

Level 6, 134 Macquarie Street, Hobart TAS
GPO Box 1550, Hobart, TAS 7001 Australia



Enquiries: Warren Jones
Ph: +61 3 6233 6536 Fax +61 3 6233 6600
Email: Warren.Jones@environment.tas.gov.au
Web: www.epa.tas.gov.au
Our Ref: (Pulp Mill LUPAA permits_Oct 09)

20 October 2009

Mr Kim Evans
Secretary
Department of Primary Industries, Parks, Water and Environment

Kim

As you will be aware, I have sought advice from the Solicitor-General regarding the status of the permits taken to have been issued under the *Land Use Planning and Approvals Act (LUPAA)* with the passage of the Pulp Mill Permit through Parliament. These are Schedules LU1, LU2, LU3 and LU4 of Appendix 2A to the Pulp Mill Permit. *

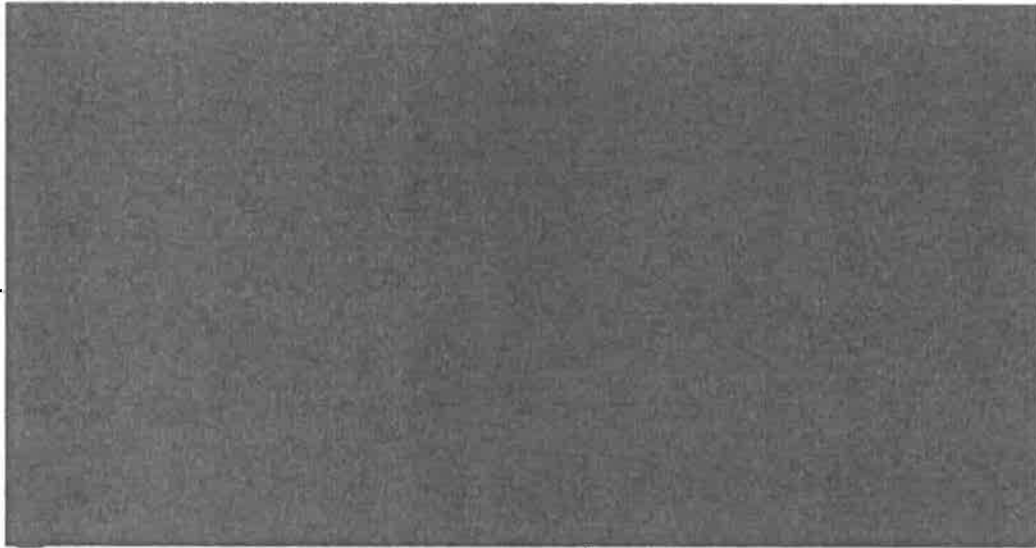
I have sought this advice because:

- Each of the Schedules designates the Director of Environmental Management, (now the Director, EPA) as the person or body responsible for the enforcement of Part 3 of the LUPAA permits, which contain the environmental management conditions. As such I am required to receive or approve numerous documents and plans required by the permits as well as regulate the environmental effects of construction works and the operation of the mill and associated developments. Approximately 1300 of the 1600 conditions in the Pulp Mill Permit are contained in the Part 3 sections of LU1 – LU4.
- My understanding of the way that the Pulp Mill Assessment Act (PMAA) and the Pulp Mill Permit functions is that, once the LUPAA permits were taken to have been issued, the provisions of LUPAA and other relevant legislation apply as if the permits had been issued by the relevant Councils under LUPAA. This understanding is based on a number of opinions I have received from the Solicitor-General's office as well as discussions with the former Solicitor General and officers from the Department of Premier and Cabinet who were responsible for the drafting instructions for the legislation. *
- Under section 53(5) of LUPAA a permit expires two years after it was issued unless
 - (a) there has been substantial commencement of the activity; or
 - (b) the relevant Council has granted an extension of the permit.
- The two year anniversary of the date on which the permits were taken to have been granted was 30 August 2009. Gunns has not sought an extension to the permits LU1 – LU4. Gunns did undertake some on-ground works in the areas covered by each of the four land-use permits prior to 30 August. Most of these works were undertaken in the month prior to 30 August.
- It was not self evident to me that the works that Gunns had undertaken prior to 30 August represented "substantial commencement" of the activities authorised by each of the permits. *

This copy is not a complete copy of the original record.

- As the regulator of about two thirds of the conditions under the Pulp Mill Permit it is important that I have confidence in the validity of the instruments that I am charged with enforcing by the PMAA.

The advice from the Principal Crown Counsel in the Solicitor-General's office on this matter is attached. There are, in my view, three key points



The consequence of this advice is that the doubt over the current status of the permits needs to be resolved. There appear to be two main options for achieving this; either a ruling will need to be made by the Supreme Court or the PMAA could be amended to clarify its intent and operation.

I am writing to ask that you make appropriate enquiries to resolve whether the Government intends to amend the PMAA in such a way as to clarify the status of the LUPAA permits LU1 - LU4. If the Government does not propose to take this course of action then I will need to write to Gunns to advise them of my current view that there is significant doubt that the permits survive. The George Town, West Tamar and Launceston Councils are also each regulators of Part 2 of one of the land use permits and, as the Principal Crown Counsel has advised that they are likely to have the primary obligation to take action in relation to the permits, they should also be informed.

You will be aware that the Commonwealth Minister has also issued a permit under the Environment Protection and Biodiversity Conservation Act to Gunns to allow the construction of the Pulp Mill. While there is no interdependency between the Commonwealth permits and the LUPAA permits, I have an agreement with the Commonwealth Department of Environment Water Heritage and the Arts regarding cooperation on the regulation of the mill. Under the terms of that agreement I believe that it would be appropriate for me to advise them of my views in relation to the land use permits.


If amendment of the PMAA is considered then it is appropriate for me to draw your attention to two other issues that, in my opinion, would benefit from clarification by amendments:

- (1) Clause 8(3) of the PMAA provides that if the person proposing the project does not comply with a condition contained in the Pulp Mill Permit the Pulp Mill Permit is suspended until such time as the condition is complied with. This provision is unique to the PMAA and in order to better understand its implications and functioning I have had cause to seek a number of opinions from the office of the Solicitor General. This advice has shown that the interpretation of the clause and understanding how it will work in practice is complex and open to question. Sooner or later this uncertainty is likely to result in the clause being

tested in court. As a regulator, I believe that there would be considerable merit in clarifying the intent and operation of this clause. I am sure that the Solicitor-General's Office would be willing to advise on the issues that should be clarified in relation to this clause.

- (2) There has been considerable public speculation about the meaning and functioning of Section 11 of the Act. This has also been apparent in questions that have been put to me by members of the public. While this clause has already been subject to court action, there may be benefit in clarifying its operation, particularly in terms of the post-approval stage of the project.

I look forward to your advice.



Warren Jones
DIRECTOR, ENVIRONMENT PROTECTION AUTHORITY

Briefing notes for Director, EPA meeting with DPAC

Meeting scheduled for 27th October 2010

Subject: PULP MILL PROJECT

General Information

The pulp mill project was approved by Parliament and the Pulp Mill Permit came into force on 30 August 2007.

The permit will lapse on 30 August 2011 if the project has not 'substantially commenced'. Substantial commencement is not defined in the permit or elsewhere. Legal advice may need to be sought by the Government if any doubt exists about the status of the permit at that time. There is some risk that a 3rd party may choose to test the expiry clause in a court of law. There are no inbuilt options for extending or modifying the expiry date.

An 'Obligations Register' was created by Gunns and was checked by relevant regulators in the months after the permit was issued. This register contains all the commitments required to be met by the Permit, including references to and summaries of permit conditions, due dates, estimates of timeframes for Gunns to prepare and regulators to assess documents and relevant regulatory staff likely to be involved.

In the 12-18 months following the issuing of the permit, Gunns allocated considerable resources toward fulfilling the requirements in the permit which were due prior to the commencement of construction.

Gunns are currently in a position where they can commence with bulk earthworks at the mill site with only a few minor permit requirements to be fulfilled (e.g. notifications and an updated construction timetable).

In order for Gunns to undertake construction in areas other than the mill site, they need to complete site specific components of the CEMP in addition to the above minor requirements. Some additional management plans are required before construction can commence in high risk areas such as the crossings of the Tamar River, Donovans Bay and the foreshore dunes adjacent to Bass Strait.

A raft of obligations in the permit relate to the commencement of commissioning. While these are not critical to the immediate start of construction, Gunns will no doubt start working on them in earnest once funds become available.

Gunns (and regulators) should review the commitments and requirements in the myriad of approved management plans and permit conditions relating to construction activities to re-familiarise themselves with what needs to happen on the ground during construction (e.g. liaising with the public, re-starting suspended monitoring programs, purchase of monitoring equipment, installation of web cam monitoring system).

The Major Projects Regulation Section was formed within the EPA Division (then the Environment Division) to manage regulation of the pulp mill project. The MPR section consisted of a section head and 4 regulatory officers.

Over the last 2 years the funding for the MPR section has scaled back significantly (to zero now?) and 3 positions have been lost (section head, senior environmental officer, environmental officer). Of the remaining 2 officers, one (Alice) spends 100% of her time regulation other premises and the other (Simon) spends 90% of his time regulating other premises.

A significant increase in project specific workload can be expected for the EPA if the project proceeds. Tasks will include:

- Involvement in coordination of regulatory activities;
 - Revision and approval of management plans (and general obligations tracking);
 - Site inspection and reporting (many separate construction sites are expected to be operational concurrently);
 - Incidence and complaint response and investigation; and
 - Ministerial communication.
- (+ potential ramping up of government funded monitoring programs such as an air monitoring network in the Tamar Valley)

It is anticipated that a number of dedicated staff, equivalent to that which was in place previously, would be required if the mill goes ahead. This would involve recruitment of a minimum of 3 staff (as well as decisions to be made about backfilling Alice's and Simon's current roles?).

A range of project facilitation groups were established at the start of the process and have since been suspended. These groups would need to be re-established if the project goes ahead. The main groups were the IDC, the Regulators Group, weekly proponent/regulator meetings in Launceston facilitated by DED and attended by EPA officers, with other relevant regulators invited as required, and a semi regular meeting between state and local government regulators as necessary.

If the project goes ahead, the pre-existing lines of communication would need to be set up between all relevant parties again. This could only take place after re-establishment of the above groups and forums.

If Gunns want to make changes to the project they need to seek approval from the Director. The permit allows for the Director to assess and approve changes.

The significant changes that the EPA is currently aware of are:

- Revised water supply and wastewater pipeline alignments;
- Revised methodology for crossing the Tamar River and the foreshore adjacent to Bass Strait;
- Minor technology changes in the chemical plant and piping plant; and
- Re-development of the chip mill site (note: need to seek advice on relevant regulatory tool – current chip mill EPN or pulp mill permit).

Regulatory History

Toward the end of 2008, Gunns had fulfilled all requirements in order to commence vegetation clearing and bulk earthworks at the mill site.

Vegetation clearing at the mill site commenced August 2009 and is now complete (excepting ground cover). Bulk earthworks have not begun at this stage.

Construction of the main access road in to the site commenced early in 2010 and has now been completed. This will allow safe and reliable access to the mill site for bulk earthworks and further construction activities.

Minor construction activities occurred in the Trevallyn Nature Recreation Area and at Likemans Hill in August 2009.

The Director, EPA has approved the extension or suspension of timeframes for a range of commitments in the permit. The majority of these extensions and suspensions were applied for by Gunns as a direct result of Gunns ongoing difficulties in securing finance for the project.

Key plans and requirements which have been met:

- Community consultation and communication strategy;
- Construction environmental management plan (includes management of heritage, weed and disease, rehabilitation, fauna and flora, erosion and sediment, acid sulphate soils, water quality, etc) (note: site specific components still required for most non-mill site construction sites);
- Construction monitoring plan;
- Woodchip mill wastewater strategy report;
- Hydrogeological assessment and model;
- Fauna management plan;
- Waste minimisation plan;
- Pulp mill design report;
- Dust management plan;
- Wharf construction management plan; and
- Construction stormwater management plan.

Key plans and requirements under development:

- Baseline and operational monitoring plan (note: close to being approved);
- Hydrodynamic modelling;
- Shore crossing management plan (effluent pipeline into Bass Strait);
- Donovans Bay crossing management plan (wastewater pipeline); and
- Tamar crossing management plan (water supply pipeline).

Extensions and suspensions granted:

- Various components of baseline monitoring (inc. seasonal noise surveys, soil, dioxins in dairy produce, surface water quality, marine and estuarine water quality, odour);
- Construction noise monitoring;
- Submission of Chemical Plant Design Report;
- Landfill EMS; and
- Risk and safety requirements.

Other notable submissions:

- Annual environmental performance reports for 2008 and 2009.