

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

17 April 2007

Dear Minister,

**GUNNS PULPMILL PROPOSAL
NEED FOR SUPPORT PACKAGE
FOR SHIFT TO HAMPSHIRE SITE**

You are reported on the front page of last Saturday's Launceston Examiner newspaper as '*... indicating it was highly likely the [Gunns proposed pulpmill] project would be treated as a "controlled action" requiring environmental reports and the possibility of public hearings.*' If accurately reported, it could be inferred that you have been somewhat hasty in forming a view, with respect to s.87 of the Act, that assessment by 'environment report' is the appropriate level of assessment before you have had a chance to consider submissions on controlling provisions for any controlled action designation. The TCT would be concerned at the wisdom of a decision to assess such a huge and complex development proposal as a Kraft chemical pulp mill by anything less exhaustive than by environmental impact statement (where it is not a matter of ministerial discretion as to whether there should be public hearings or not).

We are particularly delighted that you have decided to invite Gunns to refer the pulpmill to you *de novo* for a decision on whether it is a controlled action or not. This controlled action decision also allows you to consider *de novo* what controlling provisions are relevant and what the scope of the guidelines for drawing up a draft EIS should be. While the EPBC Act restricts you in the identification of controlling provisions to relevant matters of NES, there is no such constraint on setting the scope of the guidelines for the EIS. You are constrained with respect to NES matters when it comes to setting conditions for an approved action or in deciding not to approve an action – but the assessment can be as broad as you would like it to be. Just as the Prime Minister has been saying that Clarence River water is Australian water not just New South Wales water, so **the residents of the Tamar Valley have a right to expect their health to be protected from excessive industrial air pollution as Australian citizens not just as residents of Tasmania.**

You may not have the statutory authority to make decisions based on the air pollution implications of the mill insofar as there is, as yet, no NES on this matter but you do have the statutory authority to make decisions on the water pollution implications of marine discharge of effluent and on the impacts on forest dependent listed threatened species of logging and clearing forests to supply wood to the proposed mill.

Dealing properly with these latter two issues can best be done by requiring Gunns to assess siting its proposal at Hampshire (including plantation based wood supply and land based effluent disposal) – and also deals with the former air pollution health issue (relatively remote location with good dispersal characteristics). As Australians are wont to say, shifting to Hampshire is a ‘no brainer’.

Tasmanian RFA no longer an RFA within the meaning of s.38 of the EPBC Act

With respect to the forest industry’s argument that the scope of any assessment of the pulpmill should not extend to the 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. 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 attached.

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 protect threatened species can be consistent with the NFPS and thence exempted by virtue of s.38 of the Act. **The TCT urges you to seek legal advice on this point before deciding what controlling provisions are relevant in deciding whether the proposed Gunns pulpmill is a Controlled Action.**

As mentioned in our earlier letter, we remain deeply concerned that Gunns Ltd intends to evade proper scrutiny of its Controlled Action by working with Tasmanian major party politicians and forest industry stakeholders to put you under improper pressure to make decisions inconsistent with your statutory obligations under the EPBC Act. A good example of such pressure is provided by reported statements by Gunns’ Les Baker in the same newspaper article (Examiner, 14/4/7, p.1) that, ‘[Gunns pulpmill] *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.*’

Need to forestall preemptive action by Gunns

While it would be quite appropriate to consider accrediting any of the information referred to by Mr Baker in conducting whatever level of assessment you might decide upon, the existence of such information should have no influence upon your decision as to what level of assessment is appropriate. As an aside, it should also be pointed out that Gunn's failure to provide adequate and timely information to address issues raised by the RPDC led to Gunns' decision to withdraw from the RPDC assessment process in favour of a somewhat less rigorous alternative. It would seem reasonable to conclude from these recent events that Gunns knew its information failed to address fatal flaws in their project proposal – hardly the basis for a perfunctory federal assessment.

Collective action in defence of the Tasmanian forest industry by keeping 'Canberra' at bay is habitual – viz. the recent indecent haste with which the Tasmanian RFA was renegotiated with the intent of exempting listed forest-dependent species from the protective threatened species provisions of the EPBC Act to negate a Federal Court judgment. Such a meeting of political and industry stakeholders met in the north of Tasmania at the end of last month with a view to placing you under pressure. The TCT urges you not to accede to the course of action this lobby is seeking to impose upon you - which would require you to behave in an inappropriate manner. Indeed, the TCT would like to go so far as to urge you to preempt the intentions of such inappropriate advocates by taking three prompt initiatives:

1. **Including the impacts of wood resource supply in the range of matters to be considered when identifying controlling provisions** for a controlled action decision – in recognition, not only of the substantially improved understanding of the nature and extent of Gunns' proposal as a result of the albeit truncated assessment by the RPDC (especially in the extent to which pulpwood flows around the State would increase very substantially despite misleading assertions to the contrary) but also to provide a framework for mandating a prompt orderly transition from reliance on wood from native forests to wood from plantations (which could be achieved instantly if the mill were to be sited at Hampshire);
2. Should you decide that the Gunns proposal is a controlled action, subsequently **announcing that you will be assessing the proposal by environmental impact statement** (this would have the dual effect not only of setting the timing of an approval decision beyond the deadline for the forthcoming federal election thus neutralizing it as an election issue but also of calling Gunns' bluff – of threatening to abandon the project if not approved by the end of June 2007 – and so minimizing opportunities for improper influence in the lead up to the election);
3. In order to forestall preemptive action by Gunns, in cooperation with the Tasmanian government, to sign contracts before the end of June (on the basis of Tasmanian assurances that a Pulp Mill Permit, eventually with appropriate backdated conditions, will be issued), **initiate appropriate Supreme Court action aimed at securing an injunction against Gunns** and its commercial partners entering into any agreements that would give rise to compensatable commitments unless and until you have decided to approve the action and the conditions upon which it might proceed;

4. It is highly unlikely that Gunns' will await your decision before signing contracts with suppliers anytime after 31 May 2007 (when Tasmania's 'Claytons' consultant is currently scheduled to get its assessment report to the Lennon Government), it would thus be prudent to have such an injunction in place to indicate to Gunns' suppliers, shareholders and collaborators that Gunns alone will bear the sovereign risk associated with pursuing their proposal without prior Australian Government authorization (after the 1989 State election, the incoming minority Labor government paid a few millions of dollars of 'disappointment' money to Australian Newsprint Mills/Huon Forest Products – and blamed the Greens - when a woodchip export mill proposal was abandoned, and **we are concerned that Gunns and the Tasmanian government are presently arranging matters so that very substantial 'disappointment' payments** would be forthcoming should you not approve Gunns proposal – for which, of course, you would be blamed – and not just by a Labor Premier).

While your advisers and officials may find it hard to believe that Gunns could play such a hard-ball game as to sign contracts and beginning works based on promises of authorization pursuant to Tasmanian legislation without your authorisation in the lead up to the forthcoming Federal Election, the TCT's experience is such as to suggest that you not only need to take this option seriously but also that you would be well served to take preemptive action to forestall it.

Political benefits of pollution abatement

Whatever merit one might think there may be in the idea of constructing a huge, Kraft pulpmill in Tasmania, the impetuous way in which Gunns Ltd. and the Lennon Government are set to 'crash or crash through' is fraught with terrible danger (to Gunns Ltd.'s shareholders, to the Tasmanian community, as well as to the Tasmanian environment) and has seriously exacerbated the situation in which we now find ourselves. There are many in the Tasmanian community who would thank you for ensuring that a proper, sober and independent evaluation of Gunns' plans is undertaken. Indeed, I understand that recent polling by the Tasmanian Liberal Party indicates a lower level of support for Gunns' pulpmill proposal, especially in the north of Tasmania, than one would assume from listening to its proponents and associated vested interests.

For your interest, I have enclosed a copy of a comment piece by the editor of the Launceston Examiner in yesterday's Sunday Examiner which disputes the conventional wisdom put about by forestry industry stakeholders that the forestry issue won the two northern electorates of Bass and Braddon for the Liberals at the last federal election. As Dean Southwell, not shy in supporting Launceston businesses, points out, Labor was on the nose already. Both the Launceston Examiner and the Burnie Advocate ran front page banner headlines based on the EMRS poll referred to by Mr Southwell predicting that Labor would lose these two seats – weeks before Latham announced his forests package and at a time when Howard was considered equally likely to announce a dramatically pro-conservation package (which the TCT had had considerable input to).

That Mr Southwell, customarily an enthusiastic supporter of the Launceston business community (dominated by Gunns), should put such contentious facts back out in the public arena at such a time is a very strong indicator of the extent to which Tamar residents are worried about exacerbation of existing air pollution problems and Gunns' dismissal of their concerns. It should not be assumed that saying 'no' to siting a Kraft pulpmill in the Tamar Valley would be electorally unpopular in Bass. The Tasmanian branch of the AMA has been a strong antagonist of siting a major additional source of air pollution in the area and Professor Hayden Walters, head of the medical school at Hobart University and a world renowned respiratory physician with a particular interest in asthma, would be an ideal person to seek a briefing from if you were of a mind to do so.

An incentive package for Hampshire that includes paper-making as well as pulp

As discussed above, should you be of a mind to ensure that a proper environmental impact assessment of the Gunns pulpmill proposal is carried out pursuant to your statutory responsibilities, you will be confronted by two procedural and political problems: firstly, you will not be in a position to decide whether or not to approve the action on a timetable acceptable to Gunns (with threats from them to abandon the project and blame it on you and the Howard government in the lead up to a federal election); and, secondly, you will find it very hard to approve siting of such a polluting mill at Bell Bay, in the Tamar Valley. **In anticipation of such politically charged petulance, the TCT would like to suggest that you give consideration to developing an alternative proposition to put to Gunns – a proposition that would see an appropriate form and scale of assistance for development of an acceptable pulpmill, with associated paper manufacture, at their Hampshire site south of Burnie.**

In the TCT's view, such a proposal would have the following desirable characteristics with respect to shifting to a better site:

1. **The Hampshire site already has a large woodchip mill** operating there. The original proposal was for a site that would be suitable for later development of a chemical pulpmill such as that currently proposed for Bell Bay (the DP&EMP for this original proposal will be on file with your Department).
2. **The Hampshire site is in a relatively remote location** with environmental characteristics that make it much more suitable as a location for a Kraft pulpmill than Bell Bay (a conclusion that the RPDC assessment Panel was actively considering before the recent spate of resignations in response to improper pressure from Premier Lennon).
3. **The Hampshire site is surrounded by plantations** –
 - a. this not only allows for **on-ground effluent disposal** thus obviating the need for marine discharge (this is easier said than done but well within 'best available technology' constraints).
 - b. but also allows for **100% plantation-based feedstock** (in a report in 2000, Melbourne University's Professor Ian Ferguson prepared a report for BRS which, inter alia, estimated that 3.4 Mtpa of plantation wood would be available in Tasmania from 2010 based on trees already in the

ground in 2000) thus allowing for an immediate industry transition from reliance on native forests to reliance on plantations for industrial wood supply – a national policy setting for some 15 years that has been more honoured in the breach in Tasmania, despite receipt of tens of millions of dollars of federal money supposedly to drive such a transition).

With respect to the project itself, the key to making a shift to a better site a realistic alternative is to offer to assist Gunns in developing a paper wholesaling distribution network across Australia to allow it to compete with PaperlinX (which currently has a virtual monopoly on distribution – as a result of a rather short-sighted decision by then ACCC Chairman, Alan Fels, some years ago). **If such a paper distribution network were in place, Gunns could justify including a paper-making machine to further process at least part of the pulp production for domestic paper supply** (most of the pulp would still have to be exported but the declining economies of scale as one goes down the wood fibre processing chain are such that paper manufacture and distribution at a scale appropriate to a realistic share of the Australian domestic market is practicable).

Obviously, there are considerable gains in terms of employment, wealth creation and import substitution in including paper manufacture in the scope of the project. Importantly, **it would be much more prudent for the Australian Government to be providing assistance in the area of further down-stream processing for import substitution than to be helping and encouraging the Tasmanian Government to provide under-priced wood** and other input assistance to Gunns to for exporting raw and semi-processed materials.

The TCT is concerned that the Australian government might see fit to condone the subsidizing exports of both woodchips and pulp by Gunns through underpricing of wood from State Forests. As a global leader in the debate to free up markets for agricultural produce, we would expect Australia to discourage subsidizing exports. Conversely, helping to break up domestic monopolies to encourage new entrants, especially local manufacturers, would seem to be far more appropriate

Need for a ‘fit and proper person’ assessment of Gunns

One of the considerations which the TCT feels you should give significant weight to in your deliberations on this issue is the serious lack of experience Gunns Ltd. has in managing a project such as construction of a Kraft pulpmill and in operating a complex industrial plant such as a Kraft pulpmill. This was the underlying cause of the collapse of the earlier attempt by North Forests Ltd. to establish such a mill at Wesley Vale in northern Tasmania in the late ‘80s.

If the extraordinary manner in which Gunns Ltd. is going about getting authorization to build and operate such a plant is anything to go by, **it would seem prudent to spend some time in assessing whether or not Gunns Ltd. is a ‘fit and proper person’ to hold the permits and licences it seeks.** Its refusal to submit its proposal to assessment by the RPDC would seem to be *prima facie* evidence of a serious problem.

It seems to us that there are only two realistic conclusions to be drawn from such an ill-prepared company seeking to gain approval to build and operate such a huge and complex plant: either the senior managers of both Gunns Ltd. and the Tasmanian Government are on an ego-driven, irrational path towards their destiny or Gunns Ltd. intends to on-sell the package of approvals to another entity, probably Chinese, that does have the capacity and experience to build and operate such a plant. Such a transfer would require Foreign Investment Review Board approval. An up-front 'fit and proper person' assessment would explore such considerations – and the results of such an assessment could save all of us – and our children – a lot of trouble.

Yours sincerely,

Alistair Graham