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TASMANIAN ABALONE COUNCIL LTD

Macquarie Wharf No. 1

Hunter Street

Hobart Tas 7000

Telephone: 03 6231 1955

Facsimile: 03 6231 1966

Email tasab@bigpond.net.au

ABN: 80 009 590 578

ACN: 009 590 578

25th September, 2006

Resource Planning and Development Commission
GPO Box 1691
HOBART Tas 7001

Dear Sir/Madam,

Re: Bell Bay Paper Mill Proposal 2006

This submission is on behalf of the Tasmanian Abalone Council Ltd, an industry body representing the interests of abalone divers, quota holders and processors involved in the commercial abalone industry in Tasmania. In addition to making this short submission on behalf of its members, the Tasmanian Abalone Council Ltd also fully endorses the more comprehensive Pulp Mill submission made by the Tasmanian Fishing Industry Council.

Firstly, we would like to bring to your attention to the following:

General facts of the Tasmanian Abalone Industry

- a) It supplies 25% of the world's total wild abalone catch
- b) It has been commercially fished for 40 years and catch records have been kept for 30 years
- c) It is acknowledged as a sustainable fishery
- d) All 3500 abalone quota units are held under a Deed of Agreement – refer attachment
- e) Tasmanian abalone is recognised by world markets as a premium quality product harvested from the *pristine and unpolluted waters of Tasmania*
- f) A recent study conducted by the School of Economics at the University of Tasmania ("A Review of Abalone Diver's Charges"; Bruce Felmingham and Ingrid Van Putten, December 2005) indicates that the abalone fishery produces the following annual economic benefits for the State of Tasmania:
 - adds \$335 million to the value of Tasmanian production
 - adds \$240 million to Tasmania's Gross State Product
 - adds \$106 million to Tasmanian workers' wage income and
 - adds directly, indirectly or by induced income effects 1445 full time equivalent jobs to the Tasmanian labour market.

Areas of Concern

The major concerns of the Tasmanian Abalone Council Ltd (TAC Ltd) are those already comprehensively detailed in the TFIC Pulp Mill submission.

The Council would like to point out that there is an established and sustainable abalone fishery in direct proximity to the effluent pipe line discharge point as verified by the *Tasmanian Abalone Fisheries Assessment Report 2005 ref. – ISSN 1441-8487*.

In addition to the concerns expressed in the TFIC submission regarding toxicity and dispersal of effluent, the TAC Ltd has additional concerns relating to the sheer volume of effluent that will be released via the proposed 3km pipeline into Bass Strait.

It is our understanding that the discharge of effluent into Bass Strait will be in the order of 73 million litres per day – or to express it another way, 73 000 tonnes per day.

This translates to 26.65 million tonnes per year and 613 million tonnes over the proposed 23 year life span of the mill – i.e. nearly two thirds of a billion tonnes of effluent.

By any analysis, this is a massive amount of material to dump into a body of water, which according to recently available CSIRO flow surveys, has minimal flushing ability.

As the effluent from the proposed paper mill would consist of *fresh water* this would mean that the effluent would float above the salt water and would therefore allow the weather to affect the direction in which the effluent is dispersed.

The passage of cold fronts in Bass Strait causes winds to be directed towards the coastline of northern Tasmania in a north west to south west direction.

A high-pressure ridge will cause north east to east winds with sea breezes of a northerly direction.

The aforementioned weather conditions would cause *onshore winds* in the area of the discharge point of the mill.

The TAC Ltd is of the opinion that this will cause mill effluent to build up along the coastline of northern Tasmania and therefore, place the abalone fishery in the immediate vicinity under the possible threat of toxic build up.

It is our recommendation that detailed modelling of surface water movement/ flow in the Eastern end of Bass Strait be undertaken as part of the Pulp Mill review process.

It is also our understanding that the effluent pipeline will discharge 411 kgs of organochlorines per day (although this figure may now have to be altered

in light of the recent admission by Gunns Ltd that Toxicos has revised its dioxins estimate upwards by a factor of 45 times). This equates to 2.9 tonne per week or 150 tonne per year. Organochlorines accumulate in the tissues of marine organisms – they are not broken down during ingestion or digestion.

Thus, abalone (or indeed any other shellfish or scalefish) exposed to effluent (or effluent affected food-stock such as algae) may bio-accumulate these toxins over time. Whilst this potential accumulation may not necessarily result in fish mortality, accumulated residues may be detectable via tissue analysis conducted by or on behalf of any of our valuable overseas importers.

The possible negative impact on future market acceptance and/or future demand for Tasmanian seafood is an issue that the RPDC and the Tasmanian Government needs to consider very, very carefully.

Given the massive quantities of effluent being disposed of over a period of 23 years and beyond, it is also our view that it is unrealistic and foolhardy to accept that any scientist or scientific organisation, regardless of credentials, can be expected to provide a comprehensively reliable and realistic assessment of the possible negative impact on marine flora and fauna in the relevant area of Bass Strait.

In Summary:

Whilst the TAC Ltd accepts that Governments have to make decisions based on the best available information at the time, there must be an acceptance that whatever "scientific" information is used it *is at best an approximation* given that we are dealing with such massive outflow volumes over an extended period of time.

Whilst there may well be a substantial financial imperative to build this mill, has there been any consideration given to the possible cost to Tasmania if industry's such as those based around the commercial harvest of seafood are detrimentally affected in overseas markets by a perception (real or imagined) that our "clean green and unpolluted" status is diminished by the existence of the proposed Pulp Mill?

I look forward to your considered response to the above matters as well as those raised in the TFIC submission. Consideration must also be given to extending the consultation period in light of recent errors in the IIS,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dean Lisson", with a long horizontal flourish extending to the right.

Dean Lisson,
President

Appendix 2 SAMPLE OF THE ABALONE DEED OF AGREEMENT.

Deed No

DEED PURSUANT TO SECTION 7 OF THE FISHERIES ACT 1959 IN RELATION TO A RIGHT TO TAKE ABALONE IN TASMANIAN STATE FISHING WATERS

DEED OF AGREEMENT made this _____ day of _____ 1994

BETWEEN _____ being and as the Director of Sea Fisheries appointed under the *Fisheries Act 1959* (“the Director”)

AND

of

(the “Licensee”)

RECITALS

WHEREAS:

- A. Abalone inhabit State fishing waters.
- B. The Act and the Regulations made under it abrogate the public right to take and acquire abalone in State fishing waters.
- C. In the exercise of its legislative powers, the Parliament of Tasmania has enacted legislation empowering the Director to enter into this Deed so as to confer upon the Licensee the right to take and acquire abalone in State fishing waters for commercial purposes in accordance with its terms and conditions.
- D. As at 30 June 1994, the Licensee is the holder of Abalone Quota Licence No. _____ which licenses him under the Act and the Regulations to take abalone from State fishing waters to the extent of the number of abalone quota units specified in that licence.
- E. The rights conferred on the Licensee by the said Abalone Quota Licence are continued in and renewed and revised by the Licence to take and acquire abalone conferred by the Deed.
- F. The Licensee has agreed to pay the access charge and fee hereinafter provided.
- G. The parties are agreed that in default of the due payment of the access charge or fee, the Deed may be suspended or terminated by the Director as hereinafter provided.

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WHEREBY IT IS AGREED as follows:

1. INTERPRETATION

In the Deed unless the contrary intention appears:

- (a) a reference to the Deed is a reference to this agreement as amended from time to time or any renewal of it;
- (b) a reference to the Act is a reference to the *Fisheries Act 1959* and to any other Act for the time being regulating sea fisheries in State fishing waters;
- (c) a reference to the Regulations is a reference to the *Sea Fisheries Regulations 1962* or to any other regulations for the time being regulating sea fisheries in State fishing waters;
- (d) words bear the same meaning as in the Act and the Regulations;
- (e) the masculine gender shall include each other gender;
- (f) the singular shall include the plural;
- (g) “the abalone industry” means any person or group who satisfies the Director that it represents more than 50% of persons holding licences to take and acquire abalone from State fishing waters;
- (h) “the Director” includes his successors in office;
- (i) “fee” is the fee referred to in Clause 5.2;
- (j) “the Licence” means and refers to all and any of the rights, benefits and entitlements conferred by the Director upon the Licensee by the Deed to take and acquire abalone in State fishing waters;
- (k) “the Licensee” includes the personal representatives, successors and assigns of the Licensee;
- (l) “the Minister” means the Minister for the time being administering the Act;
- (m) “registered interest” means an interest recorded on the Register established in accordance with the provisions of Section 7C of the Act.

2. THE LICENCE

2.1 Subject to the provisions of the Deed the Director hereby confers upon the Licensee full licence and authority to enter State fishing waters and to take and acquire therefrom X abalone quota units per annum for commercial purposes such abalone being of a size not less than that specified in the Regulations.

2.2 The Licensee acknowledges that the Director does not guarantee that, other than in

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1994, an abalone quota unit will comprise 600 kilograms.

2.3 The Director acknowledges that any decision made to alter the total allowable catch of abalone will take account of the best biological advice available from the Tasmanian Department of Primary Industry and Fisheries (or its successor) on the conservation of abalone in State fishing waters (with the intent that the maximum sustainable yield of the resource will be realised within these conservation restraints) and that a reasonable level of consultation with the abalone industry will occur prior to making that decision.

2.4 The Director covenants with the Licensee that during the term of the Deed and any subsequent terms an abalone quota unit shall remain 1/3500th of the total allowable catch of abalone in any year.

2.5 The right to physically take abalone is exercisable only by the holder of a commercial abalone diver's licence. For the purposes of the Deed any abalone taken by a commercial abalone diver in respect of an abalone quota unit the subject of the Licence are taken and acquired on behalf of the Licensee.

2.6 The Licence is property which amongst other things the Licensee may with the prior written approval of the Director (which shall not be unreasonably withheld) assign in whole or in part provided always that the Director is first satisfied that any assignee is a fit and proper person to be a licensee and, if the assignment is made to a company, that the officers of it are fit and proper to be responsible for the management of it as a licensee and further provided that the Director will not be obliged to consent to an assignment of a Licence where the Licensee is at the time of the proposed assignment in default of a payment hereby required to be made to the Director.

2.7 The Licence may devolve to another person upon the death of the Licensee or may be sold by a person having a registered interest in the Licence or otherwise entitled to sell the property of the Licensee subject always to the right of the Director not to give effect to a transfer under this clause to any person whom the Director is satisfied is not a fit and proper person to be a Licensee.

2.8 The Deed continues, renews and revises the rights and obligations conferred by the Abalone Quota Licence referred to in Recital D.

3. TERM OF THE DEED

3.1 The Deed will commence on 1 July 1994 and will expire on 31 December 2003 unless sooner terminated.

3.2 If the Deed is renewed as provided in Clause 4, each term of the Deed as so renewed will be for a period of 10 years.

4. OPTION TO RENEW

4.1 The Licensee will have a continuing option exercisable in writing not more than 9 months nor less than 3 months prior to the expiration of the Deed to renew the Deed for a

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further term on the same terms and conditions other than the fee when the fee is due for revision under Clause 4.4.

4.2 This option will not be invalid by reason only that it does not fix with sufficient certainty the fee for further terms of the Deed or in the circumstances provided for in Clause 5.6.3.

4.3 The option conferred by Clause 4.1 may not be exercised if the Deed has been lawfully terminated by the Director or if the Licensee is in default of a payment hereby required to be made to the Director.

4.4 The Director will undertake a reasonable level of consultation with the abalone industry during the first six months of the eighth year of each alternate term of the Deed for the purposes of reaching agreement in that year on the fee to be paid by the Licensee during the next two terms of the Deed. Upon agreement being reached between the Director and the abalone industry the Director shall announce the fee within 21 days of such agreement and, if the Licensee renews the Deed, the Licensee will pay to the Director that fee during the next two terms.

4.5 If the Director and the abalone industry are unable to agree during the period stipulated in Clause 4.4 upon the fee to be paid during the next two terms of the deed, the fee will be the fee fixed by or determined in accordance the Regulations in the second half of the eighth year of each alternate term of the Deed.

5. PAYMENT OF CHARGE AND FEE

5.1 The Licensee will pay to the Director for the Licence, upon the execution of the Deed and thereafter in the first month of each calendar year of the operation of the Deed, an annual access charge of \$100.

5.2 The Licensee will also pay to the Director a fee to take and acquire abalone under the licence during a billing period.

5.3 The fee will be payable in respect of the following billing periods:

1 January - 31 March (Billing period 1)

1 April - 30 June (Billing period 2)

1 July - 30 September (Billing period 3)

1 October - 31 December (Billing period 4)

5.4 The fee payable in respect of each billing period will be due and payable as follows:

Billing period 1 30 April

Billing period 2 31 July

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Billing period 3 31 October

Billing period 4 31 January

5.5 For the purpose of this Clause abalone will be deemed to have been taken and acquired under one abalone quota unit at a time until it is all used up.

5.6.1 The fee payable in respect of billing period 1, 2 and 3 respectively is the product of the kilogram value of the number of abalone quota units taken and acquired by the Licensee in that billing period and the fee per kilogram for that billing period.

5.6.2 The fee payable in respect of billing period 4 is the product of the kilogram value of the number of units conferred by Clause 2.1 on the Licensee and for which no fee has been paid in that calendar year and the fee per kilogram for that billing period.

“kilogram value” means the number of kilograms of abalone that comprise an abalone quota unit as specified in the Regulations.

“fee per kilogram for that billing period” is the fee in the Schedule to the Deed which corresponds to the beach price, for that billing period.

5.6.3 In the event that the beach price at any time exceeds the maximum figure in the Schedule hereto:-

(a) The fee per kilogram will be calculated at the percentage applicable to that maximum figure until the Schedule is extended as hereinafter provided;

(b) The Director will forthwith undertake a reasonable level of consultation with the abalone industry for the purpose of reaching agreement within 28 days of the commencement of consultation upon the fee per kilogram to be applicable to beach price in excess of the maximum figure hereinbefore referred to;

(c) Upon agreement being reached in accordance with clause 5.6.3(b), the Director shall forthwith announce the fee which shall thereupon become part of the Schedule;

(d) If agreement is not reached in accordance with Clause 5.6.3(b), the fee applicable to beach price in excess of the maximum figure hereinbefore referred to will be the fee fixed by or determined in accordance with the Regulations.

5.7 The definition of “beach price” contained in the Regulations will not be changed without a reasonable level of prior consultation with the abalone industry in relation to the proposed change and then only in the event that the Director has reasonable grounds for believing that the price as defined does not reflect the true return to licensees, who may include the Licensee from the disposal of abalone. In the event that the Director proposes to change the beach price he will first publish in writing the basis for his belief that the existing beach price does not reflect the true return to licensees and the basis for determining the new beach price.

6. TERMINATION

6.1 The Deed may be terminated or suspended by the Director for any one or more of the following acts, matters or things:

(a) Non-payment of any part of the access charge when specified in Clause 5.1 or fee by the date specified in Clause 5.4;

(b) An accumulation by the Licensee of fines and special penalties totalling more than 100 penalty units in any consecutive period of three years or more than three convictions in a like period for offences arising under the Act or Regulations arising out of separate incidents involving the taking, possession, processing or offering for sale of abalone or the management, administration or the operation of the abalone quota system administered by the Department of Primary Industry and Fisheries (or the successor) where by reason of the conduct constituting such offences the Licensee has in the opinion of the Director (which shall not be unreasonably held) shown himself not to be a fit and proper person to hold the Licence.

(c) The Licensee has entered into a contract or arrangement in breach of the covenant in Clause 14.

6.2 Before terminating or suspending the Deed in reliance upon the ground specified in paragraph 1(a) of this clause, the Director will send a notice of demand to the Licensee for payment of the access charge or fee (as the case may be). If payment is not paid within 14 days of delivery of the notice of demand the Director may exercise the power to terminate or suspend providing that he has first served upon the Licensee a further notice in which he furnishes particulars of the unpaid amount and affords to the Licensee an opportunity to pay such amount within 21 days of the service of such notice.

6.3 Before terminating or suspending the Deed in reliance upon the ground specified in paragraph 1(b) of the clause, the Director will serve upon the Licensee 21 days' notice in writing of his intention to do so.

6.4 Before terminating or suspending the Deed in reliance upon the ground specified in paragraph 1(c) of this clause, the Director will serve upon the Licensee notice in which he furnishes particulars of the matters which the Director relies upon as constituting that ground and will afford to the Licensee a period of 21 days from the date of service within which to provide to the Director written submissions. Upon receiving the written submissions, the Director will consider them and, after doing so, may resolve to either terminate or suspend the Deed or withdraw the notice and shall so advise the Licensee in writing. If the Licensee does not make any written submissions the Director may proceed to terminate or suspend the Deed if he so wishes.

6.5 Notwithstanding that the Director has served a notice under Clause 6.2, 6.3 or 6.4 the Director will not terminate or suspend the Licence if the Licensee can and does remedy the situation which constitutes his misconduct or makes reparation prior to the Director serving notice to terminate or suspend as provided in Clause 6.6.

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6.6 If the Director resolves to terminate the Deed he will serve upon the Licensee and any person having a registered interest notice of termination and if he resolves to suspend the Deed, he will serve upon the Licensee notice of suspension.

6.7 Upon termination or suspension of the Deed by the Director, neither party will have any claim against the other except in respect of any rights or liabilities which accrued to either of them prior to the termination or suspension and in the case of termination the Director may proceed to dispose of the Licence by selling it.

6.8 Notwithstanding service upon the Licensee as hereinbefore provided of notice of termination of the Deed, a person holding a registered interest ("the holder") may within 14 days of service upon him of notice of termination pursuant to Clause 6.6 elect by written notice to the Director to exercise any power of sale conferred upon the holder by the instrument which gives rise to the registered interest. For 3 months after service of the last-mentioned notice the right of the Director to sell the Licence shall be postponed in favour of the exercise by the holder of his power of sale, during which time the holder will be at liberty to exercise the powers conferred by the Licence and will be subject to it as if the holder were the Licensee. From the proceeds of any sale of the Licence by the holder the holder will immediately discharge in order of their priority all debts of the Licensee which are the subject of a registered interest and the reasonable costs incurred by him in effecting the sale, and shall forthwith thereafter pay the balance of the proceeds to the Director. In the event that the balance exceeds 20% of the total sale price, the Director will pay the amount by which the balance exceeds 20% of that paid to the Licensee.

6.9 The Deed may be terminated by the Licensee on one month's notice to the Director in writing.

6.10 Notwithstanding Clause 6.9 the Deed may be terminated by the Licensee on 10 days' notice to the Director in writing if the weight of abalone the Licensee may take under an abalone quota unit has been reduced to a number which is unacceptable to him.

6.11 In the event of the Licensee terminating the Deed under Clause 6.10, the Director will not offer the Licence to another person on terms and conditions more favourable than those in the Deed without first offering the Licence to the Licensee on those terms and conditions.

6.12 Subject to Clause 6.11 upon termination of the Deed by the Licensee neither party will have any claim against the other except in respect of any rights or liabilities which accrued to either of them prior to the date of termination.

6.13 Notwithstanding Clause 6.7 and subject to Clause 6.8, following a lawful termination of the Deed the Director will pay no less than 80% the proceeds of sale of the Licence to the Licensee and the remainder (if any) into the Consolidated Fund.

7. COMPLIANCE WITH THE ACT AND REGULATIONS

The Director and the Licensee will comply with the provisions of the Act and the Regulations.

8. NOTICES

8.1 Any notice to be given under the Deed shall be in writing and shall be duly given when hand delivered or sent by prepaid post or by facsimile transmission to the party to which such a notice is to be given under the Deed at the last address of that party known to the other party.

8.2 Any notice shall have been received:

(a) in the case of hand delivery when delivered;

(b) if sent by prepaid post on the third day after the date of posting;

(c) if sent by facsimile transmission (provided that the sending facsimile machine produces a printout of the time, date and uninterrupted transmission record of the sending of the notice) at 9.00 am on the next following ordinary business day in such place.

8.3 Notwithstanding the provisions of Clause 8.1 any notice under Clause 6.2, 6.3, 6.4 and 6.6 must be personally served on the Licensee or upon any person notified by the Licensee in writing to the Director as his agent for the purpose of receiving notices or if that is not reasonably practicable be served by substituted service by delivering it to the Licensee's last known address and by advertising it in a newspaper circulating generally in Tasmania.

9. FORCE MAJEURE

If by reason of any fact, circumstances, matter of thing beyond the reasonable control of the Director or the Licensee either party is unable to perform in whole or in part any obligation under this Deed such party shall be relieved of that obligation to the extent and for the period that he is so unable to perform it and shall not be liable to the other party in respect of such liability provided that the party asserting the existence of a force majeure:

(a) gives the other party prompt notice of that force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which he will be unable to perform or be delayed in performing that obligation; and

(b) uses reasonable diligence to remove the force majeure as quickly as practicable.

10. POWERS OF MINISTER

The Minister may exercise any power of the Director specified in the Deed.

11. VARIATION OF THE DEED

The parties may vary the Deed provided such variation does not conflict with or breach any provisions of the Act or Regulations and that such variation is in writing signed by each of them.

12. OBLIGATIONS JOINT AND SEVERAL

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If there is more than one Licensee, the covenants and agreements of the Licensee under the Deed shall bind them jointly and each of them severally.

13. ASSURANCES

The parties shall execute and deliver all such documents, instruments and writing and shall do and procure to be done all such acts and things as are necessary or desirable to give effect to the Deed.

14. DIVERS NOT TO PAY ACCESS CHARGE OR FEE

The Licensee agrees and undertakes not to enter into any contract or arrangements with a Commercial Abalone Diver whereby the Commercial Abalone Diver is required directly or indirectly to pay all or any part of the access charge or fee as provided in Clause 5. This clause does not apply to contracts or arrangements entered into prior to the Deed.

15. SEVERABILITY

In the event of any part of the Deed other than a part relating to the payment of the fee being or becoming void or unenforceable or being illegal then that part shall be severed from the Deed to the intent and so as to leave intact all parts that shall not be or become void or unenforceable or illegal and those parts shall remain in full force and effect and be unaffected by such severance.

16. APPLICABLE LAW

The deed shall be governed by the law for the time being in force in the State of Tasmania and the parties submit to the jurisdiction of the Courts of the State of Tasmania.

17. TRANSITIONAL PROVISIONS

17.1 This Licensee agrees that all licence fees payable for abalone taken by the Licensee under the abalone quota licence described in Recital D will be paid within 30 days of the commencement of the Deed or within such other period as the Director shall authorise in writing.

17.2 In the 1994 calendar year the abalone quota units conferred, on the Licensee by Clause 2.1 shall include all quantities of abalone quota units issued to the Licensee in 1994 under the abalone quota licence referred to in Recital D.

SIGNED SEALED AND DELIVERED]

by STEVEN LESLIE BALCOMBE being]

and as the Director of Sea Fisheries]

appointed under the *Fisheries Act 1959* in]

the presence of:]

SIGNED SEALED AND DELIVERED]

POLICY DOCUMENT FOR THE TASMANIAN ABALONE MANAGEMENT PLAN

by]

in the presence of:]

SCHEDULE:

Clause 5.6.2

1. Fee per kg	Beach price
\$/kg	\$/kg
0.00 @	6 and below
0.78 - i @	10
1.33 - i @	17
3.50 - i @	35
8.80 - i @	55
45.00 - i @	150
66.00 - i @	200

Where:

• **i** is a sum (representing changes in fishing costs), rounded to the nearest cent, which is the excess over \$6.00 per kg of \$6.00 per kg plus compound interest indexed quarterly from 1 July 1994 at an annual rate of 3 per cent.

2. For beach prices falling between the amounts specified above, the fee will be the sum, rounded to the nearest cent, which appears upon a straight line interpolation between the figures listed in the column headed "Fee per kg" (above) for those amounts.

NOTE:

The terms of this Schedule do not operate beyond the expiration of the second term of the Deed.