

Your Ref: EPBC 2007/3385

Hon Malcolm Turnbull
Minister for Environment and Water Resources
Parliament House
Canberra
ACT 2600

30 August 2007

Dear Minister,

**COMMENT ON PROPOSED DECISION
TO APPROVE CONSTRUCTION AND OPERATION OF
A BLEACHED KRAFT PULPMILL AT BELL BAY, TASMANIA**

Thankyou for the invitation and opportunity to comment on your proposal to approve construction and operation of a bleached Kraft pulp mill at Bell Bay, and associated infrastructure subject to certain conditions. As you are aware from previous letters and submissions from the TCT to yourself and your predecessors on various aspects of this proposal, the TCT is of the view that there are fatal flaws not only in the proposal itself but also in the nature and scope of the proposed conditions sufficient to render unsafe any decision to approve this proposed action.

The perfunctory nature of the assessment by preliminary documentation carried out by your Department on your behalf and the resultant proposed conditions have served only to reinforce our view that any such decision would be inappropriate at this time.

We are delighted to have been notified of your decision to delay making your decision pending on whether or not to approve the Gunns pulpmill proposal pending seeking further advice from the Chief Scientist. While we do not feel that such an exercise is an acceptable substitute for proper assessment of such a large and complex controlled action as a Kraft pulpmill by environmental impact statement pursuant to ss87(1)(d) of the Act, we do feel that you now have an opportunity to at least get some provisional advice on key matters of outstanding concern.

We would very much appreciate an opportunity to contribute to the content of your referral letter to the Chief Scientist (much as we would have a statutory opportunity to contribute to the process of setting the scope of the guidelines for drafting an EIS).

Meanwhile, we have set out in summary below, the five principal reasons why the TCT is of the view that it would be wrong for you to approve the construction and operation of a bleached Kraft pulp mill at Bell Bay. We would be grateful if you could include these considerations in your referral letter to the Chief Scientist.

In essence, these six matters are:

1. **The Hampshire site needs to be assessed as an alternative to the Bell Bay site** (with prompt transition to plantations, use of totally chlorine free bleaching and pulping sequences, minimum water use, and no ocean outfall/land disposal of effluent being the key differences associated with a Hampshire option).
2. **Need to confirm the assertion that, since the changes that were made recently, the Tasmanian RFA is no longer an RFA within the meaning of the 2002 Act** (thus rendering the exemption provisions of s38 of the EPBC Act inapplicable for forestry operations in the Tasmanian region). This being so, the Chief Scientist could usefully advise on what additional conditions are required to ensure that resource supply activities are actions in compliance with the EPBC Act, especially with respect to relevant listed Threatened and Migratory Species, World Heritage values and those National Estate values listed in Attachment 1 to the RFA.
3. **Failure to identify and mitigate threats to the marine environment is perhaps the most serious and significant failing** of assessment efforts to date. Lack of baseline hydrodynamic studies and failure to identify and assess impacts on EPBC Act protected species known to be present are perhaps the two most serious problems. **Lack of a legislative basis for appropriate penalties for non-compliance with conditions set to protect the marine environment remains a critical deficiency.**
4. **Failure to propose use of totally chlorine free bleaching and pulping sequences is a significant failing.** While the use of TCF and ECF may no longer be critical when it comes to formation of dioxins and furans, the desirability of keeping chlorinated compounds out of reused process water and effluent streams is imprudently ignored.
5. **Inability to resolve non-compliance with assessment guidelines through setting permit conditions.** The Miotti Report identifies not only the embarrassingly large range of instances where the Gunns proposal does not comply with the environmental guidelines set for it but also – and more importantly – **the nine instances where the setting of conditions cannot be relied upon to remedy such non compliance.**
6. **Improper choice of level of assessment. While consulting the Chief Scientist will be useful, it cannot substitute for doing a proper assessment – by Environmental Impact Statement pursuant to ss87(1)(d) of the Act.**

In our view, failure to adequately resolve matters raised in consideration of any one of the above six issues is sufficient for you, as the responsible minister, to decline to approve Gunns proposed pulpmill.

1. Assessment of Alternative Sites and Site Selection

Assessment by preliminary documentation [pursuant to ss87(1)(b) of the EPBC Act] does not allow for consideration of alternative siting issues. This could – and should – have been provided for if you had decided to have the proposed action assessed by environmental impact statement [pursuant to ss87(1)(d)] or by inquiry [pursuant to ss87(1)(e)].

While we accept that the law gives you the discretion to choose the level of assessment, we are firmly of the view that you were wrong to decide to assess such a large, complex, inherently polluting and hugely controversial proposal by such a perfunctory process as preliminary documentation. **We do not accept that mere public assertion of your legal right to make a decision is adequate explanation for such an extraordinary decision.**

As you will be aware, Tasmania is a small place and the TCT, along with everyone else with an interest in the pulp mill approval process, is perfectly aware that Gunns Ltd. representatives urged you to assess their proposed bleached Kraft pulp mill by preliminary documentation. As Gunns' Les Baker put on the public record (Examiner, 14/4/7, p.1) *'[Gunns pulp mill] project manger Les Baker submitted that issues such as the impact to threatened species and the marine environment had already been addressed in the extensive draft Integrated Impact Statement and supplementary information enough to warrant a lesser federal investigation.'*

It is hard to escape the conclusion that you acceded to their demands for reasons other than ministerial protection of fair and proper processes for which you are responsible. We therefore regard it as entirely reasonable and appropriate that you should subsequently decide to choose a somewhat more rigorous assessment process and we look forward to your eventually choosing a proper course of action –assessment by EIS.

As you will be aware from publicity attendant upon Gunns abandonment of the RPDC assessment process and from RPDC documentation provided to you, it was clear that the RPDC was considering formulation of advice to the effect that Bell Bay was an inappropriate site for a pulp mill based on the Kraft process and that Gunns should consider use of the Hampshire site for such a mill.

That you did not insist on Gunns considering construction and operation of a Kraft pulp mill at Hampshire as an alternative to Bell Bay as an element of the scoping guidelines for preparation of an EIS was an error on your part that should be corrected.

The TCT urges you to: remake your decision on the appropriate level of assessment for the Gunns proposal; and, in so doing to decide to assess the proposal by environmental impact assessment; and, in setting the guidelines for such an EIS, to include consideration of construction and operation of the proposed mill at Hampshire as an equal alternative site to Bell Bay.

In deciding to insist upon assessment of Hampshire as an alternative site, it is important to explicitly identify that a package of potential modifications to the original proposal is needed in assessing an alternative site. This package should include consideration of:

- a) The fact that the Hampshire site already has pulpmill planning approval (from when it was originally approved as the site for a woodchip mill)
- b) a prompt transition to use of plantation wood feedstock rather than native forest wood to make the most of proximity of plantation wood resources to the Hampshire site and so lower wood supply costs;
- c) use of totally chlorine free bleaching and pulping sequences – as originally promised by the state government and proponent – to facilitate water efficiency;
- d) disposal of liquid waste effluent on nearby land (within the plantations around the mill) thus obviating the need for an ocean outfall; and
- e) maximum recycling of process water to minimise freshwater input requirements and volumes of effluent for disposal (this is hard to do unless levels of chlorinated and other corrosive compounds are minimized).

2. Failure to Establish that the Recently Amended Tasmanian RFA is an RFA within the meaning of the 2002 Act

As we said in our letter to you of 17 April 2007, with respect to the forest industry's argument that the scope of any Australian Government assessment of the pulp mill should not extend to the environmental impacts of wood resource supply because those matters are covered by the Tasmanian RFA, it is important to recognise that the recent changes made to the RFA in an attempt to negate the Federal Court decision with respect to the ecologically unsustainable nature of forestry activities in the Weilangta State Forest mean that **the Tasmanian RFA is no longer an RFA for the purposes of s.38 of the Act.**

The relevant definition from the *Regional Forest Agreements Act 2002* referred to in s.38(2) is attached to that letter. S.4 of that Act defines an RFA as, *inter alia*, “(c) the agreement provides for the ecologically sustainable management and use of forested areas ..”. The Tasmanian RFA then defines ‘ecologically sustainable forest management’ by reference to the “.. *specific objectives and policies..*” detailed in the National Forest Policy Statement. The specific ‘conservation’ section from the NFPS is also attached to that letter.

As is readily apparent from perusal of this documentation, any reasonable person would have difficulty in accepting that an RFA which does not seek to actually protect threatened species can be consistent with the NFPS and thence exempted by virtue of s.38 of the Act. As you will be aware, the original Federal Court judgement in the Weilangta case is the subject of an appeal to the full Court and the Court has recently decided to hear legal argument on this matter of whether the Tasmanian RFA is or is not an RFA within the meaning of the 2002 Act.

The TCT is of the view that the Tasmanian RFA is no longer an RFA within the meaning of the Act and therefore **urges you to: remake your decision on the appropriate level of assessment for the Gunns proposal; and, in so doing to decide to assess the proposal by environmental impact assessment; and, in setting the guidelines for such an EIS, to include consideration of the environmental impacts of wood resource supply, from both native forests and plantations on both private and public land.**

Irrespective of the TCT's view, and of any advice you may have received from your Department or other sources, **we urge you to defer any decision on either further assessment or approval of the proposed action pending the outcome of the Federal Court appeal in the Weiliangta matter.**

If the full bench of the Federal Court decides that the Tasmanian RFA is no longer an RFA within the meaning of the 2002 Act, you will obviously have to abandon the assumption that the Tasmanian RFA can be relied upon to deliver implementation of your responsibilities to ensure protection of matters of National Environmental Significance, especially those specifically set out in Attachments 1 & 2 to the Tasmanian RFA. [See dot point 1 under 'Forestry' (summary of 'the factors that informed the proposed pulp mill decision and draft conditions', p.4, undated).

In anticipation of such an uncertain operational and legal environment, the Tasmanian Forest Practices Authority has recently initiated a review of the biodiversity conservation provisions of the Forest Practices Code – in much the same way that the then Forest Practices Board successfully deflected criticism of inadequacies in the soil and water provisions of the previous version of the Code when the original RFA was being negotiated in the mid '90s.

A genuine assessment of the environmental impacts of wood resources supply to the proposed Gunns pulp mill by the Australian government would allow you to identify and insist upon specific improvements to the Code while it is under review as the basis for restoring public confidence and legal validity to the Tasmanian RFA.

In the absence of such changes being made sufficient to meet EPBC Act legislative requirements, forestry operations in Tasmania will obviously be wide open to the same legal uncertainty as that exposed by the original Weiliangta legal action. It seems to us that it would be much more prudent and appropriate to wait until the sovereign risk associated with such uncertainty as to the legality of wood resource supply operations has been reduced by judicial resolution of the legal status of the RFA.

3. Failure to Adequately Identify and Mitigate Threats to the Marine Environment

There is a clear potential risk and much uncertainty associated with the proposed pulp mill's impact on the Commonwealth marine environment as well as on listed species and protected cetaceans. The EPBC Act requires that these aspects be considered.

Hydrodynamic modelling is widely considered to be inadequate. This shortcoming has been recognised in your draft decision and by the Tasmanian Government's own consultants, SWECO PIC. It certainly does not seem reasonable to give any form of approval for this pulp mill until information is available about the movement of effluent within the marine environment and the impact of toxic materials contained in effluent on the marine environment is better understood. Investigations of effluent movement should be carried out before approval for operation or construction has been given, not before. More comprehensive toxicity testing needs to be carried out to provide data that would allow modelling the movement of pollutants such as dioxins in the local ecosystem. A monitoring program and provisions to control emissions (including provisions and processes for triggering a mill shutdown) should be agreed before any approval is given.

In the document *Bell Bay Pulp Mill Project Response to Submissions under the Environment Protection and Biodiversity Conservation Act 1999*, it is stated (page 139) that sediment settling could take "5 to 80" days and "... could easily travel 20 km or more". This report suggests that 466 m³ of particulate matter will be discharged each year.

As dioxins are generally considered to be hydrophilic, it is reasonable to assume that dioxins in the effluent will have a tendency to attach to sediment particles. It is therefore clear that it is likely that dioxins may move into Commonwealth waters, which are much less than 20 km away from the outfall. The likely fate of these substances remains unknown. The fate of dioxins and other persistent organic pollutants (POPs) in the marine ecosystem need to be further investigated. This should be done before approval is given for the mill. This is obviously a substantive obligation on the part of the Australian Government as a signatory to the Stockholm Convention on Persistent Organic Pollutants (POPs).

Clearly, further hydrodynamic modelling needs to be carried out to clarify this issue, as well as identify the movement and fate of other effluent components.

Measuring POPs in effluent or the environment is not a trivial exercise. Results will depend on how samples are collected, as well as who does the collecting and chemical analysis. Significant levels of contamination are measured in picograms. At present there does not appear to be any Australian laboratory that can perform analysis at the level of sensitivity that should be required by an adequate monitoring program. The closest laboratory that can do this work is located in New Zealand and charges in the order of AUD \$500 per sample.

PCBs are also not included in these limits although the contribution of the PCBs to the toxicity in fish is about 80% of the total TEQ. To be fair, the mill proponents claim that PCBs will not be emitted, but this needs to be validated.

Effluent discharge limits in the proposed decision are given as a monthly average. Sampling frequency, techniques and sensitivity need to be made explicit before the value of these limits can be assessed. There should also be an absolute maximum discharge of effluent components specified to limit the amount of pollution entering the marine environment.

According to your Department's document, *The Factors that Informed the Proposed Pulp Mill Decision and Draft Conditions*, there is a lack of data from a new ECF mill in a "green fields" site. While ECF pulp mills with non-measurable levels of dioxins in effluent may reduce levels of persistent organic pollutants (POPs) such as dioxins and furans in sediment and biota, these substances are not eliminated and production of other harmful substances such as retene may increase. Monitoring of pollution is therefore essential.

The TCT has received scientific advice that the proposed limit for dioxin discharges in waste water (3.4 pg TEQ/L -dioxins and furans) and in benthic sediments (850 pg TEQ/kg - dioxins and furans) are orders of magnitude higher than those found in polluted manufacturing sites in Europe. This is clearly unacceptable in the relatively pristine Australian marine environment found in Bass Strait.

Bottlenose dolphins, *Tursiops truncatus*, are regularly seen swimming and feeding in the vicinity of the proposed outfall. As cetaceans, these animals require special consideration under the EPBC Act. Potential impacts on this species have not been adequately considered.

Along with bottlenose dolphins, Australian fur seals, *Arctocephalus pusillus doriferus*, are also found in this area and listed under the Act. An important seal colony is found at nearby Tenth Island. Both species can regularly be seen swimming and feeding in the vicinity of the proposed outfall.

The possibility that the fish or cephalopods that seals and dolphins use as food may be contaminated by POPs in the effluent has not been adequately addressed. Further work also needs to be done to allay concerns about human health impacts of POPs and other pollutants emitted by the mill.

Seal pups at the Tenth Island breeding colony are particularly susceptible to contamination by POPs via their mothers' milk.

Australian fur seals, along with local bottlenose dolphins, are relatively mobile and are a component of the nearby marine environment of Commonwealth waters. Any impacts on these species would clearly constitute an impact on the Commonwealth marine environment.

Marine mammals such as bottlenose dolphins and Australian fur seals are obvious sentinel species. Monitoring contamination within seals could be an effective way to identify environmental contamination by POPs at an early stage. Baseline data would need to be collected and an adequate ongoing monitoring program would have to be designed before the mill is given approval. No detailed monitoring program for contamination of marine mammals has yet been designed for this development.

The Australian fur seal *Arctocephalus pusillus doriferus* is a listed species under s248 of the *EPBC Act 1999*. The big-belly seahorse, *Hippocampus abdominalis*, is also listed and found in this area. **The statement in the document *The Factors that Informed the Proposed Pulp Mill Decision and Draft Conditions* that "no EPBC-listed species have been identified as being present in the vicinity of the effluent outfall" is clearly incorrect.** This position needs to be revised and impacts on listed species reassessed. The Australian fur seal is perhaps the most likely species to suffer from pollution by POPs from pulp mill effluent.

All cetaceans and the great white shark, *Carcharodon carcharias*, require special consideration under the EPBC Act. This has not been carried out. Other cetaceans such as orca, *Orcinus orca*, and common dolphin, *Delphinus delphis*, may also be found in this area, and risk assessment for to these species should be carried out.

The role of the Commonwealth is particularly critical in the case of this pulp mill, as the Tasmanian Government Permit conditions do not appear to provide any useful regulatory constraints on emissions into the marine environment.

Section 8 of the State Government's permit states that "*Every requirement in a condition of the Pulp Mill Permit is to be read as requiring that the action to which it refers is to be **substantially performed** ...*" (our highlighting). "**Substantially performed**" has not been adequately defined.

It therefore appears that the Tasmanian permit conditions do not necessarily place any practical limit on pollution of Bass Strait by effluent from the proposed pulp mill leaving an unhealthy level of discretion in the hands of public servants subject to ministerial influence or direction. Note that this critical weakness is not addressed by the Lennon governments oft-repeated announcement of its intention to create a so-called Environmental Protection Authority – amounting to no more than a cosmetic change to the status quo.

As the Australian Government develops and sets permit conditions to ensure protection of the Commonwealth marine environment, including EPBC Act listed and protected species, it is essential that:

- they be established as enforceable regulations under the EPBC Act with realistic penalties (**this would require a new Section to be inserted into the EPBC Act to the effect that, with respect to any action impacting on the Commonwealth marine environment, the referring party must comply with prescribed matters – i.e., conditions set by regulation – and specifying both civil and criminal penalties for both individuals and companies equivalent to those set out in ss23 and 24A**);
- relevant monitoring data be collected by a competent entity contracted to the Australian Government, wholly independent of the mill operator;
- raw monitoring data be published immediately so that the temptation to misplace unwelcome information can be removed;
- adequate hydrodynamic baseline studies are completed before standards are set, monitoring protocols finalised and approval given;

- the procedural rules for triggering a mill shutdown by the Australian Government Minister responsible for administering the EPBC Act are publicly set out in explicit detail; and
- that any decision to trigger a shut down – or not to do so – is subject to third party judicial review.

4. Failure to propose use of Totally Chlorine Free bleaching and pulping sequences.

In the section on ‘Effluent’ in your summary of *‘The Factors that Informed the Proposed Pulp Mill Decision and Draft Conditions’* (pp2-3, undated) it is profoundly disappointing to see you meekly reiterating the proponent’s justification for reneging on its original promise to pursue development of a totally chlorine free [TCF] mill in favour of an elemental chlorine free [ECF] option. While the technical arguments may be correct, they do not amount to a justification for choice of a more highly polluting option, especially where an ocean outfall is concerned and, especially when considering the inappropriate nature of Bass Strait as receiving waters.

Insofar as the proposal is to sell market pulp to paper mills, that the TCF product may not be quite as bright or strong as product from an ECF mill is not a critical factor – for uses requiring maximum strength Kraft paper, such as cement bags, brightness is obviously not a consideration. For glossy magazines, for instance, Kraft is an input to the pulp furnish for making such papers that can – and are – re-bleached to meet exacting standards. For the principal markets into which Gunns can expect to sell their paper, namely copying and writing paper, TCF Kraft paper is quite bright and strong enough for the job. Additionally, there are a wide range of other paper markets – furnishes including some proportion of Kraft for extra strength – where less than maximum brightness is no impediment to market access.

While using TCF rather than ECF pulping might have a small impact on cost of production, it is a small price to pay for wanting to operate in such an inappropriate location as the lower Tamar Valley with an outfall into Bass Strait. If the mill was to be located at Hampshire and effluent to be disposed of on land, the situation would be somewhat different (although maximizing water re-use efficiency would still militate against any avoidable use of chlorinated compounds).

5. Inability to resolve non-compliance with assessment guidelines through setting permit conditions

We are concerned at various statements both by yourself and by representatives of the Tasmanian Government and the proponent that any deficiencies in the proposal in failing to comply with the environmental guidelines set for the proposal can be effectively addressed by setting appropriate operating conditions. This is a dangerous misapprehension that we urge you abandon immediately. For your information, we have attached a copy of the report on this matter prepared for the independent members of the Tasmanian Legislative Council by Dr Roberto Miotti of Miotti Consulting Pty. Ltd.

The Miotti Report identifies 16 instances of non-compliance with the environmental guidelines by Gunns pulpmill proposal – 9 of which cannot, in his opinion, be resolved by setting permit conditions. We would urge you to forward this report to the Chief Scientist and request him to liaise with Dr Miotti in working through the preparation of advice to you on these and other issues.

6. Inappropriate Choice of Level of Assessment

In conclusion, we would like to reiterate that the TCT is strongly of the view that you were wrong in deciding that something as big and polluting as a Kraft pulp mill could be properly assessed on the basis of preliminary documentation. We appreciate that you have taken an unprecedented step in subjecting your proposed approval to further public comment and we urge you to take advantage of opportunity afforded by consideration of the comment received to remake your decision on the level of assessment warranted for a Kraft pulp mill proposal intended to be based, in part, on supply of wood from logging and clearing native forests and on discharge of toxic effluent into the poorly flushing waters of Bass Strait.

Yours sincerely,

Alistair Graham