at Cudgen in the Tweed local government area. The facility would include a combined hatchery, grow-out and processing facility and two underground pipelines – one to transfer seawater from Kingscliff Beach to the main site, and the other to dispose of wastewater to the Kingscliff sewage treatment plant discharge pipeline (see Figure 1).

It has a capital investment value of about \$18 million, and is expected to employ up to 200 people during operations.

The development application was initially approved by the Minister for Planning on 30 June 2005. The Minister's approval was subsequently appealed numerous times in the Land and Environment Court. The application was re-determined by the Minister on 21 December 2005, with a final judgement on the approval being made by the Court of Appeal, which upheld the Minister's approval.

ABLP is currently finalising the detailed design of the facility. In finalising the design of the facility, ABLP has proposed to realign approximately 2 kilometres of the 5.5 kilometre pipeline route, mainly to minimise the disruption to local roads during construction and to facilitate the extraction of sand along the approved pipeline route, which is the subject of another Part 3A project application from Gales Holdings (see Figures 1 & 2).

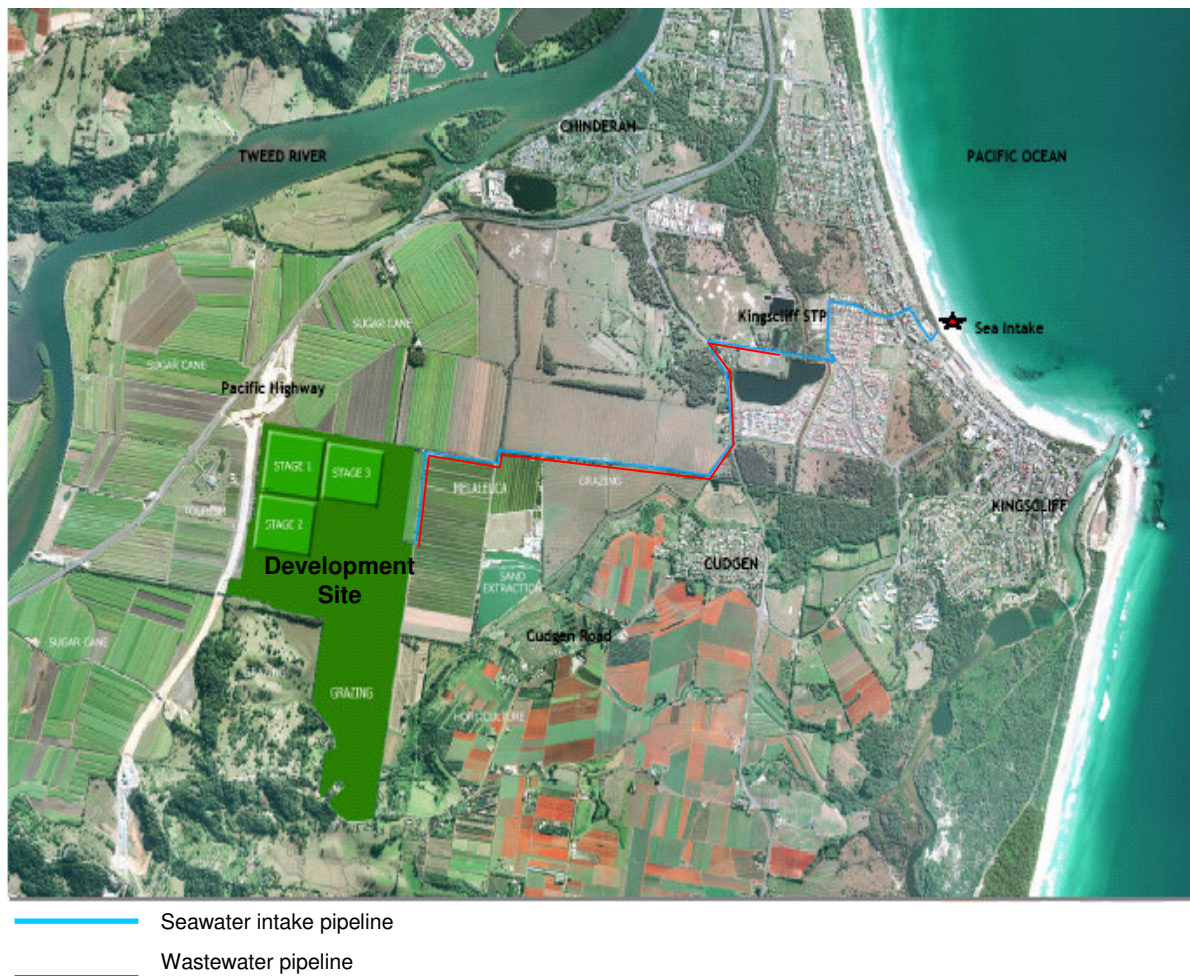


Figure 1: Regional Context

1.2 Project Description

ABLP proposes to realign approximately 2 kilometres of the proposed 5.5 kilometre pipeline route (see Figures 2), with two underground pipes to be installed – a seawater intake pipe and a wastewater pipe. The amended pipeline route would traverse predominantly cleared and disturbed areas including agricultural land and road reserves. Sections of the route would utilise the existing easement for the Kingscliff Sewage Treatment Plant (STP) pipelines.

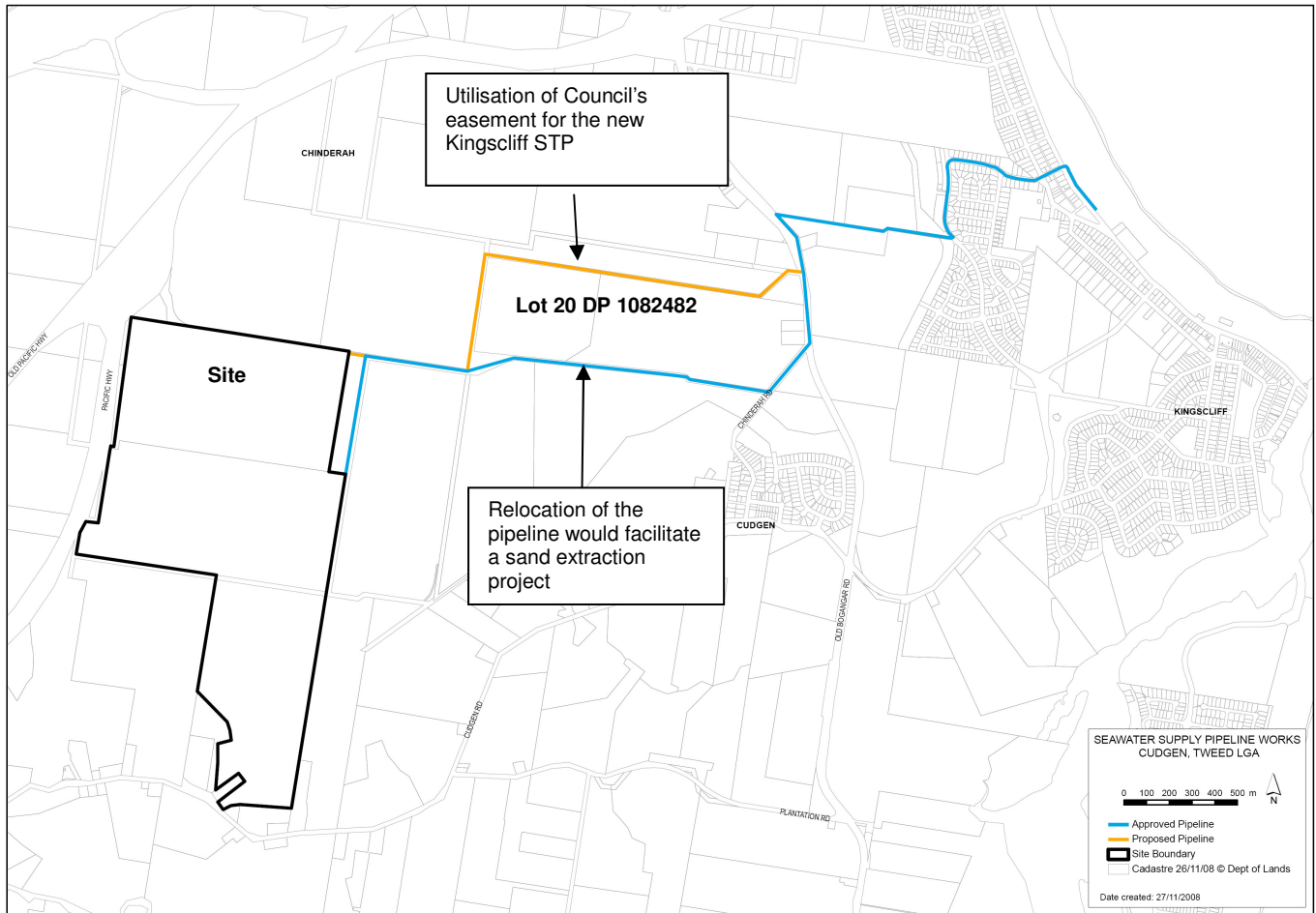


Figure 2: Amended Pipeline Route

The pipelines would generally be installed in an open trench (~1m wide) that would be excavated to a maximum depth of 1m below ground level (see Figure 3). Where the amended pipeline route would traverse watercourses, agricultural drains or road crossings, underboring or trenchless technology would be used to install the pipelines (i.e., underground drilling without the need for surface excavations).

The installation of the pipelines within the amended pipeline route would take approximately 3 to 4 weeks (the installation of the entire pipeline route would take 12 weeks).

The project is described in full in ABLP's Environmental Assessment (EA), which is attached as Appendix D.

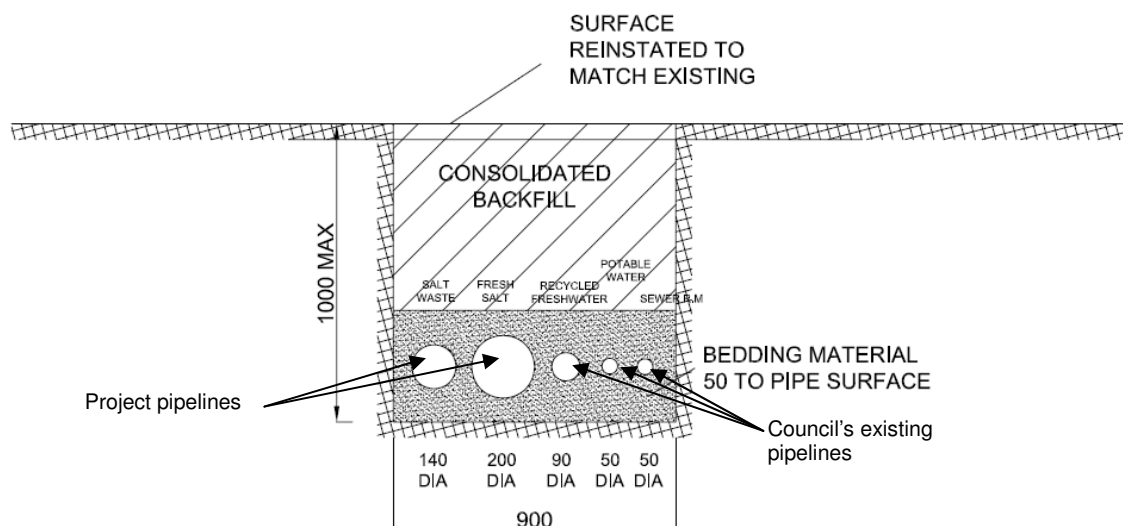


Figure 3: Pipe Trench Design (Amended Section Only)

2. STATUTORY CONTEXT

2.1 Major Project

Under Section 75B(1) of the EP&A Act, the Minister can order a proposed development to be a project to which Part 3A of the EP&A Act applies. On 7 November 2008, the Minister ordered that the proposed amended pipeline project be assessed and determined under Part 3A of the EP&A Act because:

1. of the regional significance of the aquaculture facility;
2. there was some legal uncertainty about modifying the original development consent or submitting a new development application under Part 4 of the EP&A Act; and
3. of the Department's cognizance with the broader project.

Consequently, the Minister is the approval authority for the project.

2.2 Permissibility

Under Section 75J of the EP&A Act, the Minister cannot approve the carrying out of a project that would be wholly prohibited under an environmental planning instrument. The pipeline would traverse areas zoned as 1(a) Rural and 1(b2) Agricultural Protection, as well as unzoned land under the *Tweed Local Environment Plan 2000*. The proposed pipeline route is permissible with consent in these zones.

Consequently the Minister may approve the carrying out of the project.

2.3 Exhibition and Notification

Under Section 75H(3) of the EP&A Act, the Director-General is required to make the Environmental Assessment (EA) of a project publicly available for at least 30 days.

After accepting the EA for the project, the Department:

- made it publicly available from 10 September 2008 until 13 October 2008:
 - on the Department's website, and
 - at the Department's Information Centre, Tweed Shire Council's offices at Tweed Heads and Murwillumbah, Kingscliff Branch Public Library and the Nature Conservation Council;
- notified landowners in the vicinity of the site about the exhibition period by letter;
- notified relevant State government authorities and Tweed Shire Council by letter; and
- advertised the exhibition in the Tweed Daily News.

This satisfies the requirements in Section 75H(3) of the EP&A Act.

During the assessment process the Department also made a number of documents available for download on the Department's website. These documents included the:

- project application;
- Director-General's environmental assessment requirements; and
- EA.

2.4 Environmental Planning Instruments

Under Section 75I of the EP&A Act, the Director-General's report is to include a copy of or reference to the provisions of any:

- *State Environmental Planning Policy* (SEPP) that substantially govern the carrying out of the project and;
- environmental planning instrument that would (but for Part 3A) substantially govern the carrying out of the project and that have been taken into consideration on the environmental assessment of the project.

The Department has considered the project against the relevant provisions of several environmental planning instruments (including SEPPs 44, 55 and 62; the *North Coast Regional Environmental Plan* and the *Tweed Local Environmental Plan 2000*). The Department is satisfied that none of these environmental planning instruments substantially govern the carrying out of the project, and that the project is able to be conducted in a manner that is consistent with these instruments.

2.5 Objects of the *Environmental Planning and Assessment Act 1979*

The Minister is required to consider the objects of the EP&A Act when he makes decisions under the Act. These objects are detailed in Section 5 of the Act, and include:

'The objects of this Act are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities, and*
 - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (vii) *ecologically sustainable development, and*
 - (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.'*

The objects of most relevance to the Minister's decision on whether or not to approve this project are those under Section 5(a)(i), (ii), (iii), (vi) and (vii).

With respect to ecologically sustainable development (ESD), the EP&A Act adopts the definition in the Protection of the Environment Administration Act 1991. Section 6(2) of that Act states that ESD 'requires the effective integration of economic and environmental considerations in decision-making processes' and that ESD 'can be achieved through' the implementation of the principles and programs including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms. In applying the precautionary principle, public decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment and an assessment of the risk-weighted consequences of various options.

The Department has fully considered the objects of the EP&A Act, including the encouragement of ESD, in its assessment of the project application.

2.6 Statement of Compliance

Under Section 75I of the EP&A Act, the Director-General's report is required to include a statement relating to compliance with the environmental assessment requirements with respect to the project.

The Department is satisfied that the environmental assessment requirements have been complied with.

3. ISSUES RAISED IN SUBMISSIONS

During the exhibition period, the Department received a total of five submissions on the project:

- four from public authorities [Roads and Traffic Authority (RTA), the Ministry of Transport, the Department of Environment and Climate Change (DECC) and the Department of Primary Industries (DPI)]; and
- one from a special interest group – the Tweed Heads Environmental Group Inc.

The public authorities did not object to the proposal and provided recommended conditions of approval.

One submission was received from a special interest group (Tweed Heads Environmental Group Inc.) who did not object to the proposal, however, raised concerns with wastewater discharge into the Tweed River and heritage issues (including Aboriginal).

A full copy of these submissions is provided in Appendix C.

4. ASSESSMENT

The Department has assessed the environmental impacts of the project in detail. The key environmental issues are summarised in the table below.

Table 1: Summary of the Department's assessment of environmental issues

Issue	Impact	Recommendation
Soils and Water	<ul style="list-style-type: none"> • Potential impacts relate to: <ul style="list-style-type: none"> - erosion and sedimentation during construction, - the disturbance of the bed of watercourses or drainage channels during trenching activities; - exposure of acid sulfate soils (ASS); and - leakage of wastewater during operations. • To Department is satisfied that ABLP's proposed control measures (sediment fencing, bunds and covering of stockpiled material) are appropriate. • The Department is satisfied that the construction/installation method for the pipelines would ensure the beds of watercourses and drainage channel would not be disturbed. • The amended pipeline route traverses through areas classified as Class 3 ASS. Trenches would be excavated to a maximum depth of 1m, limiting any potential exposure of ASS. • In addition, previous investigations undertaken along sections of the pipeline route for the Kingscliff STP (the proposal would utilise sections of the STP pipeline easement) indicate low levels of actual and potential ASS. • The Department is satisfied with the measures proposed by ABLP to manage any potential impacts, including an ASS management plan and the treatment of soils as required. 	<ul style="list-style-type: none"> • The Department has recommended conditions that would require ABLP to: <ul style="list-style-type: none"> - prepare a erosion and sediment control plan in accordance with relevant guidelines; - not disturb the beds of watercourses without prior approval; - prepare an ASS management plan in accordance with relevant guidelines; and - maintain the pipelines over the life of the project, ensuring that any leaks or maintenance issues are detected and repaired.

	<ul style="list-style-type: none"> The pipe material is expected to have a life of 20-50 years, and ABLP considers that maintenance requirements would be minimal. The Tweed Heads Environmental Group Inc raised concerns about the impact of wastewater discharged to the Tweed River. This aspect was assessed in detail as part of the original development application, and does not form part of the current application. The Department is satisfied that ABLP commitments together with the recommended conditions or approval would ensure that any potential soil and water impacts are minimised and managed appropriately. 	
Utilities	<ul style="list-style-type: none"> The installation of the pipelines has the potential to impact on local infrastructure such as sewer pipelines, roads and drainage utilities. ABLP has committed to undertake ground-truthing to locate services prior to construction, as well as repairing any damage to public infrastructure as a result of the proposal. The Department is satisfied that any potential impacts on public infrastructure can be managed. 	<ul style="list-style-type: none"> The Department recommends that ABLP should be required to prepare a dilapidation report prior to construction of the pipeline to ensure any impacts on public infrastructure can be identified and repaired.
Noise	<ul style="list-style-type: none"> The use of plant and equipment during the installation of the pipelines has the potential to generate noise. The works are short-term (3 to 4 weeks) and the Department is satisfied that any potential impacts would be minimal. 	<ul style="list-style-type: none"> The Department recommends that the installation of the pipelines should only occur during day time hours, with no works on Sunday.
Dust	<ul style="list-style-type: none"> Construction works have the potential to generate dust emissions from excavation works. Due to the sandy nature of soils and the short-term duration of the works (3 to 4 weeks), the Department considers that impacts from the generation of dust would be minimal. 	<ul style="list-style-type: none"> Recommended conditions of approval require ABLP to carry out all feasible and reasonable measures to minimise dust during the project, including not allowing trucks to track dirt onto roads.
Flora and Fauna	<ul style="list-style-type: none"> The pipeline route is generally cleared of vegetation and no threatened species were identified along the route. Minor and isolated removal of woody vegetation may be required. The construction methodology (ie underboring) would ensure that impacts on aquatic ecosystems are minimised. The Department is satisfied that impacts on flora and fauna, including aquatic ecosystems would be minimal. 	<ul style="list-style-type: none"> NA
Aboriginal Heritage	<ul style="list-style-type: none"> The Tweed Heads Environmental Group Inc considers that Native Title rights have not been extinguished for the Tweed River and that the Tweed Byron Local Aboriginal Land Council should be consulted. The pipeline would be installed in areas that have been previously disturbed and the impacts on Aboriginal heritage are expected to be minimal. 	<ul style="list-style-type: none"> The Department recommends that should any Aboriginal artefacts be detected during the installation of the pipelines, that work ceases and the Department, DECC and relevant Aboriginal groups are notified.

5. RECOMMENDED CONDITIONS

The Department has prepared recommended conditions of approval for the project (see Appendix B), and summarised these conditions in Appendix A. These conditions are required to:

- prevent, minimise, and/or offset adverse impacts of the project;
- set standards and performance measures for acceptable environmental performance;
- ensure regular monitoring and reporting; and
- provide for the ongoing environmental management of the project.

The Department has provided the draft conditions of approval for the project to relevant government authorities for comment, and has incorporated these comments into the conditions of approval where appropriate.

ABLP has reviewed and accepts the recommended conditions.

6. CONCLUSION

The Department has assessed the merits of the project having regard to the objects of the EP&A Act, and the principles of ecologically sustainable development, and where necessary conditions of approval were recommended to address any residual concerns.

With the implementation of the recommended conditions of approval, the Department is satisfied that the impacts of the project can be mitigated and/or managed to ensure an acceptable level of environmental performance.

The relocated pipeline is intrinsically linked to the Minister's approval for the broader aquaculture facility and the project would help facilitate the development of the aquaculture facility which is considered to be of regional and state planning significance, as it:

- would be a significant employer in the Tweed region,
- has the potential to increase NSW aquaculture production four fold; and
- would broaden Australia's export market.

Consequently, the Department believes that the project is in the public interest, and should be approved subject to conditions.

7. RECOMMENDATION

It is RECOMMENDED that the Minister:

- consider the findings and recommendations of this report;
- approve the project application, subject to conditions, under section 75J of the Environmental Planning and Assessment Act 1979; and
- sign the attached project approval (see Appendix B).

Signed 11/12/08

David Kitto

Director

Major Development Assessment

Signed 13/12/08

Chris Wilson

Executive Director

Major Project Assessment

Signed 15/12/08

Sam Haddad

Director-General

APPENDIX A: SUMMARY OF CONDITIONS OF APPROVAL

Aspect	Condition	Requirement
Schedule 2: Administrative Conditions		
	5	Requires the Proponent to repair any damage to public infrastructure
Schedule 3: Specific Environmental Conditions		
<i>Construction</i>	8	Limits construction hours
<i>Construction Management</i>	9	Requires the Proponent to prepare and implement a construction management plan including the management of erosion and sediment and acid sulfate soils
<i>Soil and Water</i>	11	Beds of watercourse are not to be disturbed without prior approval from relevant agencies
<i>Dust</i>	12 & 13	Requirements to minimise dust during construction
<i>Aboriginal Heritage</i>	15	Requirement to cease work and notify appropriate authorities and Aboriginal groups if artefacts are identified during construction
<i>Operation</i>	16	Requirement to maintain the pipelines during the life of the project.
<i>Incident reporting</i>	17	Provides incident reporting requirements.

APPENDIX B: CONDITIONS OF APPROVAL

APPENDIX C: SUBMISSIONS

APPENDIX D: ENVIRONMENTAL ASSESSMENT
