

Undercutting Good Environmental Governance: A Current Controversy in Australian Environmental Law



© Dave Watts
Wedge-tailed
eagle (Tas)



Taz
Devil



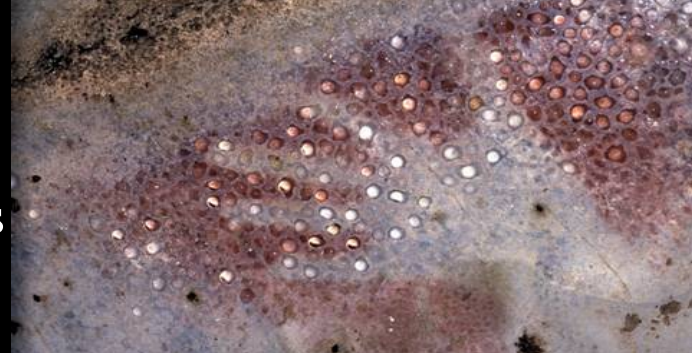
Spotted-tail Quoll

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iucnael.org, Wuhan 2009

NE Tas
Oct 2006

Overview

- *Tas Dams Case*: Federal power to implement treaties
- Env't Protection & Biodiversity Conservation Act:
 - objects and ecologically sustainable development
- EPBC Act exempts Regional Forest Agreement (RFA) forestry from the Act's:
 - protection (ss.38-42); and
 - EIA (s.75(2B))
- RFAs insufficiently robust to warrant exemption
- Pulp mill case study



Florentine Valley, SW Tas





lakepedder.org
 dammed & flooded 1972
*'The day will come when
 our children will undo what
 we so foolishly have done'*



Edward St John
 QC MP, 1974





National Library of Australia

nla.pic-an6631500-v

Rock Island Bend, Franklin River, SW Tas (Peter Dombrovskis, 1983)

Commonwealth of Aust v Tasmania (1983) 158 CLR 1 (*Tasmanian Dams Case*)

EPBC Act objects: s.3

The objects of the Act include:

- a) to provide **for*** the **protection of the environment**, especially ... matters of **national environmental significance**; and
- b) to promote **ecologically sustainable development** through the conservation and ecologically sustainable use of natural resources; and
- c) to promote the conservation of biodiversity; and
-
- e) to assist in the co-operative implementation of Australia's **international environmental responsibilities**; and
-

* 'for' = weak: delete



Giant freshwater crayfish

12

Australian Government
Attorney-General's Department

COMLAW
Commonwealth of Australia Law
Incorporating the Federal Register of Legislative Instruments (FRLI)

Home

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Chapter 1—Preliminary

Part 1—Preliminary

- 1 Short title (see Note 1)
- 2 Commencement (see Note 1)
- 3 Objects of Act
- 3A Provisions of ecologically sustainable development
- 4 Act to bind Crown
- 5 Application of Act
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- 8 Native title rights not affected
- 9 Relationship with other Acts
- 10 Relationship with State law

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11 Simplified outline of this Chapter

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ADSTRALLA

Environment Protection and Biodiversity Conservation Act 1999

Act No. 91 of 1999 as amended

This compilation was prepared on 15 January 2007 taking into account amendments up to Act No. 165 of 2006

Volume 1 includes: Table of Contents Sections 1 – 266A

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Volume 2 includes: Table of Contents Sections 267 – 528 Note 1 Table of Acts Act Notes Table of Amendments Notes 2 – 5 Table A

Prepared by the Office of Legislative Drafting and Publishing

Matters of National Environmental Significance

World Heritage properties



Ramsar wetlands

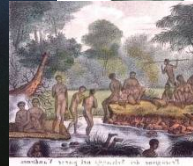


Migratory species



Threatened species and ecological communities

National heritage



Marine area
3-200nm



Nuclear
actions



Principles of ecologically sustainable development

- EPBC Act s.3A [links to object s.3(b)]; **emphasis added**

- (a) decision-making processes should effectively **integrate** both long-term and short-term economic, environmental, social and equitable considerations;
- (b) [**precautionary principle**] if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of **inter-generational equity** — that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the **conservation of biological diversity and ecological integrity** should be a fundamental consideration in decision-making;
- (e) improved **valuation, pricing and incentive mechanisms** should be promoted.

Principles of ecologically sustainable development


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- (a) decision-making processes **should** effectively **integrate** both long-term and short-term economic, environmental, social and equitable considerations;
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- (d) the **conservation of biological diversity and ecological integrity** **should** be a fundamental consideration in decision-making;
- (e) improved **valuation, pricing and incentive mechanisms** **should** be promoted.

[(e) => economic instruments, eg internalize externalities, polluter pays principle, regulatory mix, etc: see Distinguished Lecture]

'should' = weak: replace with 'must'

RFA Forestry Exemption: EPBC Act s.38(1)

A photograph showing the aftermath of a forest fire. The ground is covered in dark, charred wood and ash. Several tree trunks are left standing, some heavily charred and skeletal. In the background, a person wearing a red shirt is visible, standing near a large pile of charred wood. The sky is overcast and grey.

‘Part 3 [Act’s protection] does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.’

Regional Forest Agreements: Tas applies across State

[DAFF Home](#)

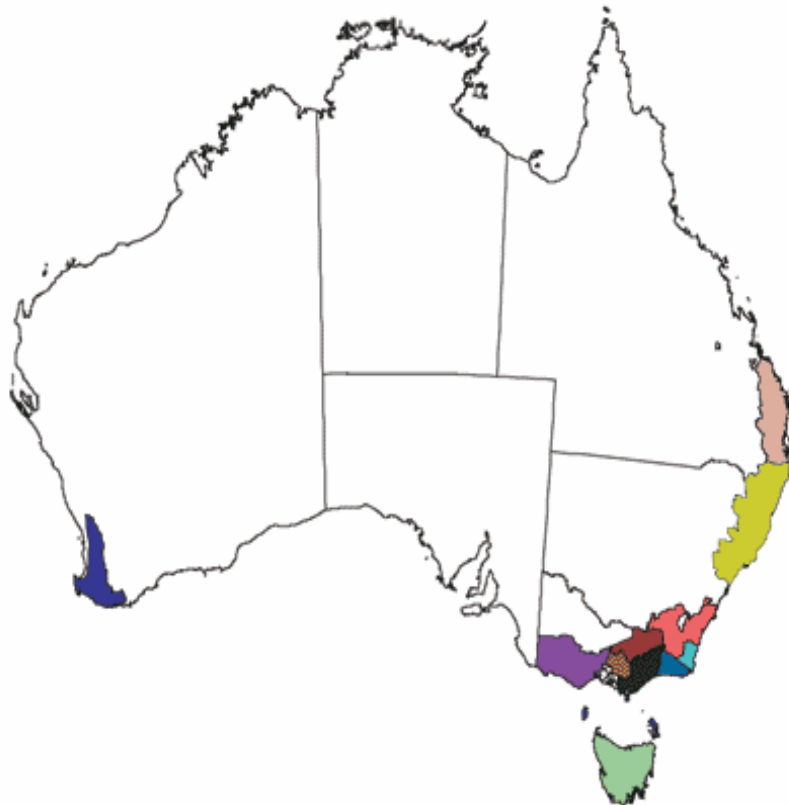
[About DAFF](#)

[Grants](#)

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[DAFF Home](#) > [RFA Home](#) > [Regions](#) > [Map of Regions](#)

MAP OF REGIONS



Regions with a completed RFA

-  Western Australia
-  West Victoria
-  North East Victoria
-  Central Highlands Victoria
-  Gippsland Victoria
-  East Gippsland Victoria
-  Tasmania
-  Southern New South Wales
-  Eden New South Wales
-  North East New South Wales
-  South East Queensland CRA Regions (no completed RFA)

Contact:

[Email Forestry](#)
[About Forestry Branch and Contact details](#)
[Media Inquiries](#)

<http://www.daff.gov.au/rfa/regions/map>

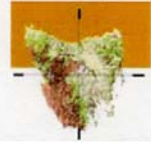
Impacts on earth (soils), air, water, biodiversity





Tasmanian Forest Industry

PLANNED BURNS 2005



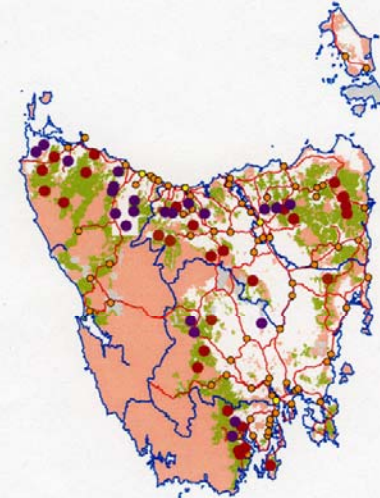
Planned Burns for Thursday 21 April 2005

Click on a Planned Burn point to see details about the fire.

Planned burning is dependent on suitable weather conditions. Not all burns shown may be undertaken today.

Note:- If no burn symbols appear on this map when it has loaded there is nothing wrong with your system or this Web site: it simply means no burns are planned for the day.

Hint:- Right-click with your mouse and a menu will appear to allow you to zoom in and out.



Legend:

<input checked="" type="checkbox"/>		FIAT High Intensity Burns
<input checked="" type="checkbox"/>		FIAT Low Intensity Burns
<input checked="" type="checkbox"/>		FT High Intensity Burns
<input checked="" type="checkbox"/>		FT Low Intensity Burns
<input checked="" type="checkbox"/>		FT Fuel Reduction Burns
<input checked="" type="checkbox"/>		Cities
<input checked="" type="checkbox"/>		Major Towns
<input checked="" type="checkbox"/>		Major Roads
<input checked="" type="checkbox"/>		Coastline and FT Districts
<input checked="" type="checkbox"/>		State Forests
<input checked="" type="checkbox"/>		Reserves
<input checked="" type="checkbox"/>		Public Land

Disclaimer:- Planned burns are part of an industry-wide program, not just those carried out by Forestry Tasmania (FT)

These are approximate locations of burns planned by FT and members of the Forest Industries Association Tasmania (FIAT). The Land Type areas shown have been generalised and

Fresh water pollution

Concerns over chemicals (eg atrazine, triazines) used in plantation establishment and possible impacts on animal and human health. eg:

‘Hobart water triazine scare’,
Mercury, April 29, 2009, p5:

“Further testing at Bryn Estyn a month later traced the source of the herbicide to nearby forestry plantations. Officers were unable to pinpoint an exact location,” Mr Llewellyn said.



Landscape-scale change

Logging coupe SA 11C, March 2005



Gunns Ltd's CEO,
John Gay,
defended 1080
poisoning of native
wildlife by calling
them 'vermin'



Temperate rainforest: cleared for plantation, NW Tasmania



Wedge-tailed eagle (Tas)

The **Tasmanian wedge-tailed eagle** (*Aquila audax fleayi*). Nationally-listed endangered sp. (a separate sub-species from mainland Aust).

Total population estimate is **less than 1000 birds**, consisting of an estimated **95 successful breeding pairs**. Build nests in tall trees.

Eagles are sensitive to disturbance when nesting and may abandon a nest site if too disturbed.^[1]

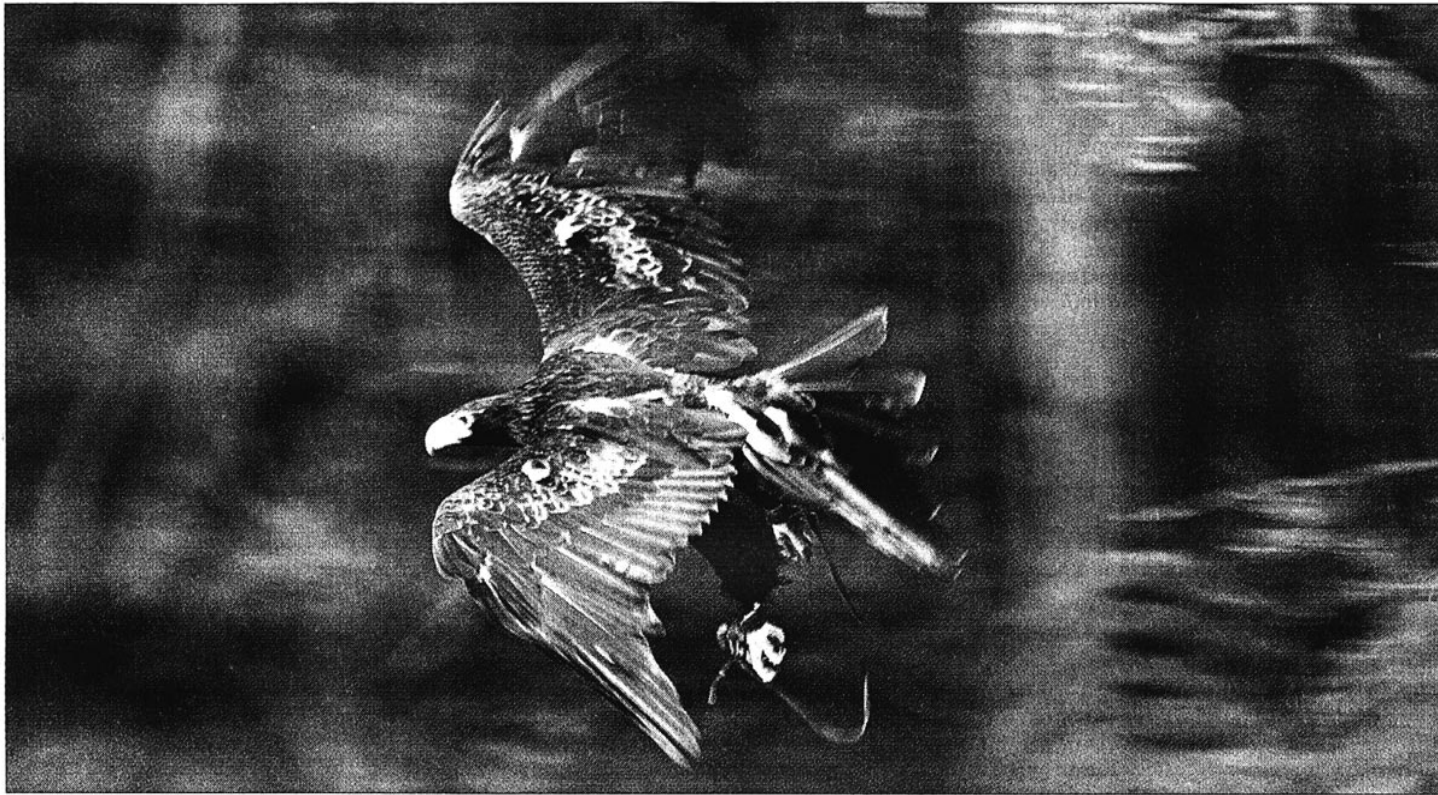
Logging disturbs their nesting and breeding.

Studies (eg. University of Melbourne) show the eagle faces a 97% risk of local extinction in NE Tas if current scale of logging continues.

[1] Australian Government, Department of the Environment and Water Resources, 'Recommendation Report prepared for EPBC Project 2007/3385 [Gunns Pulp Mill]', August 2007 at 10, [13] <<http://www.environment.gov.au/epbc/notices/assessments/2007/3385/pubs/recommendation-report.pdf>>.



Logging may wipe out wedge-tailed eagle: study



A wedge-tailed eagle soars at Healesville Sanctuary yesterday. The Wilderness Society says Tasmania's eagles are in danger even if logging stops.

PICTURE: CRAIG ABRAHAM

Natalie Kotsios

The wedge-tailed eagle could be on the brink of extinction in Tasmania if logging of the state's old-growth forests continues, and other species may not be far behind, a study says.

The Melbourne University report says logging and the replacement of native forests with plantations have badly damaged the bird's habitat.

Prepared by university researchers for Forestry Tas-

mania to use for planning purposes, the report was brought to public attention yesterday by the Wilderness Society.

The study predicts the eagle's risk of extinction could reach 97 per cent if logging continues.

Wilderness Society spokeswoman Virginia Young said the bird of prey already faced danger because of habitat loss and other problems. "Even if logging stops, it still faces a 62 per cent chance of extinction," she said.

The report predicts the

impact of different levels of logging on 11 animal species in Tasmania's north-east, the area where most logging takes place.

One of the researchers, Brendan Wintle, said since there were at least 10,000 forest species, it was likely many others were also at risk. "If you convert a lot of forest into plantation, then you are going to detract from the habitat," Dr Wintle said.

Forestry Tasmania general manager Hans Drielsma said the study was based on possible

scenarios to guide decisions. "We have publicly committed to retaining at least 95 per cent of all existing native forest, so these worst-case scenarios will never happen," Dr Drielsma said.

More than 1600 plants and animals are on the national threatened species list, with 657 of those found in Tasmania.

The release of the report was timed to coincide with National Threatened Species Day yesterday, which marked the death of the last known Tasmanian tiger.

Wielangta Forest case

Brown v Forestry Tasmania (2006-08)

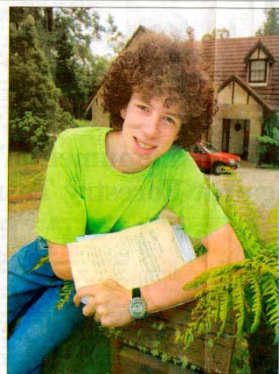
see <www.on-trial.info>.

- Trial judge held FT operations in Wielangta Forest were:
 - significantly impacting 3x endangered species (swift parrot, wedge-tailed eagle and beetle); and
 - in breach of Tas Regional Forest Agreement cl.68; and
 - therefore in breach of EPBC Act.
- TRFA cl.68 then amended by Aust PM Howard and Tas Premier Lennon:
 - from agreement 'to protect' species;
 - to agreement species **are** protected!
- Full Federal Court: overruled trial J.
- High Court (2-1): given TRFA amendment, no reasonable prospect Senator Brown could win on appeal.

Green joy at legal victory

Young Jet top of the class in Tassie

LINDA SMITH
HE is just 16 but Fern Trevis is the youngest in the way of his passion for learning.
Not only did he skip grade seven and study mathematics subject while completing year 12 at Hutchins this year, but he hit the field in this year's Tasmanian Certificate of Education exams to become the state's top student.
Jet achieved the highest Tertiary Entrance Rank possible — 98.5 — and one of 11,000 Tasmanian students to receive year 11 and 12 results yesterday.
About 800 certificates were delivered to year 12 students, while 600 students received their year 11 Statement of Results.
Most students received theirs by the mail box but some were required to collect them.
It was an arduous wait



RELEASE: Jet Holloway receives the good news yesterday. Picture: LEIGH WINDHAM for the Act, who didn't think he had done very well in his first-year uni subject but got a 5.0 of the top.
"I'm really happy with some of my internal studies and I thought I studied up a few of the subjects."
Continued Page 4
Top 100 students: Page 4

PHILIPPA DUNCAN
GREENS senator Bob Brown has won a landmark court case against Forestry Tasmania that may have far-reaching implications for logging in Australia.
The judgment — which spared applause and cheers in the Federal Court in Hobart — has pleased the industry, which is predicting mass job and resource losses.
Yesterday the state and federal governments, which sided with Forestry Tasmania in the multi-million-dollar action, were scrambling to understand the decision's consequences.
Justice Shane Marshall ruled that Forestry Tasmania's logging operations in the Wielangta State Forest near Orford had breached the Regional Forest Agreement.
He also ruled that the company was not exempt from the federal Environment Protection and Biodiversity and Conservation Act.
The judge said logging was likely to have a "significant impact" on three endangered species that live in the forest — the Tasmanian wedge-tailed eagle,



ELATED: Bob Brown with supporters at the Federal Court in Hobart yesterday. The broad-footed stag beetle and the swift parrot — the environmental case as the most critical since the Franklin Dam case in 1982.
Senator Brown called the win "monumental" and hailed the environmental case as the most critical since the Franklin Dam case in 1982.
The Tasmanian senator predicted the decision would dramatically restrict logging across Australia and called for an immediate end to logging in the forest.



ENDANGERED: Wedge-tail eagles, stag beetles and swift parrots.

Lennon says ruling could cause havoc

BY NIC PRICE
PREMIER Paul Lennon claimed yesterday that the court injunction halting logging in the Wielangta State Forest would have serious consequences for Tasmania and, without redress, would play havoc with the forestry industry, the proposed pulp mill, the economy and the agriculture sector.
But more moderate voices said large-scale effects were unlikely and the year ahead would be shaped by legal wrangling in the wake of the decision.
Mr Lennon yesterday called Prime Minister John Howard seeking an urgent change to the Regional Forestry Agreement that he said was required to protect 10,000 Tasmanian timber jobs from the shockwaves of the decision.
Mr Lennon also said that because endangered species, such as the wedge-tailed eagle, lived all over the State, the implications of the decision could extend "beyond forest harvesting to

WHAT THE JUDGE SAID:
The ruling of Justice Shane Marshall "Protection is not delivered if one merely assists a species to survive. Protection is only effective if it not only helps a species to survive, but aids in its recovery to a level at which it may no longer be considered to be threatened."
He ruled that only a small part of the parrot, eagle and beetle populations would use the CARP Reserve System which was "small" and not aligned with the animals' territories. He ruled it would not protect them.
"It is unlikely the State can, by management prescriptions, protect the eagle. As to the beetle and parrot, the State must urge Forestry Tasmania to take a far more protective stance."
He said that due to Justice Marshall's interpretation of the word "protect" — which states that threatened species population should increase — it would not be possible for Forestry Tasmania to modify operations to comply with the RFA.
The Forest Industries Association of Tasmania

THE WIELANGTA DECISION

SWIFT PARROT

The swift parrot is a small, fast-flying and brightly coloured green, red, blue and yellow. It is estimated 1250 breeding pairs remain. It comes to Tasmania in August or September then crosses back over Bass Strait to the mainland in March or April, but only breeds in Tasmania.

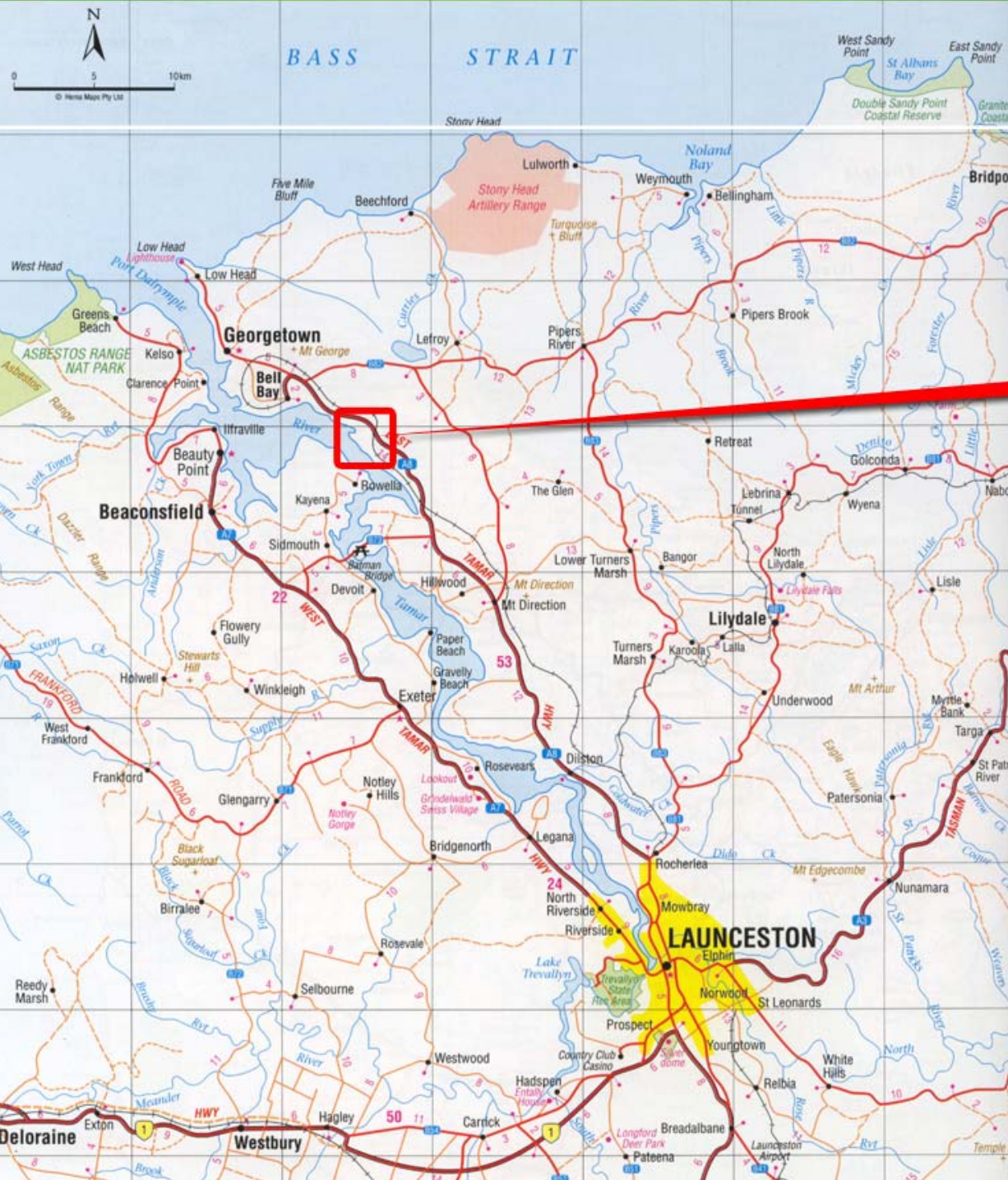
WEDGE-TAILED EAGLE

The Tasmanian wedge-tailed eagle is Australia's largest bird of prey — growing up to one metre long with a wing span up to 2.2 m. The eagle is territorial, sensitive to disturbance and usually builds large nests in old-growth eucalypt forest.

STAG BEETLE

The broad-footed stag beetle is extremely rare (it has only been found in Wielangta and Maria Island) and is found in damp areas of old-growth forests. Scientists believe the species is more than 200 million years old and usually grows in rotting wood on the forest floor.

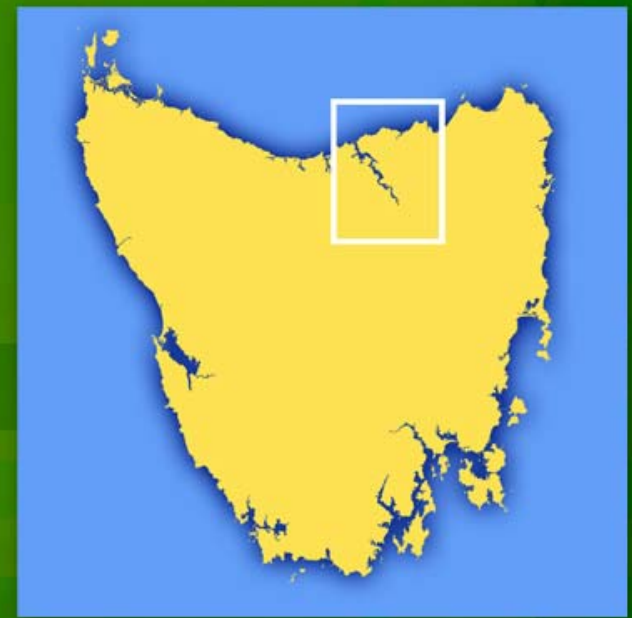
backed Mr Lennon's comments and said the original intent of the RFA should be restored.
Craig Woodfield, of the Tasmanian Conservation Trust, said the decision was welcome but not a landmark. "This won't be the end of logging or anything like that, but it is a damning indictment of Forestry Tasmania," he said.
The ruling was not necessarily applicable to other forests. "A precedent has been set but for that to be useful we would have to injunct and appeal a whole lot of other areas, and that is very expensive and time-intensive," he said.
"It's a huge moral victory and it would be nice if we got stronger protection of biodiversity, but when the Government is challenged like this they just change the law."
Mr Woodfield said he would have a year or more of legal and political wrangling over the issue before an outcome became clear.
On Tuesday, Forestry and Conservation Minister Eric Abetz said the ruling was not wide-reaching and only applied to Wielangta.



BELL BAY PULP MILL

Proposed site

Bell Bay, Tamar Valley



Protests: eg 8,000 rally against Gunns Ltd pulp mill plan, Launceston



‘Pulp mill amendment’: new EPBC Act s.75(2B)

EPBC Act s.75(2B)
added December 2006,
commenced February 19,
2007.

=> in making key EIA
screening/scoping
decisions, the Federal
Environment Minister
‘must not consider any
adverse impacts of ...
any RFA forestry
operation’



Pulping the assessment process

August 2005: Gunns Ltd refers proposal to build and operate bleached Kraft eucalypt pulp mill at Bell Bay, including wood-fired power generation, to Cth.

Integrated assessment by Tas RPDC, also Cth-accredited for EPBC Act purposes.

19 February 2007: s.75(2B) insertion into EPBC Act commences.

14 March 2007: Gunns withdraws its pulp mill proposal from assessment process.

15 March 2007: Tas Premier announces intention to legislate.

Gunns withdraws (28 March) then resubmits (2 April) same EPBC referral to Cth.

17 April 2007: *Pulp Mill Assessment Act 2007* (Tas) passed: RPDC process pulped.

2 May 2007: Minister Turnbull decides under EPBC Act to:

- assess pulp mill on 'preliminary documentation'.
- exclude adverse impacts of the mill's wood supply from EIA and approval processes due to s.75(2B).

TWS challenges this decision (unsuccessful due to s.75(2B)).

In Aug and Oct 2007 respectively, State and Federal Governments grant Gunns approvals to construct and operate pulp mill for 50 years.



Pulp Mill Assessment Act 2007 (Tas)



Section 11. Limitation of rights of appeal

- (1) Subject to subsection (3) and notwithstanding the provisions of any other Act –
 - (a) a person is not entitled to appeal to a body or other person, court or tribunal; or
 - (b) no order or review may be made under the *Judicial Review Act 2000*; or
 - (c) no declaratory judgment may be given; or
 - (d) no other action or proceeding may be brought –
in respect of any action, decision, process, matter or thing arising out of or relating to any assessment or approval of the project under this Act.
-
- (3) Subsection (1) does not apply to any action, decision, process, matter or thing which has involved or has been affected by **criminal conduct**.
- (4) **No review** under subsection (3) operates to **delay** the issue of the **Pulp Mill Permit** or any action authorised by that permit.

Section 11 also removes right to Statement of
Reasons for Pulp Mill Permit conditions:
*Landon-Lane v Minister for Economic Development
and Tourism and Premier of Tasmania*
[2009] TASSC 50
(17 July 2009)



Lucy Landon-Lane,
organic walnut farmer,
Tamar Valley
© Richard Butler

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21 MAR 2007

Fast-track pressure alleged by ex-judge

Pulp claims rock Premier



I was pressured by Premier,

From Page 1

Premier had mentioned legislation "a couple of times".

Later, in a statement, Mr Lennon admitted he had indicated to Mr Wright that he might have to go to parliament to get a timeframe.

"This could be the only thing Justice Wright could refer to when he uses the term 'legislation'," he said.

At the meeting, held two days after Mr Lennon had met Gunns Ltd chief executive John

Gay, Mr Wright said Mr Lennon had given him a typed shorter timeline.

"He suggested I follow his deadline rather than mine," he said.

"I felt compromised. I was having this pressure placed upon me."

Mr Wright is the third member of the RPDC pulp mill panel to threaten to resign or resign this year due to State Government interference. Former chair Julian Green and CSIRO scientist Warwick Raverly quit

in January citing interference from the Government's pulp mill taskforce.

The formal RPDC process was abandoned last week after Gunns withdrew, citing unacceptable and expensive time delays, having pushed for a decision by June 30.

Mr Wright said Mr Lennon had threatened to introduce legislation and a ministerial direction to make the RPDC abandon public hearings and finish the assessment by July 31. "The proposition was I was to

MERCURY 2

says former judge

continue but with these shackles placed upon me," he said.

Mr Wright said Mr Lennon's proposition had left him in a "state of shock" for an hour after the meeting and he was "very upset for a number of days".

He determined the July 31 timeline was impossible and on Friday, March 2 rang the head of the Department of Premier and Cabinet, Linda Horsey, to resign. But Ms Horsey had rung Mr Lennon, who was holidaying in New Zealand, and then convinced him to stay, saying every

thing was back to square one.

Mr Wright revealed this last night after Mr Lennon questioned yesterday afternoon why Mr Wright had not resigned if he felt compromised.

"If Christopher Wright felt that I had done anything improper he would have resigned," Mr Lennon said.

At a public directions hearing last month, Mr Wright said it would be late November at the earliest before the RPDC could make a recommendation on the mill.

PHILIPPA DUNCAN

FORMER judge Christopher Wright felt "compromised", leant on and pressured by Premier Paul Lennon to fast-track the assessment of the Gunns pulp mill.

Mr Wright said Mr Lennon had given him an "ultimatum" to speed up the assessment of the \$1.5 billion project or he would introduce legislation.

The chair of the Resource Planning and Development Commission pulp mill assessment panel, which had been assessing the mill until last week, verbally resigned after his meeting with Mr Lennon.

But Mr Lennon has denied proposing legislation at the meeting on February 27.

"I did not say that at all," he said.

Mr Lennon said he had only asked Mr Wright to "consider" a shorter timeline and accepted his advice that the July 31 date could not be met.

But last night Mr Wright stood by his "full and frank account of what had happened" and said the

Continued Page 2
Fed quick-fix fears: Page 25
Polly: Page 27

MERCURY -

April 2007 Legislative Council of Tasmania

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21 MAR 2007

Premier accused of interfering with RPDC

ADVOCATE 6

THE former head of a panel scrutinising the State's \$1.5 billion pulp mill has accused Premier Paul Lennon of interfering with the assessment process in a bid to speed up the project.

Retired Tasmanian Supreme Court Judge Christopher Wright said Mr Lennon's actions led him to attempt to quit as chairman of a Resource Planning and Development Commission (RPDC) panel.

Mr Wright said he felt "pressured" after a meeting with Mr Lennon in Hobart on February 27 over the pulp mill assessment.

"He told me he wanted the matter fast-tracked so it could be concluded by July 31," he said. "When I said I didn't think I could do it, he (Mr Lennon) said it was his intention to introduce new legislation and give a new ministerial direction to the RPDC."

"That would have meant the proposal would have to be concluded by June 30 and that public hearings were to form no part of the process."

He said Mr Lennon also handed him a draft timeline of the assessment, which differed from his own.

Timber giant Gunns withdrew from the RPDC mill assessment process last week, saying it could not afford delays and that it wanted environmental, social and economic assessments of the pulp mill finished by June 30.

Mr Lennon reacted by introducing a special bill in parliament yesterday to fast-track the assessment process and provide an answer on the proposal by September.

"The new bill effectively subverts the RPDC, an independent body which oversees the State's planning system."

Mr Wright said that following his meeting with Mr Lennon, he decided to resign and phoned Department of Premier and Cabinet secretary Linda Horsey on March 2.

"She (Ms Horsey) said the premier does not want you to resign, he will not proceed with the legislation and he will not issue a new direction," he said.

Mr Wright's resignation was never accepted. Mr Lennon yesterday denied proposing new legislation, including to remove the RPDC from the pulp mill process, during his meeting with Mr Wright.

"The meeting was sought with Justice Wright to see whether a definite timeline could be provided," Mr Lennon said.

"I indicated to Justice Wright at that meeting that I might have to go to parliament to provide for a definite timeline, but I was only prepared to do that if he was agreeable."

Liberal opposition leader Will Hodgman accused Mr Lennon of political interference in the work of the RPDC.

"Mr Lennon needs to explain the latest allegations about his interference in this process, and commit to letting a new independent process do his job, if it is established, free from his hand-fisted and extremely unlighted interference."

The Tasmanian Greens called on Mr Lennon to resign. "The Premier's been playing a double game," said Greens leader Peg Putt.

"That raises serious questions about his suitability to remain in his current position, and whether cabinet and the parliamentary Labor party have known that there was an earlier attempt by the premier to move towards legislation."

THE PULP MILL DEBATE

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23 MAR 2007

Public must have its say — former chairman

EXAMINER'S
By MICHAEL STEDMAN

THE former chairman of the pulp mill assessment panel says it is up to Tasmanians to decide if they have been "shortchanged" by the Government's new fast-tracked process.

Earlier this week, former Supreme Court judge Christopher Wright revealed he almost quit the assessment panel for the Gunns pulp mill proposal because he felt compromised by requests from Premier Paul Lennon to shorten the timeline.

Mr Lennon challenged Mr Wright's version of events in Parliament this week, repeatedly denying he proposed legislation as an ultimatum to force the Resource Planning and Development Commission to deliver a verdict on the mill by July 31.

But the Lower House was last night debating legislation for a new process that does not provide for public hearings, following Gunns's withdrawal from the RPDC process last week.

Mr Wright would not openly criticise the new process yesterday, but he released his unsent resignation letter to Mr Lennon, which condemned any attempt to do away with public representations.

"It is the firm view of the entire panel that an assessment process without provision for public hearings would be fundamentally flawed," Mr Wright wrote.

"To place a total embargo on public hearings will emasculate the effectiveness, transparency and fairness of public participation in the assessment process."



Christopher Wright

He said it was up to Parliament and the public to decide if the new process was an acceptable way forward.

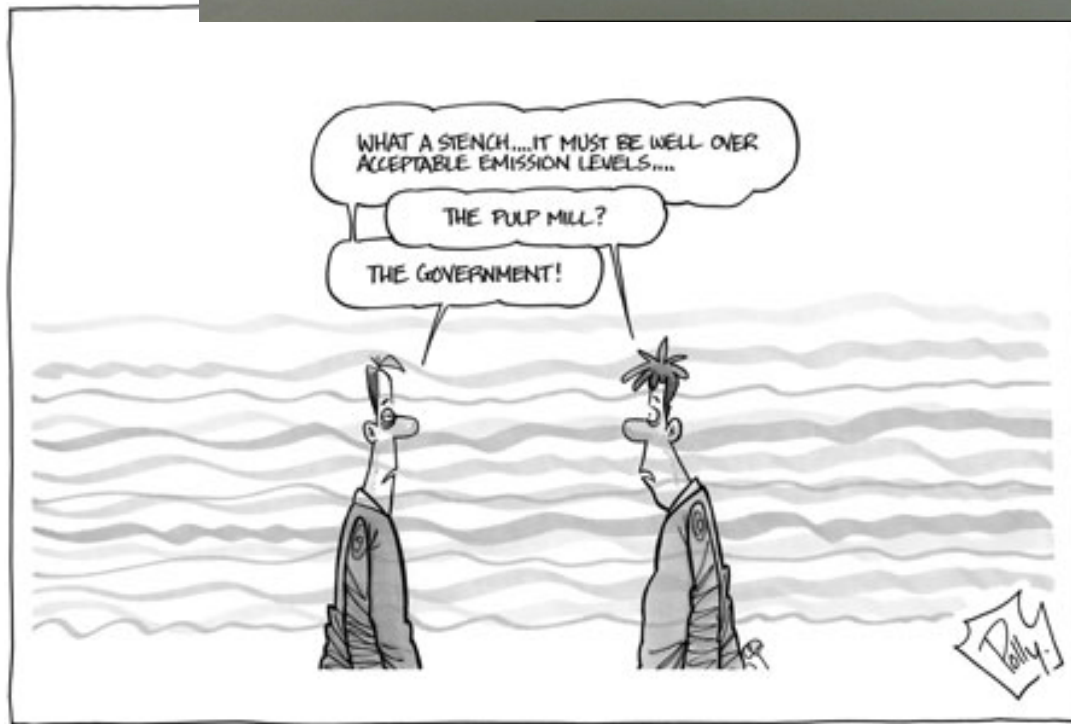
But he expressed concern that the Premier had touted the emission guidelines for the mill as "the be all and end all" of the new assessment.

"The guidelines before the RPDC were considerably broader than that," he said.

"We had to consider a wide range of economic, social and community issues relevant to the project, including the massive two-year construction phase."

Also yesterday, Mr Wright released a statutory declaration backing his account of the February 23 meeting, including releasing a timeline prepared by Mr Lennon that clearly showed legislation was being considered to truncate the timeline.

Mr Lennon maintained that if Mr Wright had thought something improper had occurred he would have resigned on that date.



The Wilderness Society v The Minister & Gunns Ltd

(then)
Minister
Turnbull



The Wilderness Society, itself being sued McLibel-style by Gunns Ltd (see gunns20.org), sought, unsuccessfully, to have the pulp mill's impact on native forests assessed, through:

- submissions to Minister Turnbull; then
- judicial review application in the Federal Court in 2007.

TWS lost. Full Federal Court held 2-1 that s.75(2B) entitled Minister to decide as he did, not to consider forests.

Gunns directors,
Mercury, 23 July 2008





**The "carbon blanket" -
the Greenhouse Effect**

**The
Carbon
Cycle**

**Pulp mill and
wood-fired power
station**

**The "carbon store"
- vegetation, soil
& oceans**

**Logging
& land
clearing**

Effluent pipeline

3 n mile boundary



Commonwealth marine area >3 nautical miles offshore

Wood Supply Concerns

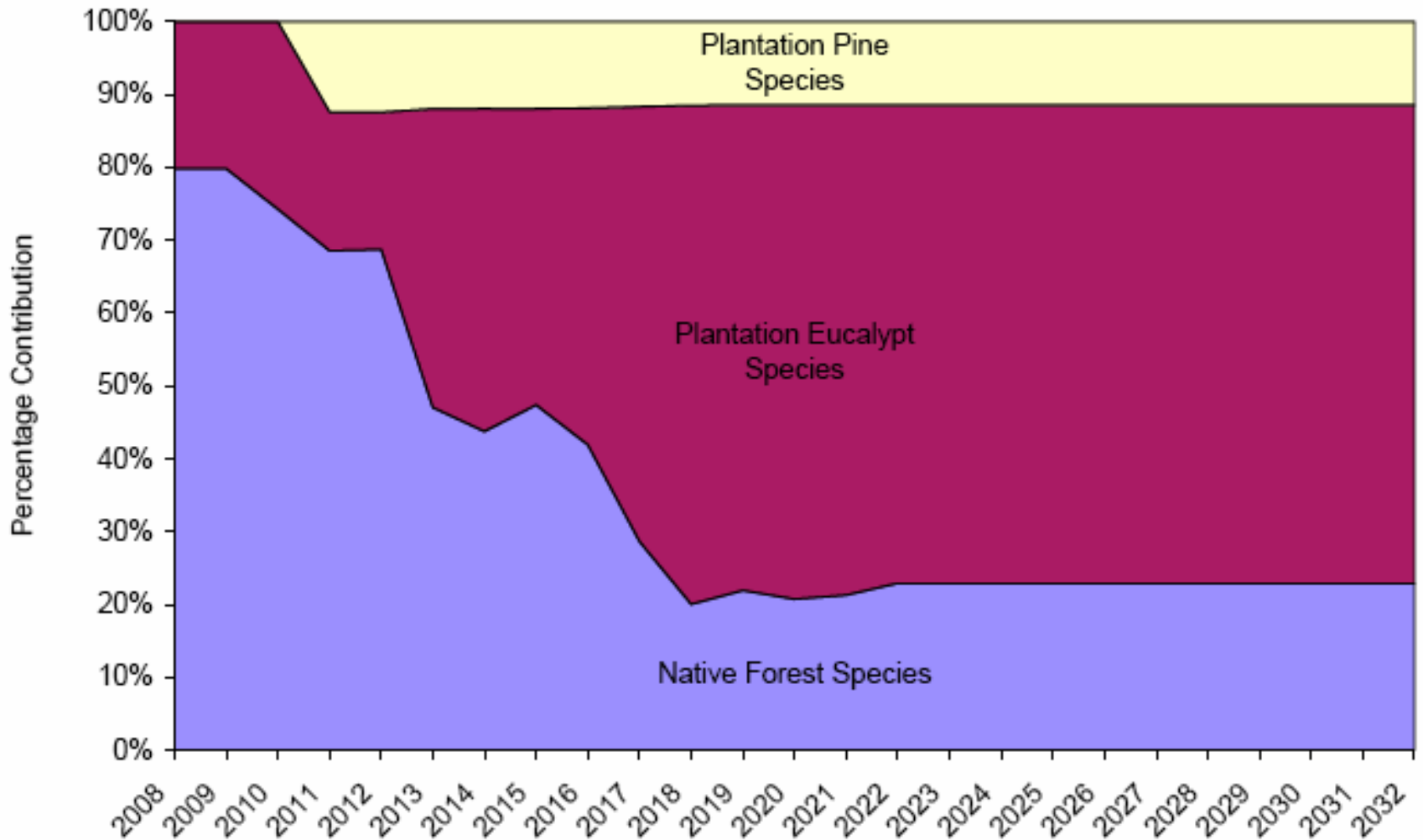


Figure 6-19 Likely Contribution over time of Pulpwood Species to Pulp Mill

[Source: Gunns' pulpwood resource modelling] Gunns' IIS Volume 1b 6-243

Pulp Mill Wood Supply

Dr Chris Beadle, *Australian Science*, October 2007:

‘... I can only conclude that omitting independent scrutiny of the wood supply from the ongoing assessment of the proposal was a flawed decision. Note that the RPDC-sponsored report did “not consider broad references to resource area and location [in the IIS] as sufficient demonstration of the sustainability of wood supply”.

Other Users

The proposed pulp mill will place demands on Tasmania’s production forests that will potentially overshadow demands from other industries that rely on the same wood supply (such as sawn timber and veneer). Several of these not only add more value to the wood harvested, but their products also lead to greater storage of carbon.

Tasmania’s production forests will have a more secure and sustainable future if they are managed in the first instance for such products rather than pulp.

Current arguments against the mill are all about it being in the wrong place, but it may also prove to be too large for the longer-term benefit of Tasmania’s forests and for a more balanced suite of forest and associated industries.

Chris Beadle is a professional forest scientist based in Hobart with 35 years’ experience. Between 1997 and 2005 he was Manager of the Sustainable Management Program in the Cooperative Research Centre for Sustainable Production Forestry (which ceased operations in 2005). This article represents Dr Beadle’s own views and not those of his employing organisation, CSIRO.’

TASMANIA’S PULP MILL: The Forgotten Issue Is Wood Supply

Chris Beadle questions whether Tasmania’s forests can meet the supply needs of the proposed pulp mill.

Using chemical the pulp mill... that management of native forests... small to pulp mill production... that applied to meet the total wood...



The proposed pulp mill will place pressure on native forests to supply sufficient wood.
Photo: Greg Wray / Shutterstock

Native Forests

Native forests are generally slower growing than plantations, and average harvestable yields are around 3 GMt/ha/year. Average total sustainable wood yield from native forests harvested for wood production on both public and private land is probably 3.5–4.0 million GMt/year.

In 2000–05 the total amount of wood harvested from these forests in Tasmania was about 5.1 million GMt/year including about 4.4 million GMt/year of pulpwood and 0.7 million GMt of sawlogs.

In short, current rates of harvesting exceed the long-term sustainable yield from the type of forest. Several factors have probably contributed to this. One is that the areas harvested include old forest that has accumulated large amounts of standing timber. To this extent it is a one-off resource.

When the mill opens the intention is to source 70% of the wood supply from native forests and 20% from plantations in north-east Tasmania. The majority of wood costs are actually in harvesting and transport. Pulp is a world commodity product and any

country is only competitive (particularly in the first world where cheap land and labour are not available) if the cost of wood is minimised. That is one of the reasons why the preferred site is the Tamar, not Hampshire.

In 10 years, the proportion of wood supply for the mill from native forest in north-east Tasmania will have fallen from 70% to 20% of the total requirement, presumably because all that is left is what can be sustainably supplied from regrowth forests. Thus by 2018 the proponents forecast that 50% of the wood will be harvested from plantations in north-east Tasmania. The rest of the wood supply will come from other parts of the state.

A comment was made recently in the media that ‘the wood supply is good’. In the short term this may be the case, but only due to a reliance in part on old forests and confidence that the plantation estate established in Tasmania by 2005 will be able to provide about 70% of the wood supply (3 million GMt/year) by 2020. The eucalypt plantation estate in Tasmania in 2005 was about 160,000 ha. After sawlog and veneer have been taken,

the equivalent of about 130,000 ha of this is available to supply hardwood pulpwood. Thus there is a shortfall of about 1 million GMt in 2020. Up to 0.4 million GMt of this may be pine but there is still a potential shortfall of 0.6 million GMt. In other words, plantations will be unable to supply the mill’s wood requirements at the levels suggested.

I can only conclude that omitting independent scrutiny of the wood supply from the ongoing assessment of the proposal was a flawed decision. Note that the RPDC-sponsored report did “not consider broad references to resource area and

location [in the IIS] as sufficient demonstration of the sustainability of wood supply”.

Other Users

The proposed pulp mill will place demands on Tasmania’s production forests that will potentially overshadow demands from other industries that rely on the same wood supply (such as sawn timber and veneer). Several of these not only add more value to the wood harvested, but their products also lead to greater storage of carbon. Tasmania’s production forests will have a more secure and sustainable future if they are managed in the first instance for such products rather than pulp.

Current arguments against the mill are all about it being in the wrong place, but it may also prove to be too large for the longer-term benefit of Tasmania’s forests and for a more balanced suite of forest and associated industries.

Chris Beadle is a professional forest scientist based in Hobart with 35 years’ experience. Between 1997 and 2005 he was Manager of the Sustainable Management Program in the Cooperative Research Centre for Sustainable Production Forestry (which ceased operations in 2005). This article represents Dr Beadle’s own views and not those of his employing organisation, CSIRO.

Pulp mill EIA: forestry impacts excluded

Forestry impacts on nationally-listed endangered species like the Tasmanian wedge-tailed eagle were excluded from the Federal Minister's 50-year for Gunns Limited to construct and operate the pulp mill and associated infrastructure.

Minister Turnbull approved mill Oct 2007:

Eagle-protective conditions were limited to the pulp mill's construction area - a tiny fraction of the mill's long-term upstream forestry impacts:

"Should the nest be abandoned within the first breeding season after the commencement of construction near the nest site, the proponent should be required to offset this loss by reserving a minimum of 20 ha surrounding an eagle nest not currently protected." ^[1]

[1] Australian Government, Department of the Environment and Water Resources, 'Recommendation Report prepared for EPBC Project 2007/3385 [Gunns Pulp Mill]', August 2007 at 10, [13]

<http://www.environment.gov.au/epbc/notices/assessments/2007/3385/pubs/recommendation-report.pdf>.



Wedge-tailed eagle (Tas)
© Ted Mead



Wedge-tailed eagle (Tas)
© Dave Watts



Law Reform

EPBC Act exempts RFA forestry from:

- EPBC Act protection (ss.38-42); &
 - EIA screening & scoping: s.75(2B).
-
- Regional Forest Agreement regime does not warrant EPBC carve out: *Wielangta case*, and resultant gutting of Tas RFA by agreeing sp. protected.
-
- Failure to protect nationally listed species threatened by forestry operations may abrogate Aust's international legal obligations.
-
- EPBC Act (and RFA regime) need reform: eg ss.38-42 & s.75(2B) ought be repealed.
-
- Pulp mill saga raises core governance issues.

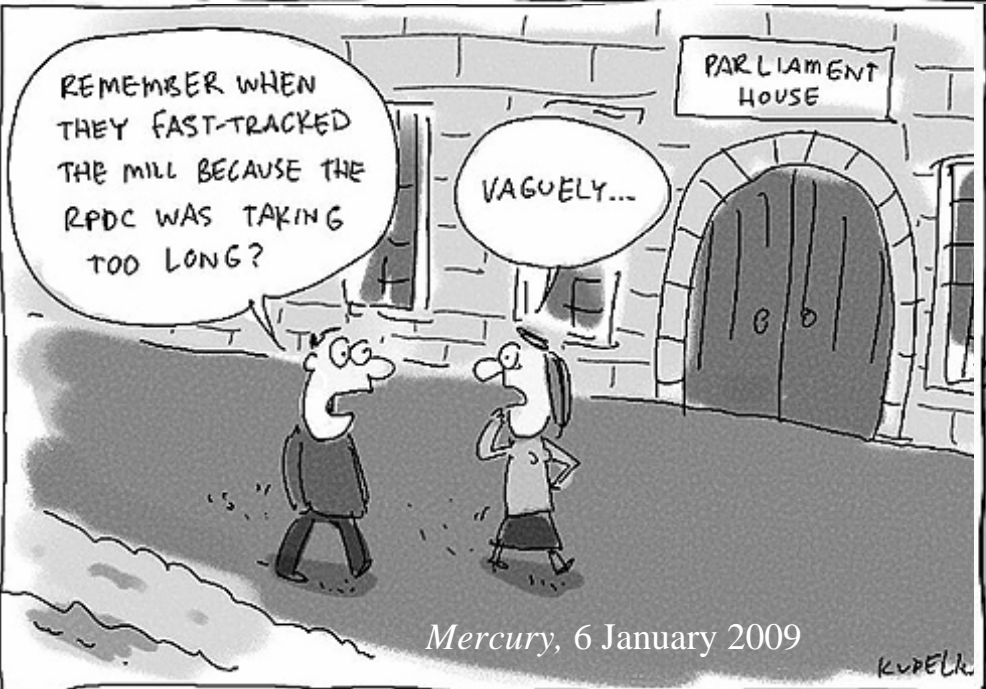
Forestry Tasmania mismanagement
killed El Grande, Australia's
largest known tree



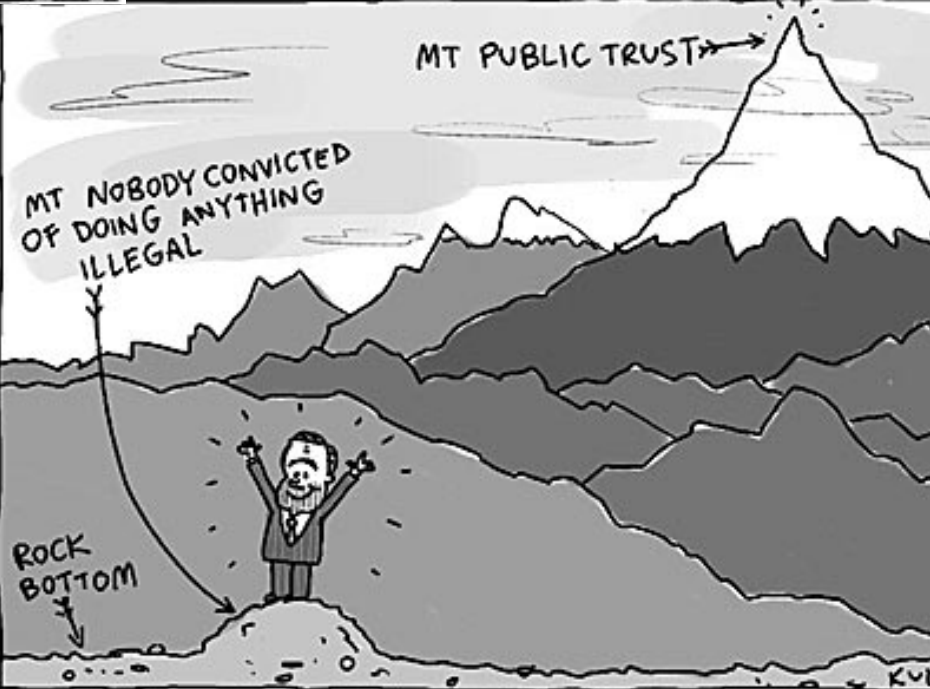


Mercury, 16 August 2008

Mercury, 26 September 2008



Mercury, 6 January 2009



Parliamentary Committee on Ethical Conduct, Final Report, 23 July 2009

Joint Select Committee of:

- 3 Independent MLCs
- 3 Labor Government MPs
- 1 Liberal Opposition MP
- 1 Green Opposition MP

Recommended *inter alia*:

“that legislation providing for the creation of the Tasmanian Integrity Commission be drafted.”



PARLIAMENT OF TASMANIA

JOINT SELECT COMMITTEE ON
ETHICAL CONDUCT

Final Report

'Public Office is Public Trust'

Brought up by Mr Wilkinson and presented to the Deputy President of the Legislative Council pursuant to Standing Order 197 (L.C.).

MEMBERS OF THE COMMITTEE

Legislative Council

Mr Wilkinson (Chair)
Mr Hall
Mr Martin
Ms Thorp

House of Assembly

Mr Best
Mr Llewellyn
Mr McCallin
Mr Rockliff

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Joint Select Committee on Ethical Conduct, Final Report, Overview, 23 July 2009, p18

“...The following extracts are indicative of the nature of such evidence and address the broad areas of concern expressed by many witnesses:

I am very concerned about the operation of state government in Tasmania; as a small state there is a greater danger that the voices of powerful interests will be heard disproportionately by the government, that members of the government itself will have vested interests in such particular concerns, or that they will be unduly swayed by pressure applied by such interests.

The most egregious example of this currently relates to the proposal to build a large pulp mill in northern Tasmania.’

