

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.⁸² 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. 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 2012.⁸³

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>.

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.⁸⁴

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

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

Legislation

The Forests Amendment Bill 2012 (Vic) has been introduced into Parliament. The Bill will create clear, legislatively defined rules for collecting domestic firewood without a permit from state forests and those parks where collection is allowed. According to the Department of Sustainability and Environment the legislation will not change the approach to firewood collection but will mean that the rules, including where, when, how and how much firewood can be collected, will be clearly defined in legislation. The amount of firewood that an individual can collect remains unchanged at 2m³ per person per day.

The legislation introduces a maximum household firewood collection limit of 16m³ each financial year. A lower regional household limit may be set in a part of the state if firewood is limited (a household would still be able to collect elsewhere to make up the 16m³). Also, if firewood is limited in a particular part of the state, the legislation will enable particular firewood collection areas to be available only to those residing in that area.

In summary, the Bill will:

- abolish the need for a domestic firewood permit
- establish a process for designating firewood collection areas in State forest and those regional parks where firewood collection is currently allowed
- create a series of offences aimed at encouraging appropriate collecting behaviour, deterring illegal commercial firewood collection, and providing checks and balances to ensure that firewood collection is sustainable into the future and is undertaken in a socially and environmentally responsible manner
- enable a person who is unable to collect firewood for themselves to nominate another person to do so on their behalf.
- Under the rules of the scheme, a person, or someone acting on their behalf, may only:
 - » collect firewood from designated firewood collection areas
 - » collect firewood during a firewood collection season
 - » collect fallen timber, and cannot fell, cut or otherwise damage standing trees or shrubs (living or dead)
 - » collect wood which is not hollow or growing moss or fungi
 - » collect firewood for domestic use and must not sell that wood

- » collect up to 2m³ of firewood per day
- » collect a maximum of 16m³ of firewood per financial year per household, or, in a particular region, a lesser amount from areas in that region if specified by the Secretary to the Department of Sustainability and Environment for that year.

WESTERN AUSTRALIA

by Joe Freeman and Ainsley Reid

Final management plans released for Shark Bay and Perup areas

In May 2012, the West Australian ('WA') Minister for Environment, the Hon Bill Marmion MLA, released new management plans for the Shark Bay, in the state's northwest, and the Perup area in the state's south. Each of these plans detail an approach for managing the protection, conservation, and maintenance of the natural environment within the relevant areas, as well as managing cultural heritage and tourism. The date on which both plans will come into operation has not yet been announced, but they will each last for a period of up to ten years.

The *Shark Bay Terrestrial Reserves and Proposed Reserves Additions Management Plan 2012* replaces the previous *Shark Bay Terrestrial Reserves Management Plan 2000–09*. The Shark Bay plan applies to an area of approximately 520 000ha, a significant increase from 175 000ha under the previous plan, and is located within the Shark Bay World Heritage Property. The *Perup Management Plan 2012* will cover an area of some 107 000ha, including the internationally recognised Muir-Byenup wetlands, two national parks and 17 nature reserves.

Both new plans are available to download from the WA Department of Environment and Conservation website.

New marine parks to be established

The WA Government has announced decisions to create two new marine parks, one in the south-west of the state and the second in the Kimberley region.

The first, the Ngari Capes Marine Park, will cover about 124 000ha between Geographe Bay and Augusta. It will be zoned to ensure access for recreational pursuits and protect the area's marine life through the establishment of 15 sanctuary zones.