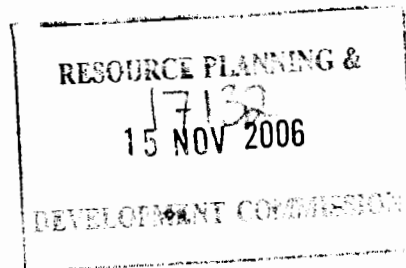


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Fax

**Bell Bay Pulp Mill
Response to The Wilderness Society's submission on the Final
Scope Guidelines**

Matter Proposed mill 80779364

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To	Executive Commissioner Resource Planning & Development Commission	Copy To	Jane Hutchinson Fitzgerald & Browne
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Dear Mr Green

**Response to The Wilderness Society's submission on the Final Scope
Guidelines**

We refer to your invitation to our client, Gunns Limited, to respond to The Wilderness Society's submission relating to the adequacy of the Final Scope Guidelines.

It is submitted that:

- on a correct analysis of the relevant legislative regime and administrative steps taken within that framework, the content of the Final Scope Guidelines is not deficient;
- on any view of the point raised by the Tasmanian Wilderness Society, it is not a point that can be agitated or answered without evidence. For this reason it cannot be regarded as a preliminary point, but must instead be scrutinised by the Commission at the hearing; and
- the Tasmanian Wilderness Society has had 10 months to challenge the decision of the Commission in an appropriate forum, and to permit it to reopen this issue as a preliminary matter in this way would be unfair.

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1 The proper construction of the legislative framework

1.1 The Administrator's Order

The Wilderness Society's submission (**Submission**) is that the Final Scope Guidelines are deficient because they do not require Gunns to investigate and report on the impacts of harvesting native forests for the purpose of supplying feedstock to the pulp mill.

The Submission is misconceived because it is based on an analysis of the legislative frameworks that uses, as its the starting point, the content of the direction issued by the Minister pursuant to section 20 of the *State Policies and Projects Act 1993 (SPP Act)*.

The correct position is that this direction must be read in the context of the 22 November 2004 order, issued by the Administrator (and subsequently amended by the *State Policies and Projects Amendment Act 2005 (Order)*), which defines the 'project of state significance' that is to be assessed under the SPP Act.

The 'project of state significance' is defined in clause 3 of the Order to mean 'the proposal by Gunns Limited for the development and operation of a bleached kraft pulp mill in northern Tasmania' (**Project**).

By virtue of clause 4 of the Order, the Project includes any use or development which is necessary or convenient for the implementation of the Project, including but not limited to the development and operation of any facility or infrastructure for a range of matters listed in that clause.

It is clear that the SPP Act applies to proposed projects, and not to existing land uses or activities that may otherwise be carried out lawfully. The statutory framework and legislative context confirms this proposition:

- section 16 defines 'person proposing the project of State significance'. A 'proposal' is something that is intended to be undertaken in the future, not something that already exists or is in place;
- section 18A provides that an order declaring a project to be of State significance 'may include in the project any use or development which is necessary or convenient for the implementation of the project, whether or not the use or development is to be undertaken by or on behalf of the person named in the order' (our underlining);
- the integrated assessment procedures in sections 20-25 are intended to inform the Governor's decision on whether or not to approve the project under section 26; and
- it is important to observe that nothing in schedule 1 of the SPP Act contradicts the contention that the Act is concerned with proposed and defined projects and not activities that are already in existence or that may be lawfully carried out.

Based on this analysis, the harvesting of native forests does not constitute part of the Project as defined in the Order because:

- native forests are not a pulp mill, and hence fall outside the scope of clause 3; and
- while the management and harvesting of land occupied by native forests is proposed as a source of feedstock for the Project, that feedstock will be sourced from land that is already being used or permitted to be used for native forestry purposes.

1.2 Project scope

The Project Scope prepared by Gunns (dated 26 August 2005) was supplied to the Commission for the preparation of the Final Scope Guidelines.

The Project Scope explains the proposed wood supply regime for the Project. A mixture of wood from native forest, as well as pine and eucalypt plantations, will be used by the

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2 Evidence required

Project. The wood from native forests will be sourced from forest managed in accordance with the Tasmanian Regional Forest Agreement and the *Forest Practices Act 1985*.

The Project Scope explains that between 2.5 to 4 million tonnes of woodchips will be required as feedstock the Project (revised, on the basis of wood supply modelling, to between 3.2 and 4 million tonnes in the draft IIS). On our instructions, the amount of woodchips used by the Project will be less than the potential volume of woodchips that are presently available to Gunns for export.

The end use of the wood harvested from native forest, and the fact that some of the wood will be used as pulp mill feedstock, is irrelevant to the Commission's assessment of the Project. Furthermore, the regulatory framework within which the native forests are harvested does not change as a result of the Project. In essence, what the Wilderness Society is seeking is an environmental assessment of an existing, lawful land-use that is regulated by Tasmanian and Commonwealth legislation.

Simply because the woodchips will be redirected from export to feedstock for the Project does not trigger a requirement for the Final Scope Guidelines to require an assessment of the impacts of harvesting of native forests for woodchips.

1.3 Consequential impacts

The Federal Court's *Nathan Dam* decision, quoted in the Submission, is concerned with the indirect or consequential environmental effects of a proposed dam on the protected matters under the *Environment Protection & Biodiversity Conservation Act 1999*. In the case of this Project, the harvesting of trees is not a consequence of the Project – the harvesting of native forests will occur whether or not the Project is developed.

The only situation where an assessment of the harvesting of native forests might be relevant is if the Project results in an intensification of the harvesting of native forests in order to supply feedstock to the Project. This is the subject of the Final Scope Guidelines at paragraph 4.2.1(5). If an intensification will result in forestry operations in Tasmania, the Final Scope Guidelines require an assessment of the likely environmental, social, economic and community issues and effects of any such intensification, and how those effects will be addressed.

The Final Scope Guidelines therefore do not ignore a relevant consideration.

2 Evidence required

The submission of the Tasmanian Wilderness Society is premised upon the assumption that there will be an intensification of forestry operations. It is Gunns' case that there will be no intensification of forestry operations in Tasmania as a result of the Project.

Whether there will or will not be an intensification is a question of fact that can only be assessed by the Commission after the relevant evidence has been called and tested. As such, the point raised by the Tasmanian Wilderness Society cannot be considered 'preliminary' in nature, and must be viewed as one of the issues for the Commission to explore at the hearing.

If the Commission ultimately finds that there will be an intensification of forestry operations in native forests as a result of the Project, some of the matters raised in the Submission may be relevant to the adequacy of Gunns' wood supply assessment, however this is not a preliminary point which can be resolved prior to the Commission hearing the evidence and submissions of the parties.

3 Delay

The Commission publicly exhibited the draft scope guidelines twice.

The Wilderness Society was a submitter to the draft scope guidelines during both public exhibition periods.

The Commission made a decision to adopt the Final Scope Guidelines in December 2005, and released a report 'Report on Final Scope Guidelines for the Integrated Impact

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3 Delay

Statement', setting out the Commission's reasons for adopting the Final Scope Guidelines.

Gunns has invested (and is continuing to invest) a considerable amount of time and money to prepare the draft IIS in response to the Final Scope Guidelines, and it is unacceptable and unfair to raise a matter purporting to be a preliminary issue going directly to the content of the Final Scope Guidelines at this juncture.

* * *

Accordingly, there is no basis to amend the Final Scope Guidelines in the manner proposed by the Tasmanian Wilderness Society.

Yours sincerely



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