

STATEMENT OF REASONS FOR DECISION ON CONTROLLED ACTION UNDER THE
ENVIRONMENT PROTECTION AND BIODIVERSITY ACT 1999

I, TANIA RISHNIW, Assistant Secretary, Department of the Environment and Water Resources and delegate of the Minister for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), provide the following statement of reasons for my decision of 1 October 2007, under section 75 of the EPBC Act, that the proposed action by Armidale Dumaresq Council to develop a Regional Landfill at Waterfall Way, Armidale, New South Wales (EPBC 2007/3646), is a controlled action under the EPBC Act and that the controlling provisions are sections 12 and 15A (World Heritage properties) and sections 15B and 15C (National Heritage places).

Legislation

1. Section 68 of the EPBC Act relevantly provides:

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

2. Section 74 of the EPBC Act relevantly provides:

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the Environment Minister) must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
 - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.
- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must:
 - (a) inform the appropriate Minister of the State or Territory; and
 - (b) invite that Minister to give the Environment Minister comments within 10 business days on whether the proposed action is a controlled action;if the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).
- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:
 - (a) the referral; and
 - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

3. Section 75 of the EPBC Act relevantly provides:

- (1) The Minister must decide:
 - (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - (b) which provisions of Part 3 (if any) are controlling provisions for the action.
- (1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
 - (a) in response to the invitation (if any) under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
 - (b) within the period specified in the invitation.
- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
 - (a) the Minister must consider all adverse impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3; and
 - (b) must not consider any beneficial impacts the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3.

Background:

- 4. The proposed action was referred under section 68 of the EPBC Act by the Armidale Dumaresq Council. The referral was received by the Department of the Environment and Water Resources on 22 August 2007. The referral indicated that, in the view of the Armidale Dumaresq Council, the proposed action is not a controlled action.
- 5. The proposed action is to develop a regional landfill near Waterfall Way, Armidale, NSW. The landfill will be located on two properties - Property 1: Lot 2 DP 253346, Lot 1 DP 820271 and Property 2: Lot 1 DP 253346 Parish of Gara, County of Sandom. The landfill will have a life of 50 years and construction will include development of an access road, leachate pond, sedimentation pond, amenities and installation of services.
- 6. The leachate barrier system will consist of a 900 mm thick layer of recompacted clay, with a leachate drainage layer, leachate sumps and drains, and a leachate pond with a compacted clay bund designed to meet 1:100 year flood standards.
- 7. The site is approximately 86 hectares of predominantly cleared pastoral land 1 kilometre south of the Waterfall Way and 12 kilometres east of Armidale. The proposed land fill will take in excess of 650,000 tonnes of putrescible waste.

8. The site is 1 kilometre from the Gara River which flows 4 kilometres southwards to the Oxley Wild Rivers National Park, which is a part of the Gondwana Rainforests of Australia World Heritage Area.
9. The New South Wales Department of Planning was informed of the referral in a letter dated 22 August 2007, pursuant to section 74(2) of the EPBC Act, and invited to provide comment. At the time of the decision no response had been received from the NSW Department of Planning.
10. In accordance with subsection 74(3) of the EPBC Act, the referral, together with an invitation for public submissions, was published on the Department's web site on 22 August 2007 for 10 business days public comment. A total of seven public submissions were received by the Department in response to the invitation. The submissions raised concerns about potential significant impacts on World Heritage values, National Heritage values and listed threatened species by contaminated leachate leaking from the landfill or floods overtopping bund walls and the leachate pond.
11. On 1 October 2007, I, as delegate of the Minister, decided that the proposed action is a controlled action and that the controlling provisions are sections 12 and 15A (World Heritage properties) and sections 15B and 15C (National Heritage places).

Evidence or other material on which my findings were based

12. The evidence or other material upon which my findings were based are listed as below:
 - a brief from the Department, dated 1 October 2007, including the following attachments:
 - a copy of the referral (EPBC 2007/3646) for the proposed action and associated figures, including the following documents:
 - Archaeological Surveys & Reports Pty Ltd, 2006: The Archaeological Investigation For Sites Of Indigenous Cultural Significance On The Site Of The Proposed New England Regional Landfill Waterfall Way, East Of Armidale, Northern Tablelands, NSW;
 - EA Systems, 2006: Flora and Fauna Assessment Proposed New Armidale Landfill Facility;
 - EA Systems, September 2006: Hydro-Geotechnical Assessment;
 - RCA Australia, 2006 Geotechnical and Hydrological Investigation Proposed Armidale Landfill;
 - Armidale Dumaresq Council Environmental Compliance Policy; and
 - Consent to Lodge Armidale Landfill DEWR Referral, 25 July 2007.
 - Supporting advice provided by the Heritage Division of the Department of Environment and Water Resources.

- Supporting advice provided by the Approvals and Wildlife Division of the Department of Environment and Water Resources.
- Comments provided by the public in response to the invitation to provide comment made pursuant to s74(3).

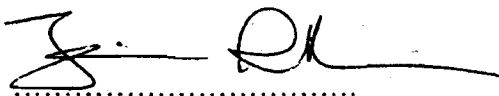
Findings on material questions of fact

13. I found that there is no likelihood of the proposed action having a significant adverse impact on a matter protected by any provision of Part 3 of the EPBC Act other than, potentially, sections 12 and 15A (World Heritage properties) and sections 15B and 15C (National Heritage places).
14. I found that the site is 1 km from the Gara River which flows 4 km southwards to the Oxley Wild Rivers National Park, which is a part of the Gondwana Rainforests of Australia World Heritage Area (GRAWHA) and is also listed on the National Heritage list.
15. I found that the natural values of the GRAWHA comprise rainforest within 50 separate reserves located between Newcastle and Brisbane (managed by NSW and QLD Agencies). I found that the GRAWHA provides habitat for more than 200 rare or threatened plant species, which also constitutes part of the natural values of the GRAWHA.
16. I found that the proposed landfill will be located high in the catchment near a drainage line on which a leachate pond will be constructed. I found that a geotechnical assessment provided with the referral indicates that the soils on the site are potentially dispersive with high erosion hazard and that this has potential implications for the proposed compacted clay capping and liner as well as for water storage embankments.
17. I found that values in Oxley Wild Rivers National Park are highly dependent on groundwater and river water entering the park. I also found that, based on the information provided by the proponent, the design of the leachate pond appears to be inadequate to deal with heavy rain and, even in the absence of heavy rain, it appears likely that leachate will be able to enter the groundwater.
18. I found that extensive research has been conducted into the failure of landfills to contain leachate. I found that landfills have the potential to fail because the clay liners, or clay-plastic composites liners, can be corroded by the mixture of chemicals that collect in any landfill. I found that both clays and plastics have been shown to react with these chemicals and eventually the liners can decay to the extent that leachate leaks into the groundwater system and ultimately may leak into streams and rivers.
19. I found that any leachate leaking from the proposed landfill is likely to adversely impact on the quality of water leaving the site and entering the Gara River.
20. I found that weeds and rubbish were likely to escape from the landfill and enter the World Heritage and National Heritage area. I found that the World Heritage and National Heritage values of the GRAWHA include animals that are directly dependent on water quality, such as frogs and turtles, and these are the values most likely to be severely adversely affected in the short term. However, in the longer term, diminished water quality and the input of weed propagules may have a significant adverse impact on the World Heritage and National Heritage values of dry rainforest and fauna.

21. I found that a number of World Heritage and National Heritage values are likely to be significantly adversely affected by the proposal to establish a landfill adjacent to the Gara River. I found that the values cited as being most at risk are those related to rainforest and fauna (particularly frogs) which are directly dependent on water quality for their survival.
22. I found that the proponent's contention that World Heritage and National Heritage values will not be affected by the proposal was not supported by the information provided in the referral.
23. I found that the proponent provided no undertakings regarding mitigation measures relating to World Heritage and National Heritage values in the referral. I found that details on the likely nature and extent of impacts on World Heritage and National Heritage values were not provided by the proponent.

Reasons for Decision

24. In making my decision I took account of the precautionary principle and public comments.
25. When considering the potential impacts of the proposed action I had regard to the direct and indirect impacts of the action.
26. In light of my findings, I was satisfied that the proposed action will, or is likely to, have a significant impact on the World Heritage values of World Heritage properties and the National Heritage values of National Heritage places. I therefore decided on 1 October 2007 that the proposed action is a controlled action and that the controlling provisions are sections 12 and 15A (World Heritage properties) and sections 15B and 15C (National Heritage places).



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TANIA RISHNIW

7 November 2007