

# TASMANIA

## by Jessica Feehely and Tom Baxter

### Proposal to create Tasmanian whale sanctuary rejected

In 2010 the Tasmanian Greens' environment spokesperson, the Hon Cassy O'Connor MHA, tabled the *Whales Protection (State Sanctuary) Amendment Bill 2010*. The Bill sought to declare Tasmanian state waters as a Whale Sanctuary and prohibit any person taking, or assisting in the taking, of a whale in state waters. The Bill was finally debated in April 2012, and failed to get government support. However, the Environment Minister, the Hon Brian Wightman MHA, subsequently proposed amendments to the *Whale Protection Act 1988* to allow regulations to be made specifying behaviour that constitutes 'interference' with a cetacean.

The proposed amendments, which will allow regulation of human interactions with cetaceans in accordance with national guidelines, followed charges being laid against two men who rode jet skis through a pod of dolphins in March 2012.

### Macquarie Harbour expansion approved

On 29 May 2012, the Tasmanian Minister for Primary Industries approved amendments to the *Macquarie Harbour Marine Farming Development Plan 2005* to facilitate a 350ha expansion of marine farming lease areas in Macquarie Harbour. The Marine Farming Planning Review Panel recommended that the proposal, a joint venture of Huon Aquaculture Group, Petuna Aquaculture and Tassal Operations Pty Ltd, be approved.

It is anticipated that salmon production in the area will triple in the short to medium term. Community and environment groups remain concerned that insufficient baseline information regarding ecological conditions in Macquarie Harbour had been presented to demonstrate that the expansion would be sustainable. Groups such as Environment Tasmania have expressed particular concern regarding potential impacts on the endangered Maugean skate.<sup>74</sup>

On 31 May 2012, the Department of Primary Industries, Parks, Water and Environment referred the proposal to the federal minister under the EPBC Act, but indicated that the proposal should not be considered a controlled action.<sup>75</sup>

The minister is expected to make a decision regarding the assessment approach (and whether any assessment is required) by the end of June 2012.

### More ups and downs for Tasmanian Forests Agreement

#### *Independent verification report released*

The Tasmanian Forests Intergovernmental Agreement (IGA), signed by the state and federal government in August 2011, required an Independent Verification Group (IVG) to undertake an assessment to verify the high conservation values of the 572 000ha of native forests nominated by the conservation signatories, and their compatibility with a secure minimum wood supply. In March 2012, the IVG's report was provided to the state and federal government, and subsequently released to the public<sup>76</sup>. The two key findings of the report were:

- based on Forestry Tasmania modeling, Tasmania's native forests are currently being harvested substantially above long-term sustainable yield for both sawlogs and peeler billets. The report noted that the extent to which yields could be met from plantations in future is highly uncertain, given the nature and maturity of plantation species
- the nominated conservation areas do contain a range of conservation values, but not all of those values would be lost as a result of harvesting.

The IVG's advice to the Prime Minister and Premier cautioned that:

Tasmania now faces a very real risk that both sides of the forest conflict may lose all that they have sought to protect. We are on the brink of losing *both* the forestry industry *and* the native forests that merit protection.

The report, which called for legislative measures to provide resource security and encouraged Commonwealth support for regional economic diversification, suggested solutions to the present conflict, including:

- renegotiating existing contracts to bring them into line with sustainable yields
- continuing to develop the plantation industry

<sup>76</sup> The full report and advice to the Prime Minister and Premier is available at <[www.forestsagreement.tas.gov.au](http://www.forestsagreement.tas.gov.au)> .

<sup>74</sup> See, for example, the Environment Tasmania submission at <[www.et.org.au](http://www.et.org.au)> .

<sup>75</sup> Referral document available at <[www.environment.gov.au/epbc](http://www.environment.gov.au/epbc)> .

## RECENT DEVELOPMENTS

- reserving key forest areas where harvesting would destroy conservation values, but allow one-off harvesting in other areas where it will not permanently compromise conservation values
- establishing areas where only selective harvesting may occur
- ensuring continued access for mineral exploration and exploitation
- ceasing environmental market campaigns.

Forestry Tasmania has strongly disputed the findings regarding sustainable yield and accused IVG Chair, Professor Jonathan West, of bias.<sup>77</sup> The Institute of Foresters of Australia has also criticised the report, saying it is 'highly flawed because of time constraints and narrow terms of reference'.<sup>78</sup>

### Tasmanian Aboriginal community enter negotiations

In March 2012, it was revealed that a Memorandum of Understanding was being negotiated between Forestry Tasmania, the Forest Industries Association of Tasmania (FIAT) and the Tasmanian Aboriginal Centre proposing that areas to be protected under the IGA would be handed back to, and managed by, the Tasmanian Aboriginal Land Council.

Tasmanian Aboriginal Centre lawyer, Michael Mansell, noted that the arrangement would allow the Land Council to receive the \$7m funding from the Commonwealth under the IGA, and use the funding to employ Aboriginal rangers and to engage experts from Forestry Tasmania and other organisations to assist with management of new reserve areas. Conservation groups did not support the proposal, arguing that new reserve areas should be managed by the Parks and Wildlife Service.

Any proposed land hand-back arrangement would require government approval. The Tasmanian Premier responded to the proposal by confirming the Government's support for the current IGA negotiations and noting that it was not constructive for arrangements to be made outside that process.

In May 2012, FIAT returned to the IGA negotiations, having pulled out earlier in the year on the basis that continuing

market campaigns by environmental groups were undermining the process. The signatories continue to meet regularly, but are yet to provide final recommendations to the Tasmanian Government.

Under the terms of the IGA, a further \$100m in funding is contingent on legislation to meet the objectives of the IGA being introduced into the Tasmanian Parliament by 30 June 2012. During Budget estimates, Minister for Forests, the Hon Bryan Green MHA, advised that the Tasmanian government intended to introduce framework legislation by 30 June 2012. Depending on the progress of ongoing negotiations, the legislation may be tabled without figures relating to reserve areas or minimum supply quotas, with details to be discussed when the legislation is debated by parliament in September 2012.

While the Tasmanian Greens have indicated that they are not opposed to that approach, the Tasmanian Liberals have criticised the plan to table incomplete legislation, dubbing it 'phantom legislation for a phantom peace deal'.<sup>79</sup>

### Mining lease approved in Tarkine

The Tasmanian Resources Minister, the Hon Bryan Green MHA, has granted a mining lease to Venture Minerals for a 362ha open-cut haematite mine in the Meredith Ranges Regional Reserve, within the area currently being assessed for inclusion in the National Heritage List. Environmental assessments for the project are ongoing, and approval has yet to be given under state or federal environmental legislation.

Venture Minerals has also made applications for a haematite prospect strip mine near Riley Creek, and a large tin and tungsten mine at Mt Livingston. The Tarkine area is also subject to applications by various companies for an additional seven mining leases and numerous exploration licences.

Bryan Green has previously opposed any heritage listing that would compromise mineral exploration. Federal Environment Minister, the Hon Tony Burke, commented in May 2012 that blanket protection was unlikely, as parts of the area already had a history of mining. In response, the Tarkine National Coalition pointed out that the area currently being assessed already excluded the areas subject to past mining, and this history should not form a basis for delaying or limiting protection of the remaining area.

77 See, for example, 'Forest peace report slams Forestry Tasmania' at [www.abc.net.au/news/2012-03-27/west-report-blasts-forestry-tasmania/3915192](http://www.abc.net.au/news/2012-03-27/west-report-blasts-forestry-tasmania/3915192).

78 'More criticism of forest values report' at [www.abc.net.au/news/2012-06-04/more-criticism-of-forest-value-reports/4049812?section=tas](http://www.abc.net.au/news/2012-06-04/more-criticism-of-forest-value-reports/4049812?section=tas).

79 'Greens defend 'phantom' legislation', at [www.abc.net.au/news/2012-06-01/greens-defend-27incomplete27-forest-legislation/4046092?section=tas](http://www.abc.net.au/news/2012-06-01/greens-defend-27incomplete27-forest-legislation/4046092?section=tas).

Heritage assessments completed by former Australian Heritage Commissioner, Peter Hitchcock, as part of the IVG process (discussed above) concluded that the Tarkine area had national heritage significance and is 'very likely of World Heritage significance'.<sup>80</sup> An earlier preliminary assessment by the Australian Heritage Council also indicated that the area met national heritage listing criteria, however the Council is unlikely to make its final recommendations regarding the listing until September 2012.

The chair of the Australian Heritage Council, Professor Carmen Lawrence, has stated that Tony Burke would be 'ill-advised' to make a decision on mining proposals within the Tarkine area until the Council's heritage assessment process is completed.<sup>81</sup>

### Liberal party calls to abolish Climate Action Council

The Tasmanian Climate Action Council was established under the *Climate Change (State Action) Act 2008* (Tas) to provide advice to the Minister regarding the State's emission reduction targets (currently 60% below 1990 levels by 2050), Tasmania's progress towards achieving its targets, and best practice adaptation and mitigation strategies. In 2010 the Council provided a detailed report to the minister entitled *Opportunities to Reduce Tasmania's Greenhouse Gas Emissions*. In March 2011, the Council also advised on the potential introduction of interim reduction targets.

In his budget reply speech, the Tasmanian Liberal leader, the Hon Will Hodgman MHA, stated that if elected, his party would abolish the independent Tasmanian Climate Action Council and leave any work on climate change to the Climate Change Office within the Department of Premier and Cabinet. The Minister for Climate Change, the Hon Cassy O'Connor MHA, rejected the suggestion and confirmed the government's ongoing support for the Council.

### Amendments proposed to facilitate interim planning schemes

The House of Assembly passed the *Land Use Planning and Approvals Amendment Bill 2012* in May 2012. The interim planning scheme provisions were introduced into the *Land Use Planning and Approvals Act 1993* in

2009, and were intended to speed up the introduction of modern, consistent planning schemes across Tasmania. Under the current Act, the Minister may declare an interim scheme and allow the scheme to take effect immediately, before public comment and a full assessment by the Tasmanian Planning Commission. There is not currently any opportunity for the Minister to require changes to a draft interim scheme submitted by a planning authority before declaration.

The amendments introduce more structure and rigour to the process for assessment of interim planning schemes. In particular, the amending legislation will allow the Minister to consult the Tasmanian Planning Commission and require changes to ensure that interim schemes meet minimum standards before declarations are made. The text of the Bill, which is expected to be approved by the Legislative Council in its next sitting, is available at [www.parliament.tas.gov.au/bills/pdf/21\\_of\\_2012.pdf](http://www.parliament.tas.gov.au/bills/pdf/21_of_2012.pdf).

### Mediation trial for nuisance disputes

In May 2012, the Environment Protection Authority and the Local Government Association of Tasmania began a six month trial of a mediation service to attempt to resolve environmental nuisance disputes. During the trial, council officers are able to refer issues with no clear regulatory solution, such as loud music, wood smoke and off road vehicle noise, to designated mediation officers for assistance. More information about the trial is available at [www.epa.tas.gov.au](http://www.epa.tas.gov.au).

### Tasmania to phase out sow stalls and battery farms

The Tasmanian government has allocated \$2.5m over the next two years to the Intensive Animal Farming Development program. The program is designed to address animal welfare concerns associated with battery hen farming and sow stalls at piggeries, two key policy issues promoted by the Tasmanian Greens. The government previously agreed to phase out sow-stalls by 2017, but will now assist industry to transition to alternative equipment by mid-2013. The government plan to phase out battery hens includes an immediate ban on future operations and imposing a cap on the existing number of pens in production. No timeline has been set for the phase-out.

80 Professor Hitchcock's report is available at [www.environment.gov.au/land/forests/independent-verification/pubs/ivg\\_conservation\\_5a\\_heritage.pdf](http://www.environment.gov.au/land/forests/independent-verification/pubs/ivg_conservation_5a_heritage.pdf).

81 A. Morton, 'Tarkine at risk as mining applications are assessed without advice on heritage'. Sydney Morning Herald, 27 April 2012. <[www.smh.com.au/environment/conservation/tarkine-at-risk-as-mining-applications-are-assessed-without-advice-on-heritage-20120427-1xq4l.html#ixzz1wnO68CAf](http://www.smh.com.au/environment/conservation/tarkine-at-risk-as-mining-applications-are-assessed-without-advice-on-heritage-20120427-1xq4l.html#ixzz1wnO68CAf)>.

### Costs battles in legal challenges to pulp mill

As reported in the last NELR issue, the Tasmanian Conservation Trust ('TCT') is seeking a declaration from the Supreme Court that works at the site of Gunns Limited's ('Gunns') proposed pulp mill are unlawful, as permits issued for the work have lapsed.<sup>82</sup> Gunns made an application for security for costs, arguing that the TCT was not in a position to cover its costs (estimated at \$300 000–400 000) if its application was unsuccessful. In response, TCT gave evidence that it has dedicated litigation funds of \$78 000 and nearly \$100 000 already pledged to assist with the costs of the application.

On 20 April 2012, Associate Justice Holt dismissed the application for security for costs, even though he was satisfied that there was a reasonable prospect that TCT would not be able to cover all of Gunns' legal costs. His Honour held that TCT's case did not lack merit and was being pursued in the public interest. He noted the arrangements TCT had made to limit its own costs and to secure funding to meet a potential costs order, and also noted that Gunns' anticipated legal costs represented only a tiny portion of the estimated \$2.3b cost of the pulp mill project. On balance, he was satisfied that it would be unjust to require TCT to provide security for costs. Holt AJ's decision is available at [www.austlii.edu.au/au/cases/tas/TASSC/2012/18.html](http://www.austlii.edu.au/au/cases/tas/TASSC/2012/18.html). Gunns has appealed against the decision.

### Pulp the Mill prosecution

A criminal prosecution was previously commenced by community organisation, Pulp the Mill Inc, against Gunns on similar grounds to those raised in the TCT action. Pulp The Mill applied to withdraw their complaint in December 2011, arguing that their action was unnecessary in the light of the TCT proceedings. The application to withdraw was refused and the complaint was dismissed in January 2012.<sup>83</sup>

On 1 June 2012, Magistrate Hill ordered Pulp the Mill to pay Gunns' costs of the application. Mr Hill held that the complaint 'was laid without the proper steps having been taken to investigate it ... and there was little if any admissible evidence to support it.' Mr Hill commented that, while an action challenging the pulp mill permit itself may have been characterised as public interest litigation, a criminal prosecution was 'of an entirely different nature' and did not justify a departure from the usual rules regarding costs.

82 See TCT media release at <[www.tct.org.au/media/documents/26.10.2011FINALTCTMediaReleaseSupremeCourt\\_Web\\_Version.pdf](http://www.tct.org.au/media/documents/26.10.2011FINALTCTMediaReleaseSupremeCourt_Web_Version.pdf)>.

83 See [2012] TASM 02.

## VICTORIA

### by Barnaby McIlrath

#### Government response to Climate Change Act review and Advisory Committee report

The Victorian Government has accepted a majority of the recommendations of the Victorian Climate Change Act Review provided to government in December 2011. The government response was released in March 2012. While the 20% emissions reduction target is to be repealed in light of the passage of the Commonwealth's Clean Energy Package, the EPA's power to regulate GHG emissions will be retained in the same form that it existed prior to the introduction of the *Climate Change Act 2010* (Vic). The Review recommended that EPA Victoria issue a statement of regulatory intent to clarify how it intended to regulate GHG emissions through its regulatory decision making.<sup>84</sup>

In early June 2012 the Minister for Planning released the government response to the Coastal Climate Change Advisory Committee report. While many of the recommendations were not supported, the following recommendations received support, or in principle support:

- that state planning policy be revised to include interim sea-level targets
- that permit conditions include requirements for relocation of structures in appropriate circumstances
- that the Minister for Planning consult with the Building Commission to ensure climate change issues are assessed under the Building Code of Australia
- that Coastal Hazard Vulnerability Assessments not be required for small developments due to cost considerations.

Notably, the minister did not support recommendations including that:

- specific zones and overlays be introduced to identify coastal hazards
- legal advice be commissioned as to the legal liability of decision makers; the Government asserting that the issue of insurance was outside the scope of the planning system and was an issue for decision makers to address.

The report and ministerial response can be found at: [www.dpcd.vic.gov.au/planning/panelsandcommittees/current/coastal-climate-change-advisory-committee#response](http://www.dpcd.vic.gov.au/planning/panelsandcommittees/current/coastal-climate-change-advisory-committee#response)

84 <http://www.climatechange.vic.gov.au/home/review-of-climate-change-act>.