



APPROVAL

Kooragang Island Waste Emplacement Facility – Area 2 Closure Works, off Cormorant Road, Kooragang Island, Newcastle, NSW (EPBC 2016/7670)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Crown in right of the State of NSW, acting through NSW Treasury
ACN or ABN of approval holder	ABN: 55 437 667 728
Action	To undertake closure and rehabilitation of Area 2 (K3 and K5 and a small section of K7), which is approximately 36 hectares of the Kooragang Island Waste Emplacement Facility (KIWEF) near Newcastle, NSW [See EPBC Act referral 2016/7670 subject to the variation of the action accepted by the Minister under section 156B on 23 October 2018].

Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

Controlling Provisions

Wetlands of international importance	
Section 16	Approve
Section 17B	Approve

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Period for which the approval has effect

This approval has effect until 31 December 2030.

Decision-maker

Name and position

Kim Farrant
Assistant Secretary
Assessments and Waste Branch

Signature



Date of decision

22 March 2019

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. The action must only be undertaken within the **footprint**.
2. The person taking the action must implement the **Green and Golden Bell Frog Management Plan** to avoid and mitigate impacts on the Green and Golden Bell Frog (*Litoria aurea*) (GGBF) population.
3. GGBF monitoring must be undertaken in accordance with the **Green and Golden Bell Frog Management Plan** within the **KIWEF Site**, including the temporary basins, aligned with **NCIG monitoring program**.
4. GGBF monitoring data must be analysed following each round of monitoring to identify any changes to the GGBF population, as compared to the baseline data described in the **Green and Golden Bell Frog Management Plan**. Should a decline in population be attributed to the action, response measures must be developed and implemented in accordance with the **Green and Golden Bell Frog Management Plan**.
5. The person taking the action must revegetate the area marked in yellow and identified as 'Area 2 Closure works' on Map 2 at Attachment A to restore Green and Golden Bell Frog habitat in accordance with the **Revegetation Management Plan**.
6. The person taking the action must undertake water quality monitoring for groundwater and surface water at the **KIWEF Site** in accordance with the **Water Quality Management Plan**.
7. At the **completion of the project works**, the approval holder must ensure:
 - i. no increased distribution of *Gambusia holbrooki* due to the project works, within the area identified as 'Potential GGBF foraging or breeding habitat' as identified on Map 2 at Attachment A, and
 - ii. no net loss of GGBF foraging or breeding habitat as an impact of the project works.
8. The approval holder must implement the **KIWEF Site EMP**.

Part B – Standard administrative conditions

Notification of date of commencement of the proposed action

9. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.
10. If the **commencement of the action** does not occur within 5 years from the date of this approval, then the approval holder must not **commence the action** without the prior written agreement of the **Minister**.

Compliance records

11. The approval holder must maintain accurate and complete **compliance records**.

12. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's website** or through the general media.

Preparation and publication of plans

13. The approval holder must:
- a. publish all plans associated with the action on the approval holder's **website** within **30 business days** of the date of approval of the action;
 - b. exclude or redact **sensitive ecological data** from plans published on the **website** or provided to a member of the public; and
 - c. keep plans published on the **website** until the end date of this approval.
14. The approval holder must ensure that any monitoring data (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under a plan, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data** (2018) and submitted electronically to the **Department** in accordance with the requirements of the plan.

Annual compliance reporting

15. The approval holder must prepare a **compliance report** for each 12 month period following the date of the **commencement of the proposed action**, or as otherwise agreed to in writing by the **Minister**. The approval holder must:
- a. publish each **compliance report** on the **website** within **60 business days** following the relevant 12 month period;
 - b. notify the **Department** by email that a **compliance report** has been published on the **website** within five **business days** of the date of publication;
 - c. keep all **compliance reports** publicly available on the **website** until this approval expires;
 - d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
 - e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within five **business days** of publication.

Note: The first **compliance report** may report a period less than 12 months so that it and subsequent compliance reports align with the similar requirement under state approval. **Compliance reports** may be published on the **Department's website**.

Reporting non-compliance

16. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with the conditions; or non-compliance with the commitments made in plans. The notification must be

given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:

- a. the condition which is or may be in breach; and
- b. a short description of the **incident** and/or non-compliance.

17. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in plans as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:

- a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
- b. the potential impacts of the **incident** or non-compliance; and
- c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

18. The approval holder must ensure that independent audits of compliance with the conditions are conducted:

- i. Following the completion of onsite construction works and prior to the **completion of the project works** period;
- ii. Within a 12month period from the completion of the action;
- iii. or as requested in writing by the Minister.

19. For each **independent audit**, the approval holder must:

- a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;
- b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
- c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.

20. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Completion of the action

21. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

22. In these conditions, except where contrary intention is expressed, the following definitions are used:

- a. **Business days** means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.
- b. **Commencement of the action** means the first instance of any specified activity associated with the action. Commencement does not include minor physical disturbance necessary to:
 - i. undertake pre-clearance surveys or monitoring programs;
 - ii. install signage and /or temporary fencing to prevent unapproved use of the project area; and
 - iii. protect environmental and property assets from fire, weeds and pests, including erection or construction of fencing and signage, and maintenance or use of existing surface access tracks, if agreed in writing by the Department.
- c. **Completion data** means an environmental report and spatial data information clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is shapefile.
- d. **Completion of the action** means the first day when all specified activities associated with the action have permanently ceased.
- e. **Completion of the project works** means two years following the completion of onsite construction works (not including works undertaken to maintain the completed works).
- f. **Compliance records** means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.
- g. **Compliance reports** means written reports:
 - i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the plans;
 - ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**. Available from: <https://www.environment.gov.au/epbc/publications/annual-compliance-report-guidelines>;
 - iii. include a shapefile of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
 - iv. annexing a schedule of all plans prepared and in existence in relation to the conditions during the relevant 12 month period.
- h. **Department** means the Australian Government agency responsible for administering the **EPBC Act**.
- i. **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- j. **Footprint** means the areas enclosed by the red dashed line captioned 'Revised Referral Boundary' identified on Map 1 at Attachment A.

- k. **Green and Golden Bell Frog Management Plan** means Golder Associates (2011), *Green and Golden Bell Frog Management Plan – Kooragang Island Waste Emplacement Facility Closure Works*, dated 19 April 2011.
- l. **Incident** means any event which has the potential to, or does, impact on **protected matter(s)**.
- m. **KIWEF Site** means the area enclosed by the red line designated as 'KIWEF Surrender Notice Boundary' on Map 3 at Attachment A.
- n. **KIWEF Site EMP** means Kooragang Island Waste Emplacement Facility Area 2 Closure, Construction Environmental Management Framework. This document was developed to consolidate all environmental management requirements for the project arising from State and Federal Approvals, legislation and regulation.
- o. **Minister** means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.
- p. **NCIG monitoring program** means the existing GGBF monitoring program conducted by Newcastle Coal Infrastructure Group (NCIG) to determine GGBF abundance and distribution across Kooragang Island.
- q. **Revegetation Management Plan** means Annex A of Appendix 8, volume 1 of the preliminary documentation package.
- r. **Sensitive ecological data** means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*. Available from: <http://www.environment.gov.au/about-us/environmental-information-data/information-policy/sensitive-ecological-data-access-and-management-policy>
- s. **Water Quality Management Plan** means Annex B of Appendix 8, volume 1 of the preliminary documentation package.
- t. **Website** means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

ATTACHMENT A

Map 1 The Proposed action footprint



Map 2 Known and Potential GGBF Habitat



Map 3 KIWEF Surrender Notice Boundary

