



KordaMentha

19 September 2013

The Hon Lara Giddings MP
Premier of Tasmania
Level 11, Executive Building
15 Murray Street
Hobart TAS 7000

Dear Premier

Legislative amendment to the *Pulp Mill Assessment Act 2007 (Tas)*

We refer to the meeting on Friday 16 August between myself, Bryan Webster the Receivers and Managers of Gunns Ltd (Receivers and Managers Appointed)(In Liquidation), and your office.

One of the topics discussed in the meeting was the implications of the pending litigation brought by the Tasmanian Conservation Trust for the sale of the Pulp Mill. We discussed legislative options for alleviating the impact of the litigation. The outcomes that we are seeking in relation to an amendment to the *Pulp Mill Assessment Act 2007 (Tas)* ("**the Pulp Mill Act**") would be that the Pulp Mill Permit remained valid, and was not able to be challenged by any third party.

The intention of this letter is to elaborate on how the Act could be amended in order to achieve these outcomes. We have carefully reviewed the Act and considered how it could be amended so that the desired outcome can be achieved through the simplest and most effective means possible.

Our position is that the Pulp Mill Permit ("**Permit**") remains valid. However, in the possible event that it has lapsed under the Pulp Mill Act, the presumption against retrospectivity under common law or as espoused in section 16 of the *Act Interpretation Act (Tas) 1931* would apply so as to prevent the Permit from being revalidated through an amendment to the existing provisions of the Pulp Mill Act, if the Permit had already expired under the provisions of that Act.

We therefore think that the most prudent avenue to achieve the outcomes outlined above is for a new Act to be legislated which contains an express provision stating that notwithstanding anything in the Pulp Mill Act, the Permit is revived to the extent necessary. The new Act would also need a clause in similar terms to section 11 of the Pulp Mill Act in relation to Limitation of Rights. However in order to avoid the same risk of litigation as has occurred in relation to the current Permit, we think that the following amendments set out in the table on the following page should be incorporated in the new Limitation of Rights section.

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Section of Act	Current provision	Amendment
11 (<i>Limitation of rights of appeal</i>)	<p>(1) Subject to subsection (3) and notwithstanding the provisions of any other Act –</p> <p>(a) a person is not entitled to appeal to a body or other person, court or tribunal; or</p> <p>(b) no order or review may be made under the <i>Judicial Review Act 2000</i>; or</p> <p>(c) no declaratory judgment may be given; or</p> <p>(d) no other action or proceeding may be brought –</p> <p>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.</p> <p>(2) For the purposes of subsection (1), "any action, decision, process, matter or thing arising out of or relating to any assessment or approval of the project under this Act" includes any action, decision, process, matter or thing arising out of or relating to a condition of the Pulp Mill Permit requiring that the person proposing the project apply for such other permits, licences or other approvals as may be necessary for the project.</p> <p>(3) Subsection (1) does not apply to any action, decision, process, matter or thing which has involved or has been affected by criminal conduct.</p> <p>(4) No review under subsection (3) operates to delay the issue of the Pulp Mill Permit or any action authorised by that permit.</p>	<p>(1) Add a new subclause (2) stating: "<i>for the avoidance of doubt, the validity of the Pulp Mill Permit, or any matters associated with the Pulp Mill Permit, are matters falling within the scope of subsection (1)</i>";</p> <p>AND</p> <p>(2) delete the word "other" in subsection 1 (d).</p>

As you are aware we have agreed with the liquidators of Gunns to proceed with a joint sale process of Gunns assets, which includes the Pulp Mill, as soon as possible. If the Pulp Mill is not able to be sold as part of a package with the other assets, then there is real doubt as to whether it could be sold at all. The litigation that is pending in relation to the Pulp Mill imposes a considerable barrier to the sale of the Pulp Mill.

The timing of the passage of the amending legislation is therefore critical to the sale strategy of the Gunns assets. We seek confirmation from your Office of the likely time frame in which the amending legislation could proceed and seek your commitment to secure its passage in the November sittings of Parliament.

We would be happy to discuss these amendments further with you and please do not hesitate to ask us any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read "M. Korda". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark Korda
Receiver and Manager