

NELR recent developments

Land Title Act – carbon abatement interests

The *Waste Reduction and Recycling Act 2011* (Qld) (the Waste Act) introduced amendments to several Queensland Acts to complement the Commonwealth Carbon Farming Initiative. Under the Commonwealth Initiative, a person can obtain credits for carbon abatement projects through forestry activities provided that they have a legal right to carry out the project, and

an exclusive, long-term carbon sequestration right. The Waste Act amended the *Land Title Act 1994* (Qld) and the *Land Act 1994* (Qld) to provide for a new type of registrable interest termed a carbon abatement interest. By registering a carbon abatement interest on title, a person carrying out carbon abatement activities can demonstrate that they meet the requirements under the Commonwealth legislation to gain credits.

TASMANIA

Changes to marine farming legislation

In December 2011, the Tasmanian government passed the *Marine Farming Planning Amendment Act 2011* (the amending Act), with the support of the Liberal party. The Tasmanian Greens, including the two Green Cabinet ministers, opposed the legislation. Significantly, the amending Act removed the power of the independent, expert Marine Farming Planning Review Panel to refuse a draft amendment to a Marine Farming Development Plan under the *Marine Farming Planning Act 1995*. Instead, the Panel is now required to make a recommendation to the minister, who has discretion to make a determination contrary to the recommendation and to make any changes to a draft amendment that he considers necessary. However, pursuant to amendments introduced to the amending Act by the Legislative Council, the minister is required to table reasons in each house of Parliament for any decision that is contrary to the Panel's recommendation.

The amendments were introduced only a week after details were released regarding a draft amendment to the *Macquarie Harbour Marine Farming Development Plan* to facilitate a 60% increase in salmon farm leases in the area (see below). In March 2011, the Panel had exercised its powers to refuse a draft amendment for the first time, refusing a proposed expansion of a salmon farming lease on the basis of ecological impacts. The minister's second reading speech for the *Marine Farming Planning Amendment Bill 2011* explicitly stated that the amendments were proposed in response to that decision.¹

The amending Act did not address concerns raised by conservation groups that there are no rights of

¹ Minister Bryan Green, Second reading speech, 17 November 2011, <www.parliament.tas.gov.au>.

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appeal against decisions made in relation to Marine Farming Development Plans. In response to a letter from the Tasmanian Aquaculture Reform Alliance regarding the amendments, the minister advised that the absence of appeal rights was 'intentional' as other opportunities for public comment were provided.²

Proposed Macquarie Harbour expansion

In late November 2011, a conglomerate of three aquaculture companies, Huon Aquaculture Group, Petuna Aquaculture and Tassal Operations Pty Ltd, applied for amendments to the *Macquarie Harbour Marine Farming Development Plan 2005*. The amendments sought will allow the expansion of marine farming lease areas in Macquarie Harbour from 564ha to 926ha – the largest single aquaculture expansion in Tasmanian history.

The public comment period in respect of the draft amendment closed on 22 December 2011. While industry and commercial groups have supported the proposal, community and environment groups have raised concerns about the lack of baseline data regarding ecological conditions in Macquarie Harbour, the inadequacy of hydrodynamic modeling, potential impacts on the endangered Maugean skate, and adverse impacts on the adjacent Tasmanian Wilderness World Heritage Area.³

The Marine Farming Planning Review Panel is expected to make a recommendation to the minister regarding the expansion proposal in the first half of 2012.⁴

² Letter from Minister Bryan Green to the Tasmanian Aquaculture Reform Alliance and Environment Tasmania, 23 December 2011.

³ See, for example, the Environment Tasmania submission at <www.et.org.au>.

⁴ 'Seafood project waits on green light', *The Mercury*, 24 January 2012, 8.

Tasmanian forests conservation agreement signed

The Tasmanian Forests Intergovernmental Agreement (IGA), signed by the Tasmanian and Australian Governments in August 2011, committed to protect areas of native forest, security for a minimum wood supply and financial assistance for displaced workers, transitional arrangements and management of conservation areas.

The IGA provided for the immediate protection of 430 000ha of high conservation value forest in informal reserves, while the Independent Verification Group completed its assessment regarding final boundaries and appropriate reserve categories for the 572 000ha of native forests nominated by the conservation signatories. Under the agreed terms of reference, the Verification Group is required to determine whether the nominated areas satisfy the high conservation value criteria and should be protected, having regard to the need to maintain a secure minimum wood supply.

Clause 36 of the IGA provided that, until completion of the independent verification process, the agreed 430 000ha would be protected by a Conservation Agreement under the EPBC Act. The IGA also committed to honouring existing wood supply agreements. The IGA required scheduled harvesting within the 430 000ha to be relocated wherever possible but, if an independent expert confirmed that some wood supply contracts could not be met outside the 430 000ha, compensation could be paid to the contractor.

The Independent Verification Group sought an extension until February 2012 to complete their assessment of conservation boundaries. Independent forestry experts advised the government that it was not possible to reschedule harvesting in all coupes within the 430 000ha for the period to February 2012.⁵

On 13 January 2012, a Conservation Agreement was signed by the federal minister, the Tasmanian minister and Forestry Tasmania. Though the Conservation Agreement excluded those coupes which the experts had indicated could not be rescheduled, the governments have promoted the agreement as providing protection for 'more than 99.5% of the 430 000ha nominated for interim protection'.⁶ Environmental NGOs have been

critical of the Conservation Agreement. In particular, the groups claim that the exclusion of forest areas which could not be rescheduled from the Conservation Agreement, rather than compensating affected contractors, fails to deliver on key commitments under the IGA and puts conservation values at risk.⁷

The Conservation Agreement will remain in force until the Verification Group releases its findings. After that time, a second conservation agreement will be entered into covering the area of forest identified by the Verification Group as having high conservation values, and will remain in place until legislation is enacted to provide longer term protection for those areas.

Three Capes Track proposal

The Tasmanian Parks and Wildlife Service released the draft Development Proposal and Environmental Management Plan (DPEMP) for the controversial Three Capes Track for public comment in November 2011. The proposal involves construction of infrastructure to support a hut-based bushwalk covering nearly 70km within the Tasman National Park (including Cape Raoul, Cape Pillar and Cape Hauy). The project is jointly funded by the Australian and Tasmanian Governments, who anticipate that the track will attract up to 10 000 visitors annually. Additional private investment is also expected for promotion and operation of the tourist track.⁸

Conservation groups have criticised the scale and commercial nature of the proposal, potential impacts on wilderness values (including disturbance of Wedge-Tailed Eagle habitat) and the extent of vegetation clearance. Concerns have also been raised regarding the visual impact of the proposal and associated impacts on the heritage values of the nearby Port Arthur Historic Site.⁹

The DPEMP, and public comments made on it, will be assessed under the Parks and Wildlife Service Reserve Activity Assessment process.

The proposal was also referred for assessment under the EPBC Act. On 16 January 2012, the minister identified threatened fauna (particularly, the Wedge-Tailed Eagle)

⁵ The independent schedulers' reports are available at <www.environment.gov.au/land/forests/independent-schedulers.html>.

⁶ See Department of Infrastructure, Energy and Resources media release, 13 January 2012. <www.dier.tas.gov.au/forests/tasmanian_forests_agreement/verification_process>.

⁷ The Wilderness Society, Environment Tasmania Conservation Council, Australian Conservation Foundation 'Governments fail to deliver on Forests Agreement', joint media release, 13 January 2012, <www.et.org.au/news/2012/governments-fail-deliver-forests-agreement>.

⁸ Copies of the DPEMP are available on the Parks and Wildlife Service website at <www.parks.tas.gov.au/?base=25657>.

⁹ See, for examples, <keepthecapeswild.org.au>.

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as a controlling provision but determined that the proposal was not a controlled action provided it was carried out in accordance with specific conditions.¹⁰

Enforcement review

A number of amendments have been proposed to Tasmania's principal environmental legislation, the *Environmental Management and Pollution Control Act 1994* (Tas) (EMPCA). The amendments, which are primarily aimed at improving enforcement options, include:

- expanding the definition of 'environmental nuisance'
- allowing EMPCA to apply to minor discharges of oil and hazardous substances at sea from small vessels that would not be effectively captured by the provisions of the *Pollution of Waters by Oil and Noxious Substances Act 1987* (Tas) (which gives effect to the MARPOL Convention in Tasmania). The proposed amendments will allow such minor incidents to be dealt with by infringement notice.
- improving access to information regarding contaminated sites
- increasing the EPA Board's powers to require additional information during the EIA process, and making it an offence to provide false information
- confirming that an environment protection notice can be issued to a former owner where it becomes clear that environmental harm is being caused as a result of past activities. The proposed amendments also clarify the extent to which responsibilities under an environment protection notice can be transferred to a new owner or another party.
- Confirming that the EPA has power to compel a person to answer questions or provide documents, even where the information may incriminate them, but any information gathered in that manner will not be admissible in any proceedings against a natural person.

State of the Derwent report

The Derwent Estuary Program (DEP) is a regional partnership between local governments, the Tasmanian

¹⁰ The decision that approval was not required is available at <www.environment.gov.au>.

government, commercial and industrial operators and community groups working to restore and promote the Derwent Estuary. Since 1999, the DEP has worked with all partner groups in research and other activities aimed at understanding the estuary, informing the community about its values and making progressive improvements in the health of the estuary.

The 2011 DEP report card summarised monitoring data and reported on trends in sewage and industrial and stormwater pollution, including health impacts at swimming beaches and heavy metal concentrations in seafood. The report card also outlined clean-up actions taken during the year.

The report concluded that investments in the DEP were paying off, with material reductions in industrial discharges into the Derwent observed over the monitoring period. However, the report also identified the need for additional funding to extend the scope of the DEP to monitor discharges and nutrient levels in the broader catchment and the D'Entrecasteaux Channel. The report card is available at <www.derwentestuary.org.au>.

Legal challenges to work at pulp mill site

As reported in the last edition of NELR, a community organisation, Pulp the Mill Inc, filed criminal prosecution proceedings against Gunns Limited in September 2011, claiming that ongoing work on the pulp mill's Bell Bay site was unlawful as the permit issued for the project had lapsed.¹¹

On 28 September 2011, the Director of the Environment Protection Authority released a document outlining his view that work at the pulp mill site had been substantially commenced and work under the permit could lawfully continue.¹²

The Tasmanian Conservation Trust (TCT) disputes that view and, in October 2011, commenced an action in the Supreme Court seeking a determination that:

- the Pulp Mill permit had lapsed when the pulp mill was not substantially commenced by 30 August 2011

¹¹ For an overview of the charges, see <tasmaniantimes.com/index.php?/article/pulp-the-mill-launches-prosecution-of-gunns-ltd/>. <http://tasmaniantimes.com/index.php?/article/pulp-the-mill-launches-prosecution-of-gunns-ltd/>

¹² The Director of the EPA's views are available at <epa.tas.gov.au/Documents/Director_EPA%E2%80%99s_view_regarding_substantial_commencement_of_the_Pulp_Mill_project.pdf>.

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- the dam works permits issued for the pulp mill project had lapsed and the Assessment Committee for Dam Construction has no power to grant new permits for dam works associated with the construction or operation of the pulp mill.¹³

In December 2011, Pulp the Mill Inc applied to withdraw their complaint citing lack of funds. The group also argued that, given that the TCT action in the Supreme Court had the potential to more definitively resolve the issue of substantial commencement, continuing to pursue their criminal prosecution was not a good use of resources.¹⁴ On 12 January 2012, Magistrate Hill refused the application to withdraw and dismissed the complaint. Gunns Limited has applied for costs. The TCT matter is scheduled for further mention in early 2012.

Interim greenhouse gas emissions targets

The *Climate Change (State Action) Act 2008* (Tas) set a target for the Tasmanian Government to reduce its greenhouse gas emissions to at least 60% below 1990 levels by 2050. Last year the Minister for Climate Change asked the Climate Action Council to review the legislated target and to consider introducing interim targets for 2020.

In November 2011 Ms Cassy O'Connor MP introduced a private members bill, *Climate Change (State Action) Interim Targets Amendment Bill 2011*¹⁵, on behalf of the Tasmanian Greens. The Bill seeks to:

- replace the current 2050 reduction target with a target of net zero greenhouse gas emissions
- introduce an interim target of reducing greenhouse gas emissions to at least 40% below 1990 levels by 2020.

¹³ See Tasmanian Conservation Trust, 'TCT seeks Tasmanian Supreme Court determination that the Tamar Valley Pulp Mill permit has lapsed', media release, 26 October 2011 <www.tct.org.au/media/documents/26.10.2011FINALTCTMediaReleaseSupremeCourt_Web_Version.pdf>.

¹⁴ See ABC new report, 22 December 2011. <www.abc.net.au/news/2011-12-22/20111222-activists-seek-to-dump-gunns-legal-action/3744362>.

¹⁵ The Bill is available at <www.parliament.tas.gov.au/bills/pdf/82_of_2011.pdf>.

The Bill, which is unlikely to get support from the Labor government, will be debated later in 2012.

New chair for Tasmanian Heritage Council

Dr Dianne Snowden has accepted a three year contract as the new Chair of the Tasmanian Heritage Council, the body responsible for managing cultural heritage (other than indigenous heritage) assessments in Tasmania.

Seven new members have also been appointed, including persons with expertise in archaeology, architecture, planning, history, local government, building, and tourism issues.

Tasmanian coastal planning advisory committee appointed

In June 2011, the Tasmanian Government accepted the recommendation of the Tasmanian Planning Commission to reject the draft *State Coastal Policy 2008*. The Premier subsequently directed the Minister for Planning to 'present recommendations to Cabinet in the near future on the priorities and scope of a comprehensive coastal planning framework.'¹⁶

In late 2011, a Coastal Planning Advisory Committee (CPAC) comprising representatives of the Tasmanian Planning Commission, Department of Primary Industries, Parks, Water and Environment, Department of Justice and the Climate Change Office was appointed to develop Tasmania's coastal policy framework. As part of this role, CPAC will work to develop a sea level rise planning tool, consider the draft interim Coastal Hazards Code and investigate options for managing coastal developments such as canal estates.¹⁷

¹⁶ See NELR Recent Developments: Tasmania June 2011.

¹⁷ Tasmanian Government submission, 'Barriers to Effective Climate Change Adaptation', December 2011, <www.pc.gov.au/data/assets/pdf_file/0005/114548/sub051.pdf>