

12/19481

8.

YOUR REF: BSS:BC 1182566
OUR REF: BSS:BC 1182566
DIRECT LINE: 6235 9362
DIRECT EMAIL: ben.swain@murdochclarke.com.au



MURDOCH CLARKE BARRISTERS
AND SOLICITORS

26 July 2011

Page Seager
Barristers & Solicitors
DX 110
HOBART

Attention: Ms Kathryn Speed

By email: kspeed@pageseager.com.au

Dear Madam

RE: TRIABUNNA INVESTMENTS PTY LTD –
ASSIGNMENT OF LEASE – TRIABUNNA WHARF

I acknowledge receipt of the copy of your email dated 22 July 2011 to Shields Heritage. I note that I have not received any reply from you to my email dated 19 July 2011 to you.

My email dated 19 July 2011 posed a number of questions. I have not received answers in relation to any of those questions. I am instructed to again ask:

1. given that my client does not intend to operate the wood chip facility, do you require any further "details regarding the Assignee's [my client's] ability to operate the facility"? If so, what are those details you require?
2. what is required by way of a "capability statement and a financial capacity statement"?
3. what information do you wish to see regarding my client's "character"?
4. what information do you wish to see regarding my client's "financial position"?
5. what information do you wish to see regarding my client's "business experience"?

PARTNERS
DM WOODHEAD
AJ DUNN
KB PROCTOR
DE EGAN
F. KUZIN
RS REID
A J GAUGH
B S SWAIN

SENIOR ASSOCIATES
M G FOSTER
AG BELLONS CHENE
RC MANNING
CR HIGGINS
A L HAY

ASSOCIATES
L N GOLLING
M L EDINGTON
J F O'SHAUGHNESSY
B R DANCE

CONSULTANTS
R J BADENACH
K M DEANE

10 VICTORIA STREET HOBART TASMANIA
GPO BOX 408 HOBART 7001
DX 131 HOBART

TELEPHONE: 03) 6235 9311
FACSIMILE: 03) 6234 2670
EMAIL: mccd@murdochclarke.com.au

Until you answer these questions, how can my client know what information it is that your client is seeking? Further, how can my client (or Gunns Limited) know if your client is acting reasonably in considering this Assignment as required by the provisions of the Lease?

I do also address one fundamental error that was contained in your email dated 22 July 2011. Your email indicates that you are of the opinion that the Lease requires the wood chip mill to continue to operate. This is incorrect. There is no provision in the Lease which requires the wood chip mill to continue to operate. I would be pleased to have your advice as to which provision of the Lease you say places a positive obligation upon the Tenant to continue to operate the mill?

To avoid any confusion, I repeat that my client has agreed, subject to certain conditions, to offer to lease the mill so that the mill may operate.

It is reasonable for your client, as Landlord, to make an assessment as to whether it believes my client, as Assignee, will be able to comply with the Tenant's obligations under the Lease. Whilst not the sole consideration, the ability of my client to pay any rent due under the Lease should be a primary consideration of your client. Does your client seriously have any doubts as to the ability of my client to comply with the terms of the Lease and to pay any rent due under the Lease?

Can I please have a response to this email, addressed to me, by no later than the close of business on Thursday 28 July 2011.

Yours faithfully
MURDOCH CLARKE

Per:



BEN SWAIN

Cc Shields Heritage
Attention: Ms Jacinta French

By email: jmfron@shieldsheritage.com.au

12/19483

9.

PAGE SEAGER
LAWYERS

Level 2, 179 Murray St
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GPO Box 1106, Hobart TAS 7001
DX 110 Hobart
ABN 37 078 672 296

T 05 6235 5155
F 03 6231 0352
E enquiry@pageseager.com.au
A www.pageseager.com.au

KNE : 111763

3 August 2011

Jacinta French
Partner
Shields Heritage
53 Cameron Street
PO Box 187
Launceston

By email: jmfrench@shieldsheritage.com

Dear Jacinta

ASSIGNMENT OF LEASE TRIABUNNA WHARF

We refer to your email to us on 26 July 2011 and the questions contained within that correspondence.

We maintain that the information requested in our original correspondence to Shields Heritage on 15 July 2011 are appropriate and reasonable for Tasports to make a determination as to any potential assignment of its lease with Gunns. The Lease states that the demised premises are to be used for the purpose of an export woodchip wharf and for the purposes connected therewith.

Tasports remain willing to engage on this matter and once again, request that the requisite information be provided as soon as is practical.

Yours faithfully



Kathryn Speed
Partner
Direct Line: (03) 6235 5105
E-mail: kspeed@pageseager.com.au

Cc: Mr Ben Swain
Murdoch Clarke

12/19482

10.

ARTHUR MARK SANSON
CHRISTOPHER KEITH CHAMBERS
JACINTA MARIE FRENCH
MURRAY RUSSELL CHAMBERS

PATRICK JOHN SULLIVAN - CONSULTANT
JAMES FRASER ANDERSON OAM RD - CONSULTANT



51 CAMERON STREET,
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AUSTRALIA
PO BOX 187, LAUNCESTON,
TASMANIA 7250

AUSDOC DX 70123
TELEPHONE: (03) 6337 5777
FACSIMILE: (03) 6334 0351
Email: shields@shieldsheritage.com
A B N. 26 477 023 371

ESTABLISHED 1837

8 August, 2011

Our ref 110898
Your ref 111763

Page Seager
By email
Attention Kathryn Speed

Dear Sirs,

Re: Tasports and request for assignment of Triabunna wharf lease from Gunns Ltd to Triabunna Investments Pty Ltd

We refer to your letter dated the 15 July 2011 and your subsequent correspondence.

The consent sought from your client at this stage is only for the assignment of the lease to Triabunna Investments Pty Ltd.

As has been publicly reported, Triabunna Investments Pty Ltd will not itself be operating the mill at Triabunna but will be engaging an operator for the mill. Triabunna Investments Pty Ltd cannot advance the engagement of that operator until there is certainty that it can have access to the wharf, i.e. that the lease of the wharf facility has been assigned to Triabunna Investments Pty Ltd.

Once that has been assigned Triabunna Investments Pty Ltd will proceed to engage an operator and at that stage Triabunna Investments Pty Ltd will seek your client's consent to the sublease of the wharf lease to the mill operator. Until then your questions relating to who will be operating the mill and for what term cannot be answered.

The above information is consistent with the response provided direct to you by Mr Swain of Murdoch Clarke in his letter dated the 19 July 2011.

Again, as has been publicly reported, the State Government and the Triabunna local community wish to have the mill reopened as soon as possible. It is more than speculation that the mill will be reopened (as referred to by you in your letter dated the 22nd July 2011).

Whilst we note your comment in your letter dated the 22nd July 2011 that "this is of no benefit to my client if the mill is not operational", that is the current position. That is, the mill is not operating, our client had ceased operations. Triabunna Investments Pty Ltd purchased the mill site with a commitment incorporated in the sale agreement for the mill to be re-opened.

To demonstrate Triabunna Investments Pty Ltd's financial capacity to meet its obligations under the lease the following information is provided:

HOBART OFFICE: 50 VIC TORIA STREET, HOBART, TASMANIA 7000, AUSTRALIA. PO BOX 165, HOBART, TASMANIA 7001, AUSTRALIA
AUSDOC DX 701 TEL: (03) 6223 8055 FAX: (03) 6223 8985

KINGSTON OFFICE: 61 CHANNEL COURT, KINGSTON, TASMANIA 7050. PO BOX 474, KINGSTON, TASMANIA 7050
AUSDOC DX 70852 KINGSTON TEL: (03) 6229 1011 FAX: (03) 6229 1201

Triabunna Investments Pty Ltd

As advised to you by Mr Swain of Murdoch Clarke in his email dated 19 July 2011, Triabunna Investments Pty Ltd owns the Triabunna Woodchip Mill. As has been widely reported in the media an amount of \$10 million was paid for the Triabunna Woodchip Mill. That asset was purchased unencumbered by Triabunna Investments Pty Ltd and without the need for debt financing.

The directors of Triabunna Investments Pty Ltd are prepared to capitalise Triabunna Investments Pty Ltd to the extent of \$500,000.00 and include an obligation on Triabunna Investments Pty Ltd in the Deed of Assignment of Lease that the share capital of Triabunna Investments Pty Ltd will not be diminished below the amount of \$500,000.00.

The directors of Triabunna Investments Pty Ltd, as previously advised, are Jan Cameron and Graeme Wood. Details of their financial capacity and business expertise are freely available in the public domain. Nonetheless I provide the following information in relation to each of the directors.

Jan Cameron

Jan Cameron founded the Kathmandu empire in Australia. The sale of that business by her in 2006 realised approximately \$280 million for her.

Jan is currently Australia's fourth richest woman. Jan is currently a director and owner of Retail Adventures Pty Ltd which owns the Crazy Clarke's, Go-Low, Sam's Warehouse and Chickenfeed businesses.

In addition to her numerous business interests, Jan also undertakes extensive philanthropic and charitable works. She has donated in excess of \$35 million to various charities over the last four years.

Graeme Wood

Graeme was the founder of the online travel company Wotif.com in 1999. Graeme retired from his role as CEO and managing director of Wotif.com in 2007 but remains involved in the business. He has an estimated wealth in excess of \$200 million.

Graeme has also used his entrepreneurial skills and wealth for charitable and philanthropic purposes. He is the founder of the Graeme Wood Foundation, the co-founder and chairman of the University of Queensland endowment fund and the founder and chief executive of Wild Mob. He has given away to these various charities, tens of millions of dollars over the last few years.

Graeme was the 2008 Suncorp Queenslander of the Year and the 2005 National winner of the Ernst & Young Entrepreneur of the Year amongst a long list of other accolades.

The above information has been provided to satisfy the obligation to provide your client with details of the proposed assignee's capacity to meet its financial obligations under the lease and of their own business experience.

As your client is aware, a substantial part of the purchase price paid by Triabunna Investments Pty Ltd has been withheld and will continue to be withheld from our client until the lease is assigned. Our client is therefore suffering a financial penalty.

Your client cannot unreasonably withhold its consent to the assignment of lease. Nor can your client refuse to consent to the assignment merely because the mill will not be operating- there is no provision in the lease that requires the mill to be operating.

Please refer this information to your client and seek their consent to the assignment of the lease to Triabunna Investments Pty Ltd as a matter of urgency.

Yours faithfully,
SHIELDS HERITAGE



JACINTA FRENCH
jmfrench@shieldsheritage.com

1.

Attachments: ATT6681582.gif

Thank you for the discussion by phone this afternoon regarding the assignment of the Triabunna wharf lease to Triabunna Investments.

I note your advice that you are meeting tomorrow afternoon to further review your position. A Gunns is available to participate in a phone hook up to discuss your information requirements, perhaps after you have had your internal meeting and have clarity around exactly what is required.

Please let me know if a phone hook up can occur or alternatively what detailed information you need to finalise this matter.

 $\hat{A} \qquad \hat{A}$

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 $\hat{A} \qquad \hat{A}$

26 August 2011

Ms Jacinta French
Shields Heritage
53 Cameron Street
LAUNCESTON TAS 7250
By email: jmfrench@shieldsheritage.com

Mr Ben Swain
Murdoch Clarke
10 Victoria Street
HOBART TAS 7000
By email: ben.swain@murdochclarke.com.au

Dear Ms French & Mr Swain

TASPORTS - TRIABUNNA WHARF ASSIGNMENT

I refer to the meeting scheduled for 11.30am on Tuesday 30 August 2011.

Given that lawyers will be present and the intention of all parties is to come to a final disposition of this matter the meeting will be a without prejudice meeting and this letter is provided on that basis.

In anticipation of that meeting we note that we have agreed to outline Tasports' position in respect to the request to assign the lease to Triabunna Investments Pty Ltd.

Upon receipt of the request for consent for transfer, Tasports obtained further information from the parties and received legal advice from counsel. That legal advice is to the effect that it is presently reasonable for Tasports to withhold its consent to the assignment however as at today's date no decision has been made as to whether it will or will not assign the lease.

The circumstances as they currently stand appear to be that:-

1. Gunns Ltd have requested an assignment of the lease pursuant to clause 3.5;
2. Payment of a portion of the purchase price payable by Triabunna Investments Pty Ltd to Gunns is conditional upon assignment of the lease;
3. The intended assignee of the lease has publically stated its intention not to operate the woodchip mill and Tasports have not been able to consider the capability of the entity that will actually be operating the sawmill because one has not been chosen;

-
4. Triabunna Investments Pty Ltd will not be able to obtain a saw mill operator until the lease is assigned.

Tasports has called this meeting to attempt to facilitate a solution that finally resolves the issues and is acceptable to all parties.

We note that all parties have confirmed their attendance and look forward to the meeting.

Yours faithfully



Brett Cassidy

Senior Associate

Direct Line: (03) 6235 5173

E-mail: bcassidy@pageseager.com.au

6 September 2011

Ms Jacinta French
Shields Heritage
53 Cameron Street
LAUNCESTON TAS 7250
By email: jmfrench@shieldsheritage.com

Mr Ben Swain
Murdoch Clarke
10 Victoria Street
HOBART TAS 7000
By email: ben.swain@murdochclarke.com.au

Dear Ms French and Mr Swain

TASPORTS - TRIABUNNA WHARF ASSIGNMENT

I refer to the meeting held on 26 August 2011 in relation to this matter.

At that meeting you advised that you would respond to our client's proposal within a couple of days of that meeting. Since then we have heard nothing from either of you. Can you please advise us of any proposal your clients now have in relation to this matter.

I look forward to your early response.

Yours faithfully



Brett Cassidy
Senior Associate
Direct Line: (03) 6235 5173
E-mail: bcassidy@pageseager.com.au

19 September 2011

Ms Jacinta French
Shields Heritage
53 Cameron Street
LAUNCESTON TAS 7250
By email: jmfrench@shieldsheritage.com

Mr Ben Swain
Murdoch Clarke
10 Victoria Street
HOBART TAS 7000
By email: ben.swain@murdochclarke.com.au

Dear Ms French and Mr Swain

TASPORTS - TRIABUNNA WHARF ASSIGNMENT

I refer to the meeting held on 30 August 2011 and to our correspondence to you both on the 6 September 2011.

Since the meeting we have heard nothing from either of you. As requested previously, can you please advise us of any proposal your clients now have in relation to this matter.

I look forward to your response.

Yours faithfully



Brett Cassidy
Senior Associate
Direct Line: (03) 6235 5173
E-mail: bcassidy@pageseager.com.au

15.

6 October 2011

Ms Jacinta French
Shields Heritage
53 Cameron Street
LAUNCESTON TAS 7250
By email: jmfrench@shieldsheritage.com

Mr Ben Swain
Murdoch Clarke
10 Victoria Street
HOBART TAS 7000
By email: ben.swain@murdochclarke.com.au

Dear Ms French and Mr Swain

TASPORTS - TRIABUNNA WHARF ASSIGNMENT

We refer to our letters dated 6 September 2011 and 19 September 2011.

We note that to date we have received no response to the issues raised at the meeting held on 30 August 2011.

We would be grateful if we could receive either your client's response to the proposal or alternatively any other proposal that your client wishes our client to consider.

Yours faithfully



Brett Cassidy
Senior Associate
Direct Line: (03) 6235 5173
E-mail: bcassidy@pageseager.com.au

15 November 2011

Mr David Phillips
Tasmanian Ports Corporation Pty Ltd
1 Franklin Wharf
HOBART TAS 7000



Dear David

ASSIGNMENT OF LEASE TRIABUNNA WHARF - PO60778

Enclosed with this correspondence, please find original Assignment of Lease between Gunns Limited, Triabunna Investments Pty Ltd and Tasmanian Ports Corporation Pty Ltd for safe keeping by you. I have kept a copy on my file.

I thank you for your instructions in this matter.

Yours faithfully

Mark Rapley
Partner
Direct Line: (03) 6235 5166
Email: mrappleyp@pageseager.com.au

Assignment of Lease

between

Gunns Limited

Triabunna Investments Pty Ltd

and

Tasmanian Ports Corporation Pty Ltd

THIS Deed is made the 14th day of November 2011.

Parties

GUNNS LIMITED (A.C.N. 009 478 148) the registered office of which is situate at 78 Lindsay Street Launceston in Tasmania ("the Assignor");

TRIABUNNA INVESTMENTS PTY LTD (ACN 151 887 099) the registered office of which is situate at 10 Victoria Street, Hobart in Tasmania in Tasmania ("the Assignee"); and

TASMANIAN PORTS CORPORATION PTY LTD A.C.N. (ACN 114 161 938) of 48 Formby Road, Devonport in Tasmania ("the Lessor").

Recitals

1. By the Lease, Hobart Ports Corporation Pty Ltd leased the Leased Premises to the Assignor.
2. Pursuant to section 23(2) of the *Tasmanian Ports Corporation Act 2005*, a contract made or entered in to by Hobart Ports Corporation Pty Ltd is taken to be a contract made or entered in to by the Lessor.
3. The Lessor is entitled to the reversion in the Leased Premises expectant on termination of the Lease.
4. The Assignor has agreed to assign to the Assignee from the Assignment Date the benefit of the unexpired term of the Lease including the benefit of any option to renew contained in the Lease.
5. The Lessor has consented to the assignment.

This Deed witnesses as follows

1. Interpretation

1.1 Definitions

In this assignment, the following definitions apply unless they are inconsistent with the context:

- (a) "the Assignment Date" means the Assignment Date specified in the schedule;
- (b) "the Price" means the Price specified in the schedule;
- (c) "the Lease" means, depending on the context:
 - (i) the Lease specified in the schedule;

- (ii) the leasehold interest granted by the Lease or arising on registration of the lease if the lease is a registrable lease; or
- (iii) any other interest arising from the Lessee taking possession of the Leased Premises and/or the Lessee paying or the Lessor accepting money for the right to occupy and use the Leased Premises under, resulting from or relating to this document;
- (d) "the Leased Premises" means the Leased Premises specified in the schedule and to the extent that this meaning varies the Lease the parties agree this meaning prevails over the Lease;
- (e) "the Lessee" means the lessee for the time being under the Lease; and
- (f) "the Lessor" means the Lessor named in the schedule.

1.2 *Interpretation*

In this deed, the following rules apply unless they are inconsistent with the context:

- (a) the word "include" does not exclude;
- (b) words signifying the singular number include the plural and words signifying the plural number include the singular;
- (c) words denoting a gender include all genders;
- (d) words denoting an individual or person include a corporation or firm and words denoting a corporation or firm include an individual or person;
- (e) a reference to any party to this lease includes that party's personal representatives, successors and permitted assigns;
- (f) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this lease;
- (g) headings and any table of contents do not affect interpretation and are included for ease of reference only;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (i) the parties exclude from this lease all covenants implied by statute unless the statute provides that the parties cannot exclude the covenant.

2. **Assignment of lease**

2.1 *Assignment*

The Assignor as beneficial owner assigns to the Assignee from the Assignment Date:

- (a) the Assignor's interest under the Lease in the Leased Premises for the unexpired term of the Lease, and
- (b) the benefit of any option to renew the Lease contained in the Lease,

subject to all the obligations of the Assignor under the Lease.

2.2 *Lessor's consent*

The Lessor consents to the assignment and that consent is evidenced by the Lessor executing this assignment.

2.3 *Consideration for assignment*

The consideration for this assignment is the Price which the Assignee has paid to the Assignor and which the Assignor acknowledges receiving.

3. *Assignee's obligations*

The Assignee must from the Assignment Date:

- (a) pay all rent payable under the Lease;
- (b) comply with all the obligations of the Lessee under the Lease;
- (c) ensure that electricity is maintained at all material times to the Wharfs cathodic protection system; and
- (d) indemnify the Assignor against all liability in respect of the Lease arising after the Assignment Date.

4. *Release for Assignor*

The Lessor releases the Assignor from all liability arising under the Lease after the Assignment Date save for any latent liability under the Lease caused or contributed to by the Assignor, the origin of which can be shown to stem from the period prior to the Assignment Date.

5. *Status of the Lease*

5.1 *Assignor's warranty*

The Assignor warrants to the Assignee that at the Assignment Date:

- (a) the Lease and any option to renew the Lease contained in the Lease:
 - (i) have not been varied; and
 - (ii) are valid and subsisting;
- (b) there will not be any breach of the Lease by the Assignor and that all rent due under the Lease up to the Assignment Date has been paid.

The Assignor indemnifies the Assignee against all liability as a result of any breach of the Lease which occurs on or before the Assignment Date.

5.2 Lessor's confirmation

The Lessor confirms that at the Assignment Date:

- (a) the Lease and any option to renew the Lease contained in the Lease:
 - (i) have not been varied; and
 - (ii) are valid and subsisting;
- (b) an option to renew the Lease was validly exercised by the Assignor on the 27th day of July 2007;
- (c) all rent due under the Lease up to the Assignment Date has been paid.

5.3 Lessor's agreement

The Lessor agrees with the Assignee not to take advantage to the prejudice of the Assignee of any failure to comply with the Lessee's obligations under the Lease occurring before the Assignment Date save and accept if there is a latent liability of the type that would require immediate action on the part of the Lessor in order to mitigate its loss or reduce environmental harm.

6. Address for service

For the purposes of the Lease, the address for service of the Assignee is the Assignee's address specified in this assignment.

7. General

7.1 Variation of or departure from lease

No variation of, waiver of, or consent to any departure from this assignment has any effect unless it is confirmed in writing:

- (a) signed by the parties in the case of a variation; or
- (b) signed by the party waiving or consenting to the departure in the case of a waiver or consent to a departure, and then its effect is strictly limited to the extent for which it is made or given.

7.2 Severing of invalid provisions

If any provision of this assignment is invalid, other provisions which are self-sustaining and can be performed separately from the invalid provision, are valid and enforceable on their terms.

7.3 Applicable law

This assignment must be interpreted under the law of the State of Tasmania.

7.4 This assignment records all terms

In connection with its subject matter, this assignment:

- (a) is the sole and entire agreement among the parties; and
 - (b) supersedes all prior agreements and understandings between the parties,
- and a warranty, representation or guarantee connected with the subject matter of this lease or other term not contained or recorded in this assignment has no force or effect.

7.5 *Joint and several liability*

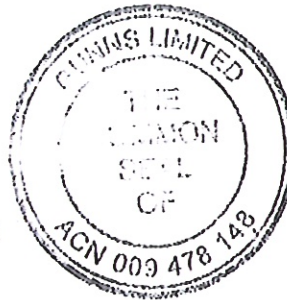
Where more than one person accepts liability under any provision of this assignment, each of those people is liable severally and every two or more of them is liable jointly.

The schedule

The Assignor:	Gunns Limited A.C.N. 009 478 148
The Assignee:	Triabunna Investments Pty Ltd (A.C.N. 151 887 099)
The Lessor:	Tasmanian Ports Corporation Pty Ltd
The Lease	The lease commencing on 1 November 2002 between Hobart Ports Corporation Pty Ltd and the Assignor in respect of the Leased Premises
The Leased Premises:	The real property described by certificate of title volume 129033 folio 1 and the associated wharf facilities, but for the Woodchip Loader, conveyor system to the Woodchip Loader and all things incidental to the Woodchip Loader and conveyor system to the Woodchip Loader.
The Assignment Date:	9 November 2011
The Price:	One dollar (\$1.00)

Executed as a Deed

Executed by Gunns Limited under
section 127(1) of the Corporations Act
by being signed by:



Director

GREGORY PHILLIP L'ESTRANGE

Director/Secretary

WAYNE LEONARD CHAPMAN

Executed by Triabunna Investments Pty
Ltd under section 127(1) of the
Corporations Act by being signed by:

Director

GRAEME THOMAS WOOD

Director/Secretary

JANE HEATHER CAMERON

Executed by Tasmanian Ports
Corporation Pty Ltd under section
127(1) of the Corporations Act by being
signed by:

Director

DANIEL T. NORTON

Director/Secretary

Geoff Duggan