

Our Ref: SJT:fb 121023

25 March 2010

Forests Assessment
Natural Resources Commission
GPO Box 4206
SYDNEY NSW 2001

Transmitted by Email: forests@nrc.nsw.gov.au

Dear Sir,

SUBMISSION IN RESPONSE TO INVITATION OF THE NATURAL RESOURCES COMMISSION ("NRC") NOTICE OF ASSESSMENT (the "Call for Submissions")

In response to the Call for Submissions we make the following submissions:

1. The assessment to be undertaken by the NRC is to include, inter alia, an assessment of the "timber resources" [Section 15 - Forestry National Park Estate Act 1998 ("**FNPE Act**")] within the "south-western cypress state forests".
2. The assessment must be undertaken before a forest agreement may be made [Section 15 - FNPE Act].
3. Section 16 of the FNPE Act provides, inter alia, that "A forest agreement must contain [inter alia]:
 - "(b) provisions with respect to sustainable timber supply from forestry operations covered by the agreement; and
 - (e) other provisions.... that are not inconsistent with this Act or any **other Act...**"

(bolding is ours for emphasis).

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4. Section 8A of the Forestry Act 1916 ("**Forestry Act**") provides, inter alia, that the objects of the Forestry Commission ("**State Forests**") include:
 - "(a) to conserve and utilise the timber on Crown-timber lands;
 - (b) to provide adequate supplies of timber from Crown-timber lands...; [and]
 - (d) to encourage the use of timber derived from trees grown in the State."
5. Under Section 14 of the Natural Resources Commission Act 2003 (the "**NRC Act**"), in exercising its functions, the NRC is, inter alia, to have regard to "the social and economic implications of its recommendations and advice" and have regard to "an integrated approach to natural resource management issues" [which issues include matters related to the management of forestry (see Section 5 of the NRC Act)].
6. Having regard to the provisions of points 1 to 5 above any assessment by the NRC must have regard to the fact a forest agreement must contain provisions (and it follows an assessment must have regard to matters) relating to "sustainable timber supply from forestry operations" and "other provisions.... that are not inconsistent with the FNPE Act or any **other Act**" such as the Forestry Act [again see Section 16 of the FNPE Act] and should take into account the statutory obligations of State Forests, the State of NSW (the "**State**") and the contractual obligations of State Forests and the State under any relevant wood supply agreement and, in particular, the obligations within any such agreement.
7. **At point 1.3** of the Call for Submissions the following appears:

"The 20-year wood supply agreement to two cypress mills...relies on wood supply from the south-west region".
8. Under that wood supply agreement State Forests has an obligation to make the allocation the subject of that agreement available.
9. In that agreement the State undertook to ensure that State Forests has sufficient resources and the necessary capacity to make the requisite quantity of timber available to the other party to that agreement and to cause State Forests to perform its obligations as required by the provisions of the agreement.

10. The State has both statutory and contractual obligations which it must observe in deciding how the south western cypress state forests should be managed in the future to provide a sustainable future for the forests and the forests industry.
11. In making any assessment NRC must have regard had to the State's, and State Forests', existing statutory obligations and existing contractual obligations.
12. NRC is obliged, in undertaking its assessment and providing its recommendations, to do so in a manner such as to enable any NSW forests agreement, the subject of the assessment, to be consistent with, and promote action which enables the State and State Forests:
 - (a) to comply with their respective statutory obligations; and
 - (b) to comply with (and not be in breach of) any wood supply agreement to which either the State or State Forests is a party.
13. In turn, the terms and conditions of any NSW forestry agreement should not in any way cause the State or State Forests to breach their respective statutory obligations or contractual obligations.
14. Having regard to the existing obligations of State Forests under the wood supply agreement in respect of the two cypress mills and under the Forestry Act the assessment should ensure that any consequential NSW forests agreement contains :
 - "(b) provisions with respect to sustainable timber supply from forestry operations covered by the agreement; and
 - (e) other provisions.... that are not inconsistent with the FNPE Act or any **other Act**" [including the Forestry Act] ,and should enable the State and State Forests to discharge their existing statutory obligations and existing contractual obligations.
15. In order to properly discharge its obligations the NRC is further obliged, inter alia, to have regard to the social and economic implications of its recommendations and the advice it provides.

16. A further relevant matter is the guiding principle under Section 14 of the NRC Act which obliges the NRC to have regard to state and national legislation and policies which are relevant to natural resource management. That legislation includes, inter alia, the Forestry Act.
17. Having regard to the contents of these submissions (and other submissions made to the NRC in response to the Call for Submissions which describe social and economic implications which will arise out of any reduction in timber such as to prevent State Forests supplying the required allocation of timber) any advice and any recommendations of the NRC which would lead to a reduction in timber resources being made available to State Forests such as to prevent or reduce the capacity of State Forests to discharge its obligations under the Forestry Act and under the wood supply agreement in respect of the two cypress mills, would be outside the scope of the NRC's power.
18. The NRC, as per the fourth bullet point in **point 1.4** of the Call for Submissions, should ensure that its recommendations "as to how the cypress forests and associated ecosystems should be managed will be such as" to best promote the government's stated objective of forests agreements delivering "conservation outcomes and a sustainable future for the forests, the forests industry and local community".
19. Additionally, the NRC, in considering the State's and State Forests', existing contractual and statutory obligations and in making its recommendations, should have regard to the fact that "*the Crown should be bound by its contracts in the same way as a private firm*¹..." and further it should bear in mind that it is appropriate "*the cost of ...[any] change in Government policy is borne by the Government and not by the innocent private contractor*". [ibid]

Yours truly,



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¹ See Peter W Hogg "The Liability of the Crown" - The Law Book Company Limited, Second Edition at page 161.