

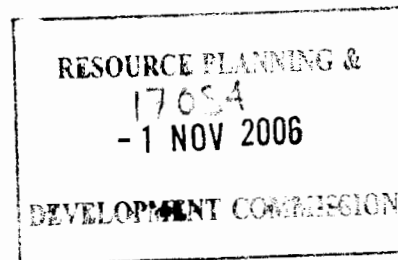
Pulp

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31 October 2006

Mr Julian Green
Chairman,
Resource Planning & Development Commission
PO Box 2036
HOBART TAS 7000



Dear Sir

Re: **THE PULP MILL**

As you are aware from the recent Directions Hearing, I act on behalf of Peg Putt MHA and Senator Christine Milne, as representative of the Tasmanian and Australian Greens.

At the Directions Hearing, I made an application, that Dr Warwick Raverty disqualify himself from the Panel to whom the Commission has delegated the task of conducting the integrated assessment in respect of the Pulp Mill. I was directed to make that application in writing within 7 days if my clients wished to proceed with it.

I have been instructed to pursue the application. The basis of the application is that in all of the circumstances, the parties or the public might entertain a reasonable apprehension that Dr Raverty might not bring an impartial and unprejudiced mind to the resolution of the matter in particular the conduct of the integrated assessment and the Panel's determination of a recommendation to the Minister pursuant to the State Policies and Projects Act.

By virtue of the delegation, the Panel, in conducting this assessment, is exercising the functions and powers of the Commission (see section 8, Resource Planning & Development Commission Act 1997). By section 10 of the said Act, the Commission when holding a hearing must observe the rules of natural justice.

The rules of natural justice require that the decision maker must bring a fair and unprejudiced mind to the determination of the issue before him. That requirement is infringed where "it is firmly established that a suspicion may reasonably be engendered in the minds of those that come before the Tribunal or in the minds of the public that the

Tribunal or a member or members of it may not bring to the resolution of questions arising before the Tribunal fair and unprejudiced minds". (R -v- The Commonwealth Conciliation and Arbitration Commission; ex parte Angliss Group (1969) 122 CLR 546 at 554).

In R -v- Resource Planning & Development Commission; ex parte Hayward (2000) TASSC 40, Underwood J (as he then was) recited the test stated by Dawson J in Grassby -v- R (1989) 169 CLR 1 as follows:

"The test which is to be applied when bias is raised has been clearly laid down. It is whether in all the circumstances the parties or the public might entertain a reasonable apprehension that the Judge might not bring an impartial and unprejudiced mind to the resolution of the matter before him: see Livesey -v- New South Wales Bar Association (1983) 151 CLR 288; Reg -v- Watson ; ex parte Armstrong (1976) 136 CLR 248. If so, then the Judge ought not to proceed to hear the matter. Of course as Gibbs CJ pointed out in Reg -v- Simpson; ex parte Morrison (1984) 154 CLR 101 at p104, the mere expression of the apprehension of bias does not establish that it is reasonably held; that is a matter which must be determined objectively".

I respectfully submit that the abovementioned principles apply to this Panel's determination of the integrated assessment and, in particular, to the conduct of the current hearing.

It is our respectful submission that a reasonably minded observer might entertain a reasonable apprehension that Dr Raverty might not bring an impartial and unprejudiced mind to the resolution of this matter. In particular, we would submit that there is evidence which indicates that Dr Raverty may have prejudged some of the crucial issues in respect of the matter.

The factual basis of this assertion is as follows:

- (a) The Commission's website (<http://www.rpdc.tas.gov.au/projects>) contains a reference to Dr Raverty's background. Of significance in this application is the following information:

"Dr Raverty has been a Research Manager and Senior Principal Research Scientist in the Pulp and Paper Research Group of Ensis (formerly CSIRO Forestry and Forest Products) for the past 5 years".

- (b) My client asserts that Ensis has already formed a clear view with respect to the Pulp Mill Project in general terms, and in respect of some of the crucial issues. In support of this submission I refer the Commission to the website maintained by the Tasmanian Government in respect of the Pulp Mill i.e. the Tasmanian Pulp Mill Task Force website at <http://www.pulpmill.tas.gov.au> and in particular to the following newsletters publicised on that website:

Pulp Mill Newsletter issue 15 (18 March 2005)
Pulp Mill Newsletter issue 29 (8 September 2005)

I refer also to the paper issued by the CSIRO on the CSIRO website at <http://www.ffe.csiro.au/downloads/questionsonKraftPulp050308.pdf>

- (c) The above material is capable of creating a reasonable apprehension that Ensis, and because of his position within Ensis, Dr Raverty, has considered and prejudged various issues including the following (by reference to Pulp Mill Newsletter, issue 29, page 2):
- (i) That the emission limit guidelines are the most stringent in the world. It is noted that Mr Green has indicated that the emission limit guidelines are subject to review during the course of this assessment. It is also noted that my client and other parties will assert that the emission limit guidelines are inadequate and not nearly as stringent as they should be.
 - (ii) Ensis has described ECF and TCF as equivalent in terms of low level toxicity of emissions. This is a crucial issue and an issue under challenge by my client and other representors.
 - (iii) Stated that organochlorine emissions from ECF bio-degrade naturally and do not accumulate in the bio sphere. Again, this conclusion is under significant challenge in the course of these proceedings.
 - (iv) That Kraft Pulp Mills run essentially on solar energy stored in timber. Again this is subject to challenge.
- (d) In addition to the above, it is submitted that the clear implication from the Ensis document is that Ensis and CSIRO, and by implication Dr Raverty, have reached conclusions in relation to the proposed Pulp Mill which is favourable to the proponent.
- (c) A central issue in the assessment is the question of the potential impact of the Pulp Mill on air quality. The proponent has used the Air Pollution Model version 3 (TAPM) for metrological and pollutant dispersion modelling (see Impact on Air Quality, volume 9, appendix 16. draft IIS; Supplementary Air Quality Assessment of Proposed Mill, August 2006). My client and other representors challenge TAPM as an appropriate or accurate model for the purpose of assessment of the impact of the Pulp Mill on air quality. My client will adduce evidence to establish that TAPM is discredited in other jurisdictions including Victoria, Western Australia and America.

However, it is noted that TAPM was developed by the CSIRO, which is a constituent of Ensis.

Again, Dr Raverty's association, through Ensis, with CSIRO, raises the apprehension that he may have prejudged the issue concerning the appropriateness of the use of TAPM.

- (f) As the abovementioned issues are critical to the Greens objection to the proposal, and critical to the integrated assessment, we respectfully submit that the apprehended bias on the part of Dr Raverty is sufficient to require his disqualification from the Panel conducting the assessment.

I trust this explains my client's position adequately. I await your response.

Yours faithfully



MICHAEL BRETT