



Mr Malcolm Turnbull
Minister for Environment and Water Resources
GPO Box 787
Canberra ACT 2601
Australia

Your reference:

Our reference:

070831 Comment-gunns

Subject:

Comment on proposed Gunns Ltd pulp mill and Federal Government approval

Date

30 August 2007

Dear Mr Malcolm Turnbull, Federal Minister for the Environment and Water Resources

Comment on proposed Gunns Ltd pulp mill and Federal Government approval

BankTrack is a network of 23 international civil society organisations with a focus on environmental and social impacts of private finance. I write to you in response to invitation for public comments on the Federal Government's decision regarding Gunns Ltd's proposed pulp mill at Bell Bay, Tasmania.

BankTrack has been tracking Gunns Ltd and financial institution involvement for some time, and we welcome a thorough review of the project by the Department of Environment and Water Resources. Comments provided to you are directed at benchmark standards for the developing world as adopted by financial institutions (Equator Principles), and the implication that the Australian Federal Government may approve a project which may not satisfy best practice standards for the developing world.

In addition, this letter embarks upon a brief discussion of the project and Australia's obligations under international law which the Federal Government is bound to consider.

The evolution of international standards of accountability and responsibility for development projects (Equator Principles)

The Equator Principles are the vanguard of environmental and social standards for commercial finance institutions.¹ They are particularly relevant to Gunns' project due to ANZ's involvement in arranging and financing the project.² The Principles have been established

¹ <http://www.equator-principles.com>

² ANZ is an Equator Principle Financial Institution <http://www.banktrack.org/index.php?show=dodgy&id=74>

to improve environmental and social outcomes for major development projects and take into account World Bank standards.

The Equator Principles (EPs) are international standards adhered to by a cartel of over 50 major private financial institutions, covering 86% of global project finance in developing economies. To illustrate the importance of EPs, John Ruggie, the Special Representative to the Secretary General on the issue of human rights and business has recognised the Equator Principles as an important initiative for the evolution of corporate legal responsibility and accountability.³

EPs are directed at improving development standards in the third world, yet apply to projects worldwide. In March 2007, BankTrack notified ANZ of risks regarding violation of the Equator Principles. The risks were largely associated with fast-track legislation proposed by Tasmania's government.⁴

The matter is receiving international attention. ANZ's involvement in the financing Gunns Ltd and issues relative to compliance with Equator Principles have appeared in at least one international financial journal⁵. The case was also presented to the Organisation for Economic Cooperation and Development (OECD) at the annual Roundtable on Corporate Social Responsibility in Paris as an example of how financial institutions may support environmental destruction despite commitments to uphold international norms.

Responsibility for implementation of the Principles undoubtedly rests on the adopting financial institutions. However compliance with EPs on a procedural level also reflects upon a government's approach to approval process. As such a window is open to compare how Australia's approval process compares with baseline environmental and social standards for developing economies.

Currently, the financial world, international lawyers, and high-level law makers are watching Australia to see whether it will approve the mill, and whether this process will fall short of baseline standards for the third world. Any decision to approve Gunns Ltd pulp mill should take into account potential impacts on Australia's international reputation in this regard.

Australia's international obligations under international treaties and conventions
Australia's obligations under international conventions and agreements also risk breach in case of a federal government decision to approve Gunns' pulp mill. The following international obligations must be considered when the mill is assessed.

³<http://www.banktrack.org/doc/File/banks%20and%20human%20rights/UN%20and%20Ruggie%20on%20human%20rights/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>

⁴http://www.banktrack.org/doc/File/dodgy%20deals/Gunns%20Pulp%20Mill%20Proposal%20Tasmania/0_070327%20ANZ_Gunns.pdf

⁵ Circling the Equator, *Environmental Finance Magazine*, June 2007, p30-31

United Nations Framework Convention on Climate Change

According to modeling by Gunns Ltd, the proposed pulp mill will use 80% native timber feedstock at start up.⁶ As such, the demand on native forests represents a dramatic increase to logging of native forests, and the destruction of carbon sinks.

According to the United Nations Food and Agriculture Organisation (FOA) deforestation is responsible for 25 to 30% of greenhouse gas emissions.⁷ It follows that the proposed pulp mill and increase in native timber extraction by Gunns Ltd represents a serious threat to climate change and the preservation of carbon sinks.

In 1992, Australia ratified the United Nations Framework Convention on Climate Change which commits Australia to employ comprehensive measures to prevent this serious damage to “sinks and reservoirs of greenhouse gases”. Article 3, Principles, Paragraph 3.

The Australian Government explicitly commits to “cooperate in the conservation and enhancement... of sinks and reservoirs of all greenhouse gases”. Article 4, Commitments, Paragraph 1(d).

Permitting Gunns Ltd to proceed with the proposed mill will contravene Australia’s commitments to employ policies and measure in accordance with the UN Framework Convention on Climate Change. The Convention also states lack of full scientific certainty is not a reason for postponing such measures. Article 3, Principles, Paragraph 3.

Stockholm Convention on Persistent Organic Pollutants

Australia is signatory to the Stockholm Convention on Persistent Organic Pollutants which requires the ‘application of available, feasible and practical measures that can expeditiously achieve a realistic and meaningful level of release reduction of source elimination...’ of dioxins and furans.

Compliance with the Stockholm Convention is questionable under the current proposal. The National Toxics Network observes Gunns mega-pulp facility could produce a level of dioxins which will cause contamination in marine life beyond what is permissible in Australian law.⁸ A feasible and practical measure are the use of Total Chlorine Free (TCF) closed loop effluent systems. Similarly a no project situation would ensure compliance with the Stockholm Convention.

⁶ Gunns IIS Volume 1b 6- page 243 <http://www.gunnspulpmill.com.au/iis/V1/V1b.pdf>

⁷ <http://www.fao.org/newsroom/en/news/2006/1000385/index.html>

⁸ http://tasmaniantimes.com/images/uploads/NTN_analysis_of_SWECO_report.doc

Convention on Biological Diversity 1993

Australia is signatory to the Convention on Biological Diversity which entered into force on 29 December 1993.⁹ These commitments are generally reflected in the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC).¹⁰

The Federal Court case *Brown v Forestry Tasmania* 2006 [FCA] puts into doubt compliance by Tasmania's forestry operations with the EPBC, and hence the Convention on Biological Diversity. It is anticipated that native timber feedstock will be logged under the same management framework and in areas that harbor threatened species. As signatory to the Convention, Australia must "[a]dopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity". Article 10b.

The only way that Australia can fulfil its obligations under this treaty is to insist Gunns pulp mill does not proceed with reliance on native timber feedstock.

I hope you will consider Australia's obligations under international conventions as listed above when responding to Gunns Ltd's application for your approval of the pulp mill. In addition, you are urged to consider the implication that Australia's approval process might fall below baseline third-world standards as elaborated by the Equator Principles when finalising your decision on Gunns' pulp mill project.

Yours sincerely,



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⁹ <http://www.austlii.edu.au/au/other/dfat/treaties/1993/32.html>

¹⁰ <http://www.environment.gov.au/epbc/species/committees/index.html>