

Pulp Mill Assessment Amendment (Clarification) Bill 2009

FACT SHEET

The purpose of the *Pulp Mill Assessment Amendment (Clarification) Bill 2009* is to establish a date of expiry for the Pulp Mill Permit. It provides certainty about the date on which the Pulp Mill Permit lapses, should Gunns Limited have failed to substantially commence the development and operation of a bleached kraft pulp mill in Northern Tasmania.

On 30 April 2007, the *Pulp Mill Assessment Act 2007* received Royal Assent.

The Act established a standalone process for the assessment of the proposal by Gunns Limited for the development and operation of a pulp mill in Northern Tasmania, resulting in the Pulp Mill Permit being prepared by the Minister for Planning.

On 30 August 2007 the Pulp Mill Permit was approved by both Houses of Parliament and came into effect.

At the time of passing the Act it was not considered necessary for the Pulp Mill Assessment Act to contain a date at which the Permit would cease to exist, had the project not substantially commenced.

Nor was it considered necessary to specifically address provisions relating to the expiration of permits, licences or other approvals, contained in other Acts that may apply to the Pulp Mill Permit.

On 20 October 2009 the Director, Environment Protection Authority, Mr Warren Jones (Director, EPA), wrote to the Secretary of the Department of Primary Industries, Parks, Water and Environment advising that, on the basis of advice that he had received from the Solicitor-General, uncertainty has arisen.

The uncertainty arose as a result of the potential expiry of Schedules LU1, LU2, LU3 and LU4 of Appendix 2A to the Pulp Mill Permit, which are taken to have been issued under the *Land Use Planning and Approvals Act 1993* (LUPAA).

Under section 53(5) of LUPAA a permit expires two years after it was issued unless:

- the relevant planning authority has granted an extension of the permit; or
- there has been substantial commencement of the activity.

There are differing legal views about the application of section 53(5) of LUPAA to schedules LU1-LU4 of the Pulp Mill Permit.

If section 53(5) of LUPAA is taken to apply, there is also some doubt as to whether Gunns has ‘substantially commenced’ the use or development in respect of which the permit was issued, being the pulp mill, when the term ‘substantially commenced’ is given its strict legal construction in the context of that Act. This is despite the fact that the proponent has spent considerable sums of money related to satisfying permit conditions and preparing for development.

The lapsing of the Permit is, therefore, a matter that can only be conclusively resolved by a court or by legislation.

Without such a determination being made by a court, or legislation being passed by both Houses of Parliament, the Director of the EPA and all other regulators will remain uncertain of the status of the Pulp Mill Permit.

The consequence of the Director of the EPA’s advice to Government is that there is now doubt over the current status of the Pulp Mill Permit that needs to be resolved.

The proposed *Pulp Mill Assessment Amendment (Clarification) Bill 2009* provides that the entire Pulp Mill Permit lapses if the project is not substantially commenced before the end of the period of four years from the Pulp Mill Permit coming into force (that is by 30 August 2011).

The Bill also sets aside the operation of provisions relating to lapsing of Pulp Mill Permit conditions contained in section 53(5) of the LUPAA and section 159(8) of the *Water Management Act 1999* and deems permits that may have lapsed under those Acts not to have lapsed. This ensures that it is only the new date of lapsing, imposed by this Bill, being four years from its approval, that applies to the Pulp Mill Permit.

The amendment to the Pulp Mill Assessment Act means that regulators can be certain that, should Gunns not have substantially commenced the project by 30 August 2011, the Pulp Mill Permit lapses and Gunns’ authority to build and operate the pulp mill is extinguished.

Four years is considered a reasonable period of time given the size and considerable complexity of the project and lapsing provisions in other legislation.

Provisions contained in LUPAA, if found to apply, would allow up to four years for the use or development to have substantially commenced for a permit to remain on foot, whilst the

Water Management Act allows up to years for a dam to be substantially completed for the permit to remain on foot.

In providing a single date at which the Pulp Mill Permit lapses, should the pulp mill project not have substantially commenced, the Pulp Mill Assessment Amendment Bill provides the certainty sought by the Director of the EPA.