

Doc 5

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E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: dmccarth [NOTES:dmccarth@wlf.com.au]
Cc:
Sent: 12/9/2011 at 12:20 PM
Received:
Subject: Probity Audit - Offer to Gunns Limited - Part 1 B

Attachments: Letter from Premier to Mr A Kloeden, Chairman, Forestry.PDF

OFFER DOCUMENTS

- Letter from Premier to Mr A Kloeden, Chairman, Forestry.PDF

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

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Doc. 6

Premier

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WITHOUT PREJUDICE

26 AUG 2011

**Mr A J Kloeden
Chairman
Forestry Tasmania
GPO Box 207
HOBART TAS 7001**

Dear Mr Kloeden

As you are aware, the Tasmanian Forests Intergovernmental Agreement (TFA) was signed on 7 August 2011.

The State has determined under this Agreement and based on Crown legal advice that it is appropriate to make an offer of payment to Forestry Tasmania, in return for particular commitments to enable essential processes that are required to give effect to the TFA's objectives, to be immediately progressed.

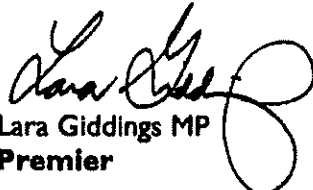
In accordance with Clause 34 of the TFA, the State is offering to pay Forestry Tasmania an amount of \$12.650 million (GST included). In return for this payment, Forestry Tasmania must sign the attached two Deeds of Release and agree to the conditions contained within.

A copy of the Deed of Release between the Crown and Gunns Limited has also been attached for information.

A pre-condition of this offer is that the State will also procure, by agreement with Gunns Limited, the release of Forestry Tasmania from any right or obligation under Contracts 917 and 918 and the China Sale Agreement. Please also note that the offer of payment to Forestry Tasmania is only activated if and when Gunns Limited executes its Deed of Release.

Forestry Tasmania has until close of business on 2 September 2011 to accept this offer. If acceptance is not received by way of signing the two Deeds of Release by that date, the State will pursue other avenues to achieve the TFA objectives.

Yours sincerely


Lara Giddings MP
Premier

Encl





Deed

Dated

**The Crown in Right of Tasmania
(Crown)**

and

**Forestry Tasmania
(Forestry Tasmania)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: Deed of Release Between Crown and
Forestry (Clean)

Contents

1	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	5
1.3	No contra proferentum	6
1.4	Headings	6
2	Condition	6
2.1	Condition	6
2.2	Termination	7
3	Payment	7
4	Excluded Claims	8
5	Assignment	8
6	GST	8
7	Notices	9
7.1	Method of giving Notices	9
7.2	Time of receipt of Notices	9
7.3	Address for Notices	9
8	Law and jurisdiction	9
8.1	Governing Law	9
8.2	Submission to jurisdiction	10
9	General	10
9.1	Waiver	10
9.2	Amendment	10
9.3	Severability	10
9.4	Further assurance	10
9.5	Counterparts	10
Annexure "A"		12
Tasmanian Forests Intergovernmental Agreement		12

Deed

Details

Parties	Crown, Forestry Tasmania	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) [##insert facsimile number##]
	Attention	Secretary
Forestry Tasmania	Name	Forestry Tasmania (being the body corporate established pursuant to section 6 of the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) 6235 8223
	Attention	

- Recitals**
- A** Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
- B** Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
- C** Particularly Forestry Tasmania claims:
- (i) that Gunns by letter dated the 18th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15th day of October 2011;
- (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
- D** Particularly Gunns claims:

- (i) that its letter dated the 18th day of April 2011 was not legally effective to terminate the Wood Supply Agreements;
 - (ii) that Forestry Tasmania is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement and as a consequence Gunns has incurred loss and damage which is claimed from Forestry Tasmania.
- E Forestry Tasmania and Gunns each deny the others claims.
- F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18th day of April 2011 was legally effective to terminate the Wood Supply Agreements then Forestry Tasmania is legally obliged to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of Pulpwood (as defined in Wood Supply Agreement 917) and Supply Products (as defined in Wood Supply Agreement 918).
- G Gunns has indicated that it wishes to exit native forest logging operations in Tasmania.
- H The Crown has entered into the Tasmanian Forests Intergovernmental Agreement with the Commonwealth.
- I Under the Tasmanian Forests Intergovernmental Agreement the Commonwealth has agreed to provide funding to the Crown for the purposes of enabling the creation of the Reserves.
- J The Reserves cannot be created unless:
 - (i) there is certainty that Forestry Tasmania is not legally obligated to make any further supplies of wood to Gunns pursuant to the Wood Supply Agreements and the China Sale Agreement; or
 - (ii) if the Wood Supply Agreements have been terminated, there is legal certainty that Forestry Tasmania is not under a legal obligation to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of pulpwood (as defined in Wood Supply Agreement 917) and the Supply Products (as defined in Wood Supply Agreement 918).
- K By virtue of clause 22 of the Tasmanian Forests Intergovernmental Agreement the Crown is obliged to ensure that a sufficient volume of native forest sawlog supply is retired to achieve the objects set out in clauses 17 and 29 of that Agreement.
- L The parties have entered into this Deed to facilitate the requirements of the Tasmanian Forests Intergovernmental Agreement by ensuring the termination of the Wood Supply Agreements and the China Sale Agreement and, except for

Excluded Claims, to resolve all claims Forestry Tasmania has against Gunns arising out of the Wood Supply Agreements and the China Sale Agreement.

Date See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

China Sale Agreement means the agreement known as 'the China Sale Agreement' constituted by the letter dated 9 June 2010 from Forestry Tasmania to Gunns, and countersigned by Greg L'Estrange as an authorised representative of Gunns.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

- (a) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 917;
- (b) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 918;
- (c) a claim under any indemnity in the China Sale Agreement; or
- (d) rights arising out of clause 16 of the Wood Supply Agreements.

Gunns means Gunns Limited ABN 29 009 478 148.

Forestry Act means the *Forestry Act 1920* (Tas).

Reserves means the reserves which are to be created pursuant to the Tasmanian Forests Intergovernmental Agreement.

Rights includes a right, a power, a remedy, a discretion or an authority.

Settlement Date means the day of 2011 or such other date agreed to in writing by both parties.

Tasmanian Forests Intergovernmental Agreement means the agreement made between the Commonwealth and the Crown on the 7th day of August 2011, a copy of which is annexed to this Deed marked "A".

Wood Supply Agreements mean Wood Supply Agreement 917 and Wood Supply Agreement 918.

Wood Supply Agreement 917 means contract for sale No. 917 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'LONG TERM PULPWOOD SUPPLY AGREEMENT'.

Wood Supply Agreement 918 means contract for sale No. 918 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'SAWLOG AND OTHER PRODUCTS SUPPLY AGREEMENT'.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to this Deed, or any document referred to in this Deed or another document, includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) **person** includes a firm, a body corporate, an unincorporated association, a responsible authority, or other entity, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (f) a reference to writing includes a reference to printing, typing and each other method of producing words, figures or symbols in visible form;
- (g) a reference to a body (other than a party to this Deed) whether or not it is a statutory body:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to any other body,refers to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them, jointly and severally;
- (i) words importing any gender include all other genders, as applicable;
- (j) a reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;

- (k) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;
- (l) a reference to a clause, schedule or appendix is to a clause, schedule or appendix in or to this Deed;
- (m) mentioning any thing after the words **include**, **included** or **including** does not limit the meaning of any thing mentioned before those words;
- (n) a reference to a day must be interpreted as the period of time in the Crown commencing at midnight and ending 24 hours later;
- (o) reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in Hobart, Tasmania, even if the obligation is to be performed elsewhere;
- (p) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning; and
- (q) references to '\$' and 'dollars' are to Australian dollars.

1.3 No contra proferentum

In the interpretation of this Deed, no rule of construction will apply to disadvantage a party because that party proposed a provision of this Deed or the Deed itself.

1.4 Headings

Headings are included for convenience only and do not affect the construction or interpretation of this Deed.

1.5 Defined terms

Terms used in this Deed and not defined herein and which are defined in the Tasmanian Forests Intergovernmental Agreement have the meaning given to them in the Tasmanian Forests Intergovernmental Agreement.

2 Condition

2.1 Condition

Each party's obligations under clauses 3 and 5 of this Deed are subject to the conditions precedent that on or before the Settlement Date the Crown enter into a deed with Gunns whereby:

- (a) Gunns releases Forestry Tasmania in the same terms as clause 3(a) of this Deed;

- (b) Gunns agrees to the termination of and to treat as terminated the Wood Supply Agreements and the China Sale Agreement in the terms of clause 3(b) of this Deed;
- (c) Gunns releases Forestry Tasmania from all its obligations and liabilities under the Wood Supply Agreements and the China Sale Agreement in the terms of clause 3(c) of this Deed; and
- (d) Gunns agrees to assign the residual rights and obligations under the Wood Supply Agreements and the China Sale Agreement in the same terms as clause 5 of this Deed.

2.2 Termination

- (a) Either party may elect to terminate this Deed by notice in writing to the other if the condition in clause 2.1 is not satisfied on or before the Settlement Date.
- (b) If this Deed is terminated pursuant to clause 2.2(a) then:
 - (i) each party will have the same Rights and obligations that it would have had as if the parties had never entered into this Deed; and
 - (ii) neither party will have a Claim against the other in respect of the subject matter of this Deed.

3 Payment

In consideration of the payment on the Settlement Date by the Crown to Forestry Tasmania of the sum of \$12,650,000.00 (GST inclusive):

- (a) Forestry Tasmania agrees to release Gunns from all Claims, except for the Excluded Claims, that Forestry Tasmania now has, or may in the future have, against Gunns in connection with or arising out of the Wood Supply Agreements and the China Sale Agreement including any breach of the same by Gunns;
- (b) Forestry Tasmania agrees to the termination of and to treat as terminated the Wood Supply Agreements and the China Sale Agreement as at the Settlement Date;
- (c) Forestry Tasmania agrees to release Gunns from its obligations and liabilities under the Wood Supply Agreements and the China Sale Agreement whether arising before on or after the Settlement Date; and
- (d) Subject to its powers and obligations under the Forestry Act (as amended) and the *Government Business Enterprises Act* (as amended), Forestry Tasmania agrees to set aside the Reserves from wood production and to do and facilitate all that it reasonably can to further the requirements of the Tasmanian Forests Intergovernmental Agreement particularly but without limitation:

- (i) provision of data and information as reasonably required by the Independent Verification Group to which the Tasmanian Forests Intergovernmental Agreement refers to facilitate its work;
- (ii) creation of the required Informal Reserves pursuant to clauses 25 and 28;
- (iii) not to supply wood or allow wood production within the High Conservation Value forest area in accordance with the requirements of clause 26;

4 Excluded Claims

Nothing in this Deed affects any Rights of a party (including any Rights of that party against the other party) in connection with any Excluded Claims.

5 Assignment

- (a) Subject to clause 4, to the extent that the Wood Supply Agreements and the China Sale Agreement may subsist or that there are continuing Rights and obligations of Forestry Tasmania arising out of those Agreements after the Settlement Date then Forestry Tasmania assigns to the Crown absolutely the benefit of those Agreements.
- (b) Forestry Tasmania consents to the assignment of the Wood Supply Agreements and the China Sale Agreement by Gunns to the Crown.

6 GST

- (a) The consideration payable by the Crown to Forestry Tasmania as expressed in this Deed is GST inclusive.
- (b) On the Settlement Date Forestry Tasmania must provide to the Crown a valid tax invoice for the consideration.
- (c) In this clause 6 unless the context otherwise requires:
 - (i) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) and the related imposition Acts of the Commonwealth; and
 - (ii) expressions defined in the GST Act have the same meaning when used in this clause 6.

7 Notices

7.1 Method of giving Notices

A notice, consent, approval, application or other communication (each a **Notice**) under this Deed must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail; or
- (c) sent by facsimile,

to that person's address or facsimile number (as applicable).

For the avoidance of doubt, no Notice may be given either orally or by email.

7.2 Time of receipt of Notices

A Notice given to a person is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the day of actual delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day; and
- (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day.

7.3 Address for Notices

For the purposes of this clause 7, a person (the **sender**) may take the address and facsimile number of another person (the **recipient**) to be:

- (a) the address and number set out in the Details above; or
- (b) if the recipient has notified the sender of another address or facsimile number, the last address or facsimile number so notified to the sender.

8 Law and jurisdiction

8.1 Governing Law

This Deed is governed by the Law of Tasmania.

8.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Tasmania and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

9 General

9.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver and such a waiver is effective only in the specific instance and for the specific purpose for which it was given.

9.2 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

9.3 Severability

If any provision of this Deed is or at any time becomes illegal, prohibited, void or unenforceable for any reason in any jurisdiction then, as to that jurisdiction, that provision is severed from this Deed and the remaining provisions of this Deed:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Deed.

9.4 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts as reasonably required of it or them and must carry out and give full effect to this Deed and the Rights and obligations of the parties under it.

9.5 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) A party may execute this Deed by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.

Executed as a deed

Signing page

Dated:

**Signed for and on behalf of The Crown
in Right of Tasmania by
The Honourable Larissa Tahireh
Giddings MP, Premier of Tasmania in
the presence of:**

Signature ←

Signature of witness ←

Name of witness (print)

Address of witness

Occupation

**The common seal of
Forestry Tasmania
was hereunto affixed by the authority of
its Board in the presence of:**

Signature ←

Name and position held (print)

Signature ←

Name and position held (print)

Annexure "A"

Tasmanian Forests Intergovernmental Agreement



Australian Government

**Tasmanian Forests Intergovernmental Agreement
between**

**the Commonwealth of Australia
and
the State of Tasmania**

7 August 2011



**Tasmanian
Government**

This agreement is made on the 7th day of August 2011 between the
State of Tasmania (the **State**) and
the Commonwealth of Australia (the **Commonwealth**)
(together the **Governments**)

1. The Tasmanian forestry industry is going through a process of structural transformation brought about by changing markets and community values. The catalyst for a sudden structural shift is the decision of Gunns Ltd, the State's major processor of both native forest sawlog and pulpwood products, to exit native forestry and to focus on its plantation based pulp mill at Bell Bay.
2. While other businesses could take up that part of the statutory minimum production of native forest sawlog currently used by Gunns Ltd, the Governments recognise that there would be ongoing market pressures. The issue of the balance between commercial use and environmental protection could also continue to divide the community, with reputational consequences for investment and economic growth.
3. As recognised in the community-driven Statement of Principles process, Gunns Ltd's exit offers a unique opportunity for the Governments to support the restructuring of the industry towards future sustainability based on both public and private resource, create a significant conservation benefit by reserving and protecting High Conservation Value forest areas, and strengthen the partnership between the two Governments and other stakeholders to develop and diversify the Tasmanian economy, creating new sources of prosperity and opportunity for all Tasmanians. However, this opportunity also brings unique challenges ranging from getting the balance right, to mitigating the economic and social consequences on affected workers, their families and regional communities during a period of transition and economic diversification for Tasmania.
4. The Governments recognise the opportunities afforded through the community-driven Tasmanian Forests Statement of Principles developed by the Signatories (**the Signatories**) to:
 - minimise state-wide economic and regional community impacts of a rapid decline in the native forest industry;
 - enable structured transition to a long term sustainable forest industry and diversification of the economic base;
 - ensure consequential conservation benefits; and
 - reduce the long term divisive community debate over native forests, including through seeking annual confirmation of the Signatories support for the implementation of all elements of this Agreement.
5. The Governments agree to work together to support the forest industry to progressively transition to a more sustainable and diversified footing and to build regional economic diversity and community resilience.
6. The Governments further agree that, through entering into this Agreement, they are seeking to achieve the following outcomes:
 - i. Forest workers, their families, communities and harvest and haulage contractors experiencing hardship as a result of the restructuring of the Tasmanian forest industry are provided with immediate support;
 - ii. Regional economies in Tasmania broaden their economic base and improve the productivity and income earning capacity of the

Tasmanian economy;

- iii. Native forest with high conservation values is further protected through expansion of the National Reserve System and possible World Heritage listing of appropriate areas;
 - iv. The Tasmanian forest industry has a sustainable and guaranteed wood supply; and
 - v. Signatories to the Statement of Principles and other stakeholders including affected communities and local governments are committed to and appropriately engaged in delivering the above.
7. The Governments recognise that the above outcomes are interrelated and no one outcome takes precedence over another.
8. To give effect to this common policy intent, the Governments agree to the following three Streams of activity all of which will commence now:
- i. Stream One: Support for Workers, Contractors and Communities;
 - ii. Stream Two: Protecting High Conservation Forests and Ensuring Sustainable Wood Supply; and
 - iii. Stream Three: Economic Diversification.
9. The Governments will design and deliver the various components of these Streams to ensure complementarity and to maximise efficiency and positive outcomes.
10. Implementation of this Agreement will be overseen by an Intergovernmental Taskforce supported by a Reference Group of Signatories, and in consultation with community members and other relevant parties on matters such as:
- i. the modelling of options and outcomes under the Independent verification process (Clause 20 refers); and
 - ii. further work and the transition plan required for successful delivery of the wood supply and conservation commitments set out in this Agreement.

STREAM ONE: SUPPORT FOR WORKERS, CONTRACTORS AND COMMUNITIES

Support for forest industry workers

11. The Commonwealth will work with State and local stakeholders to maximise employment and training opportunities at the regional and local level, including by working in partnership with ForestWorks and Skills Tasmania. This may include developing industry and community partnerships to identify and deliver appropriate solutions for displaced workers.
12. The Commonwealth will fund at least \$14 million and up to \$25 million (subject to demand) to provide immediate employment and training support for redundant forest workers in Tasmania. This will include intensive support

through Job Services Australia and other providers, for workers made redundant from eligible businesses in the forestry industry in Tasmania. In addition, support will include accelerated access to the Commonwealth's "Connecting People with Jobs" program, which will provide relocation support for redundant Tasmanian forestry workers.

13. The State will provide funding of \$15 million to ForestWorks Ltd to administer and provide transition support payments, subject to equity and efficiency criteria approved by the State, to workers directly impacted by the industry restructuring, including employees of contractors who are made redundant, as a result of Gunns Ltd's exit from native forest processing.
14. The Governments will provide funding of \$1 million over two years (\$0.5 million each) to support Rural Alive and Well Inc. mental health counselling and community well-being services for forest workers and contractors, their families and associated businesses adversely affected by the current forestry industry changes.
15. The Governments will work with major employers to identify sustainable employment opportunities.

Voluntary Exits for Native Forest Haulage, Harvest and Silvicultural Contractors

16. Following compliance by the State with Clause 22, the Commonwealth will provide and manage the allocation of \$45 million subject to demand in assistance for voluntary exits from public native forest operations for haulage, harvest and silvicultural contractors. The Commonwealth will consult with the State and, where appropriate, the forest contractors' associations during the design and delivery of this exit assistance mechanism.

STREAM TWO: PROTECTING HIGH CONSERVATION VALUE FORESTS AND ENSURING SUSTAINABLE WOOD SUPPLY

Legislated sustainable timber supply/Sustainable forestry industry

17. Wood supply for the remaining industry will be guaranteed:
 - At least 155 000 thousand cubic metres per year of high quality sawlog, by regulation.
 - 265 000 metres per year of peeler billets.
 - A speciality timber supply, noting that the industry claim is 12,500 cubic metres per year, subject to verification.
18. Contracts for native wood supply that are in existence at the time of this Agreement will be honoured. The Governments recognise the importance of this commitment for the successful implementation of the whole Agreement, particularly in relation to the guaranteed supply of peeler billets under their

current contract, including the option to extend that contract. In providing this commitment, the Governments also have a clear expectation that Signatories to the Statement of Principles will continue to respect those contracts and the associated need for guaranteed supply to meet them.

19. The Independent verification group established under Clause 20 will advise Governments, Signatories and other relevant stakeholders on any further legislative requirements that will be needed to underpin guaranteed industry supply, conservation outcomes and an effective transition plan.
20. The Governments will establish and support an Independent Verification Group, to be led by Professor Jonathan West, to provide advice by the end of 2011 to the Prime Minister and the Tasmanian Premier. The Independent Verification Group will consult with the Governments (through the Intergovernmental Taskforce), Signatory organisations (through the Reference Group of Signatory representatives), experts and other stakeholders in undertaking its work. This Independent Verification Group will design and implement an independent and transparent verification process that will assess and verify stakeholder claims relating to sustainable timber supply requirements (including at the regional level), available native forest and plantation volumes, and areas and boundaries of reserves from within the ENGO-nominated 572,000 hectares of High Conservation Value native forest. This Group will also make recommendations on appropriate forms of land tenure for the purposes of Clause 29. The Independent Verification Group will seek the agreement of the Signatories within one month of the date of this Agreement on the process for conducting independent verification, and their agreement to accept its results. If they agree, both Governments agree to be bound by the results of the verification process for the purposes of Clause 29.
21. The Commonwealth Government will provide funding to support the verification process. The Governments will ensure timely access to all relevant data, including that held by Forestry Tasmania, to the independent verification process.
22. Pursuant to outcome (iii) in Clause 6, the State will enter into a process with Gunns Ltd to ensure that a sufficient volume of native forest sawlog supply is retired to achieve the objects of Clauses 17 and 29.
23. The State will establish under terms to be agreed with the Commonwealth, and the Commonwealth will fund, a voluntary sawlog contract buy-back program for additional sawmillers wishing to exit the industry. Buy-backs under this voluntary exit program will be completed by end of June 2012.
24. In accordance with the terms agreed by the Governments, and informed by the results of the independent verification process, the Governments will increase high conservation value areas of the National Reserve System as native wood supply capacity is retired under this voluntary exit program and when suitable plantation wood supply is available.

Conservation

25. The State will immediately place the 430,000 hectares of native forest identified in Attachment A (other than any areas that are not State forest), from the 572,000 hectares nominated by ENGOs through the Statement of Principles process, into Informal Reserves. The boundaries of this 430,000 hectares were verified through an Independent verification process.
26. The State will ensure that, until the further independent verification process required under Clause 20 is completed, wood supply required under Clause 17 will be sourced from outside the 572,000 hectares of ENGO-nominated High Conservation Value forest area unless the remaining State Forest area is insufficient to meet the contractually specified quality and quantity of wood supply. Where this is the case, the Tasmanian Government will ensure that wood supplies are sourced outside the 430,000 hectares placed in Informal Reserves. The Tasmanian Government will ensure that the 430,000 hectares of State Forest identified in Attachment A is not accessed. Where harvesting work has already begun in coupes within the nominated 430,000 hectares, rescheduling will occur as soon as practical and a list of coupes that will be harvested will be agreed by the Governments and the signatories, advised by the Independent Verification Group, within two weeks of the signing of this agreement. If sourcing of wood supply from within the 572,000 hectares is considered to be necessary under any circumstances, the Governments will immediately consult with the Reference Group of Signatories and the Independent Verification Group in order to inform them of the basis for sourcing wood supply in those areas, and with the intention of providing this supply in a way that minimises impacts on conservation values.
27. During the independent verification process, in the event that Forestry Tasmania reports that it cannot meet contractual requirements from production resources outside the nominated 430,000 hectares, the Governments will undertake the following steps. First, an independent expert will be jointly appointed by the Governments to review scheduling and other relevant data and attempt to reschedule harvesting activities so as to meet the requirements of contracts and maintain the interim protection of the 430,000 hectares. In the event that the independent expert concludes that it is impossible to achieve this through rescheduling on a reasonable commercial basis or through sourcing alternative supplies, the Commonwealth will compensate the contract holder for the value of lost profits and unavoidable costs. Any such costs will be met, in the first instance, from within the \$7 million payment in financial year 2011-12 referred to in Clause 35.
28. Following completion of the Independent verification process under Clause 20, and until their formal protection in accordance with Clause 29, the State will ensure that all areas determined by the independent verification process as being of High Conservation Value and compatible with the guaranteed wood supply in Clause 17 are placed or remain in Informal Reserves and are not used for wood supply.
29. The State will ensure legislative protection of the areas of reserve (from the ENGO-nominated 572,000 hectares) determined by the independent

verification process referred to in Clause 20 above as compatible with the guaranteed timber supply. This protection will be achieved through appropriate forms of land tenure, informed by the Independent Verification Group and compatible with other economic development opportunities, including National Parks and other Formal Reserves in the National Reserve System, and possible nomination of appropriate areas for inclusion in the Tasmanian Wilderness World Heritage Area.

30. The Tasmanian Government will introduce legislation no later than 30 June 2012 into the Parliament to formally protect the areas of reserve in Clause 29 with appropriate land tenure.

31. The Governments expect that Signatories to the Statement of Principles will support the provision of Forest Stewardship Council and/or Australian Forest Standard certification for appropriate remaining forestry activity in Tasmania. Progress towards agreement by Signatories to a process for achieving certification will be considered under Clause 45.

32. The Governments expect that the Triabunna mill will reopen and be operated in accordance with the Statement of Principles. If this does not occur, either Government may request a review of the terms of this Agreement, with a review to occur only if both Governments agree.

33. If legislation to give effect to Clauses 17 and 29 is not in place within three months of its introduction, either Government may request a review of the future funding under this Agreement.

34. The Commonwealth will provide \$43 million to the Tasmanian Government to assist the State to facilitate the implementation of this Agreement. At least \$15 million of this funding will be used by the State to support voluntary compensable exits by saw-millers wishing to exit the industry (as set out in Clause 23), and \$5 million is to be used in accordance with purposes and conditions to be agreed with the Commonwealth to support provision of information and consultation with affected communities.

35. The Commonwealth Government will provide an immediate payment of \$7 million to the Tasmanian Government in financial year 2011-12 to support management of the additional reserves. Following formal legislative protection by the Tasmanian Government of the areas of reserve identified in Clause 29, the Commonwealth will provide \$7 million per financial year, indexed to CPI, with a review of the base funding after 5 years.

36. Prior to formal legislative protection of the areas of reserve identified in Clause 29, and until completion of the independent verification process in accordance with Clause 20, the 430,000 hectares referred to in Clause 25 will be protected under a Conservation Agreement between the State, Forestry Tasmania and the Commonwealth under the *Environment Protection and Biodiversity Conservation Act*, with management of these new areas of reserve by the Forestry Tasmania. Following the completion of the independent verification process in accordance with Clause 20, this initial Conservation Agreement will lapse and all areas determined by the independent verification process for the purposes of Clause 29 will be

protected under a new Conservation Agreement between the State, Forestry Tasmania and the Commonwealth under the *Environment Protection and Biodiversity Conservation Act*, with management of these new areas of reserve by the Forestry Tasmania. This second Conservation Agreement will lapse when these areas of reserve are given formal legislative protection in accordance with Clause 29.

STREAM 3: ECONOMIC DIVERSIFICATION

37. The Regional Development Ministerial Advisory Council recently established by the Hon Simon Crean MP, Minister for Regional Australia, Regional Development and Local Government, and chaired by Mr Bill Kelty AC will assist in the identification and development of regional development opportunities in Tasmania. The initial stages of this process will include consultation with the community and stakeholders to identify the further work and the transition plan required for the successful delivery of the supply and protection commitments formalised through the operation of this agreement, and the identification of other opportunities for regional development. A detailed socio-economic study by Professor Jonathon West will also be undertaken to support the Governments in identifying opportunities.
38. The Commonwealth Government will work in partnership with the Tasmanian Government through a Memorandum of Understanding to be agreed between the Hon Simon Crean MP, Commonwealth Minister for Regional Australia, Regional Development and Local Government and the Hon David O'Byrne MP, Tasmanian Minister for Economic Development to analyse options for economic diversification to support transition to a sustainable Tasmanian economy including through state-wide, place-based support for economic diversification, consistent with the Tasmanian Economic Development Plan, to be released by the end of August 2011.
39. The Governments will develop a process to identify by mid 2012:
 - a. the impacts of forestry adjustment on affected regions, including the scope for alternative sectors and jobs to support regional adjustment;
 - b. progress in implementing Commonwealth and Tasmanian adjustment measures; and
 - c. the need for further regional development assistance.
40. The regional opportunities identified through the processes in Clauses 37 to 39 above will support development by the Governments of options for economic diversification which will include a focus on:
 - a. Skills—to develop and retain specialised skills required to support innovation and future skills needs of a strengthened economic base that builds on national opportunities and supports career paths;
 - b. Business development services—to provide support for businesses to improve innovation and competitiveness;
 - c. The potential for increased value-adding and greater use of plantation timber by the forestry industry;
 - d. Infrastructure investment—to transform supply chains or minor infrastructure investment to support connectivity for selected sectors;

e. Facilitation, research and collaboration – to support improved innovation, competitiveness and productivity.

41. Subject to formal legislative protection by the Tasmanian Government of the areas of reserve identified in Clause 29, the Commonwealth Government will provide \$120 million over a period of 15 years, including an initial payment of \$20 million in 2011-12, to fund regional development projects which meet rigorous criteria for improving the productivity and income-earning capacity of the Tasmanian economy. Any funding provided under this Clause will be repaid by the State to the Commonwealth in the event that the Tasmanian Parliament does not pass legislation to provide the protection referred to in Clause 29. The Governments will work collaboratively and agree on the design, criteria, joint assessment procedures, and monitoring and evaluation of the \$120 million package. Major regional development projects under this fund will be agreed by a joint Ministerial council, comprising the Tasmanian minister responsible for economic development and the Commonwealth minister for regional Australia before funding is provided.

42. The Commonwealth's position is that no Commonwealth funds will be paid to progress the Bell Bay pulp mill project.

Nature of Obligations under this Agreement and relationship to other agreements

43. This Agreement is not intended to create legally enforceable rights and obligations. In the event that any clause of this Agreement exceeds the power of either Government or is unenforceable for any other reason, that clause is to be read as not intending to create legally enforceable rights and obligations.

44. Where Governments have agreed to ensure that certain things occur, this means they will do everything within their legal and other powers to ensure that these things occur.

45. The Governments will ask the Signatories to report annually to both Governments on the durability of, and the Signatories ongoing commitment to, the Agreement. The first report will be required by 30 June 2012. If the report demonstrates that the Agreement is no longer durable, then both Governments will review the terms of the Agreement.

46. This Agreement between the Commonwealth and the State is not expected to have direct implications with respect to the ongoing administration of the Environment Protection and Biodiversity Conservation Act 1999, with the exception of flow on implications that may occur in relation to any amendments required to the Tasmanian Regional Forest Agreement. The State will ensure that Informal Reserves created under Clause 25 of this Agreement are treated consistently with the treatment of Informal Reserves covered by attachment 6 to the Tasmanian Regional Forest Agreement. The governments will consult on the amendments that should be made to the Regional Forest Agreement either during or following the independent verification process, to reflect the terms of this Agreement.

47. The Governments will continue to discuss issues around the treatment of any potential carbon offset opportunities that may arise for Tasmania from the creation of new formal reserves and/or the reduction in annual native forest sawlog production as a result of this Agreement. In particular, the Governments will work together to examine potential opportunities under the Biodiversity Fund arising from increased formal forest reserves.

Reporting

48. The Governments will work together to ensure that there are appropriate mechanisms in place to monitor and publicly report on the implementation of the commitments in this Agreement in consultation with the Signatories to the Statement of Principles.

Data Use and Access

49. The Governments recognise that the implementation and monitoring of this Agreement depends on appropriate mutual access to and accreditation of relevant information, including from Forestry Tasmania, and agree to provide such access and accreditation for the term of this Agreement.

Funding

50. A National Partnership Agreement will be created in addition to this Agreement to facilitate funding from the Commonwealth to the Tasmanian Government for those components of the forestry package that are classified as a payment to the States by the Department of Finance and Deregulation.

Treatment of Funding by the Commonwealth Grants Commission

51. The Commonwealth Government will:
- a. Instruct the Commonwealth Grants Commission to prepare its assessment of per capita relativities for the distribution of the GST revenue pool without reference to the Funding under this Agreement (that is, the Funding will be quarantined); and
 - b. Not reduce funding provided to Tasmania under any other current or future funding agreements, such as Specific Purpose Payments, as a result of the Funding. In agreeing future financial arrangements between the Commonwealth and Tasmania for any purpose, no regard shall be had to the Funding.

Termination

52. With the exception of Clause 53, this Agreement may only be terminated by the Commonwealth with the consent of the State; or by the State with the consent of the Commonwealth; or where the dispute resolution clauses have been observed.

53. This Agreement may be terminated by the Commonwealth, where the State has been given a 30 day period of notice on:
- i. a failure to proclaim the new Formal Reserves in accordance with Clause 30; or

- ii. a failure to use money for the purpose for which it was allocated by the Commonwealth.

54. The provisions of this Clause do not apply if the failure is of a minor nature or rectification is possible and has occurred before the end of the 30 day period.

Duration and Extension of Agreement

55. This Agreement will commence on the date of its execution, and remain in force for 15 years or until its codification within a further agreement under the Tasmanian Regional Forest Agreement.

Cooperation and Response to Requests

56. The Governments agree to work cooperatively to address any matters raised in writing by either of them relating to the interpretation or implementation of this Agreement and undertake to respond to any request within 20 days of its receipt.

Dispute Resolution

57. The Governments agree that if a dispute arises between the Governments it must be resolved expeditiously in accordance with the following:
- When a dispute arises, either Government may serve a notice on the other specifying the nature and substance of the matter or issue in dispute.
 - Within 7 days of the notice being served the Governments must attempt to settle the dispute.
 - Each of the Governments agrees to use its best endeavours to resolve the dispute.

Notices

58. Any notice or other communication to be given or made pursuant to this Agreement shall be in writing and addressed as follows:

The Commonwealth

The Secretary
Department of the Prime Minister and Cabinet
One National Circuit
BARTON ACT 2600

The State

The Secretary
Department of Premier and Cabinet
Level 7
15 Murray Street
HOBART TAS 7000

or in accordance with any other mode of service which may agreed in writing between the Governments.

All other terminology in this agreement is to be interpreted subject to the definitions specified in the Tasmanian Regional Forest Agreement.

.....
Julla Gillard MP
Prime Minister

.....
Lara Giddings
Premier

Launceston
7 August 2011

Definitions:

In this Agreement unless the contrary intention appears:

"Agreement" means all parts of this Agreement between the Commonwealth and the State and includes the Attachments to this Agreement.

"Eligible business" for the purposes of Clause 12 means a business operating in the forestry industry in Tasmania which has made workers redundant as a result of the decline in the native forest industry. A business is eligible once it has been confirmed by the Commonwealth Department of Education, Employment and Workplace Relations.

"ENGOS" means environment non government organisations which are signatories to the Statement of Principles, being The Wilderness Society, Australian Conservation Foundation, and Environment Tasmania; unless otherwise specified.

"Formal Reserve System" means the system of Formal Reserves in Tasmania which are equivalent to IUCN protected area management categories I, II, III, IV or VI, and as further defined in the Tasmanian Regional Forest Agreement.

"High Conservation Value (HCV) Forests" means those forest areas identified as High Conservation value by the Signatories to the Statement of Principles.

"Independent Verification Group" means a group of experts (including an expert on geology/mineralogy) jointly nominated by, but independent of, both Governments and all other stakeholders and led by Professor Jonathan West to provide advice to the Prime Minister and the Tasmanian Premier on the results of an independent verification process to be undertaken in accordance with Terms of Reference jointly agreed by the Governments.

"Intergovernmental Taskforce" means a high level group of senior officials nominated by each government to oversee implementation of this Agreement.

"Native Forest Industry Workers" means individuals employed predominantly in the harvest, haulage or processing of wood from Tasmanian native forests.

"Reference Group of Signatories" means a group of representatives nominated by the Signatories which will be consulted by the Intergovernmental Taskforce on matters including the modelling of options and outcomes under the independent verification process, and the transition plan required for successful delivery of the wood supply and conservation commitment set out in the Agreement.

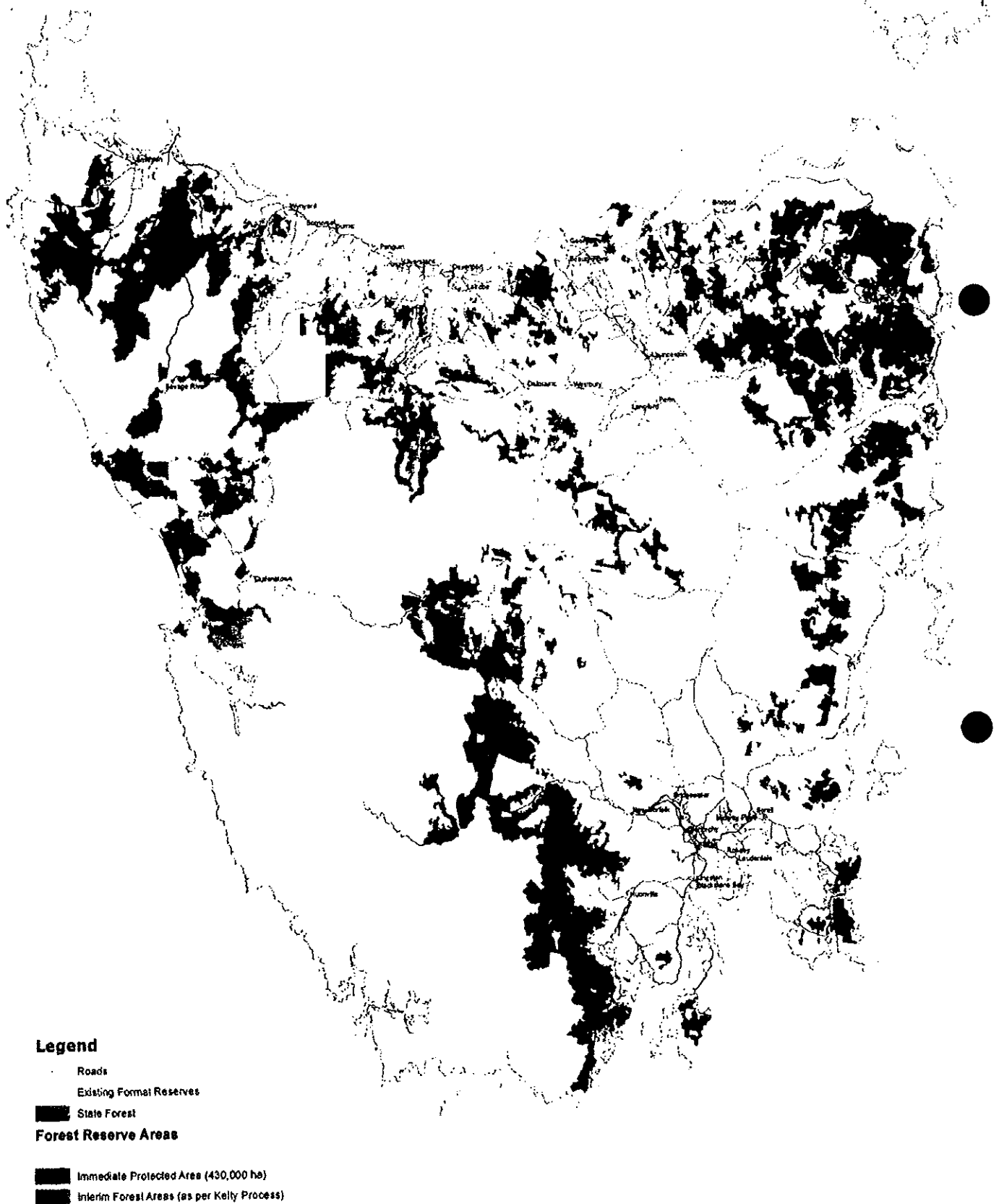
"Regional Forest Agreement" means the Tasmanian Regional Forest Agreement signed by the Commonwealth and the State in 1997, and as varied on 19 July 2001 and 23 February 2007, and the Supplementary Agreement signed on 13 May 2005.

"Signatories" means all of those organisations which signed the Statement of Principles on 14 October 2010.

"Statement of Principles" means the Tasmanian Forests Statement of Principles to Lead to an Agreement signed by forest industry, union and environment organisations on 14 October 2010.

"Tasmanian forestry industry" for the purposes of this Agreement means those businesses and workers that depend on the growing, managing or processing of trees or wood products from native forests and plantations in Tasmania.

Tasmanian Forest Agreement - Forest Reserve Map





Deed

Dated

**Forestry Tasmania
(Forestry Tasmania)**

and

**Gunns Limited
(Gunns)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: Deed of Release Between Gunns and
Forestry (Clean)

Contents

1	Definitions and interpretation	3
1.1	Definitions	3
1.2	Interpretation	4
1.3	No contra proferentum	5
1.4	Headings	5
2	Condition	5
2.1	Condition	5
2.2	Termination	5
3	Termination of Wood Supply Agreements	6
4	Releases	6
4.1	Release by Forestry Tasmania	6
4.2	Release by Gunns	6
5	Excluded Claims	6
6	Interdependent obligations	6
7	Representation and warranties	7
7.1	Gunns' warranties	7
8	Notices	7
8.1	Method of giving Notices	7
8.2	Time of receipt of Notices	8
8.3	Address for Notices	8
9	Law and jurisdiction	8
9.1	Governing Law	8
9.2	Submission to jurisdiction	8
10	General	8
10.1	Waiver	8
10.2	Amendment	9
10.3	Severability	9
10.4	Further assurance	9
10.5	Counterparts	9
Annexure "A"		11
Forestry Tasmania Release Deed		11
Annexure "B"		12
Gunns Release Deed		12

Deed

Details

Parties		Forestry Tasmania, Gunns
Forestry Tasmania	Name	Forestry Tasmania (being the body corporate established pursuant to section 6 of the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) 6235 8223
	Attention	
Gunns	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7310
	Facsimile	(03) [##insert facsimile number##]
	Attention	Managing Director
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: (i) that Gunns by letter dated the 18 th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.

D Particularly Gunns claims:

- (i) that its letter dated the 18th day of April 2011 was not legally effective to terminate the Wood Supply Agreements;
- (ii) that Forestry Tasmania is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement and as a consequence Gunns has incurred loss and damage which is claimed from Forestry Tasmania.

E Forestry Tasmania and Gunns each deny the others claims.

F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18th day of April 2011 was legally effective to terminate the Wood Supply Agreements then Forestry Tasmania is legally obliged to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of Pulpwood (as defined in Wood Supply Agreement 917) and Supply Products (as defined in Wood Supply Agreement 918).

G Gunns has indicated that it wishes to exit native forest logging operations in Tasmania.

H The parties have entered into this Deed for the purpose of:

- (i) except for the Excluded Claims extinguishing on and from the Settlement Date all Claims which each party has against the other in connection with the Wood Supply Agreements and the China Sale Agreement; and
- (ii) terminating the Wood Supply Agreements and the China Sale Agreement on the Settlement Date.

Date

See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

China Sale Agreement means the agreement known as 'the China Sale Agreement' constituted by the letter dated 9 June 2010 from Forestry Tasmania to Gunns, and countersigned by Greg L'Estrange as an authorised representative of Gunns.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

- (a) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 917;
- (b) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 918;
- (c) a claim under any indemnity in the China Sale Agreement; or
- (d) rights arising out of clause 16 of the Wood Supply Agreements.

Forestry Tasmania means Forestry Tasmania ABN 91 628 769 359.

Forestry Tasmania Release Deed means the Deed of Release to be entered into between the Crown and Forestry Tasmania in the form annexed to this Deed marked "A".

Gunns Release Deed means the Deed of Release to be entered into between the Crown and Forestry Tasmania in the form annexed to this Deed marked "B".

Rights includes a right, a power, a remedy, a discretion or an authority.

Settlement Date means the day of 2011 or such other date agreed to in writing by both parties.

Wood Supply Agreements mean Wood Supply Agreement 917 and Wood Supply Agreement 918.

Wood Supply Agreement 917 means contract for sale No. 917 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'LONG TERM PULPWOOD SUPPLY AGREEMENT'.

Wood Supply Agreement 918 means contract for sale No. 918 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'SAWLOG AND OTHER PRODUCTS SUPPLY AGREEMENT'.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to this Deed, or any document referred to in this Deed or another document, includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) **person** includes a firm, a body corporate, an unincorporated association, a responsible authority, or other entity, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (f) a reference to writing includes a reference to printing, typing and each other method of producing words, figures or symbols in visible form;
- (g) a reference to a body (other than a party to this Deed) whether or not it is a statutory body:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to any other body,refers to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them, jointly and severally;
- (i) words importing any gender include all other genders, as applicable;
- (j) a reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (k) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;

- (l) a reference to a clause, schedule or appendix is to a clause, schedule or appendix in or to this Deed;
- (m) mentioning any thing after the words **include, included or including** does not limit the meaning of any thing mentioned before those words;
- (n) a reference to a day must be interpreted as the period of time in the Crown commencing at midnight and ending 24 hours later;
- (o) reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in Hobart, Tasmania, even if the obligation is to be performed elsewhere;
- (p) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning; and
- (q) references to '\$' and 'dollars' are to Australian dollars.

1.3 No contra proferentum

In the interpretation of this Deed, no rule of construction will apply to disadvantage a party because that party proposed a provision of this Deed or the Deed itself.

1.4 Headings

Headings are included for convenience only and do not affect the construction or interpretation of this Deed.

2 Condition

2.1 Condition

Each party's obligations under clauses 3 and 4 of this Deed are subject to the conditions precedent that on or before the Settlement Date:

- (a) the Crown and Gunns enter into the Gunns Release Deed; and
- (b) the Crown and Forestry Tasmania enter into the Forestry Tasmania Release Deed.

2.2 Termination

- (a) Either party may elect to terminate this Deed by notice in writing to the other if either of the conditions in clause 2.1 is not satisfied on or before the Settlement Date.
- (b) If this Deed is terminated pursuant to clause 2.2(a) then:
 - (i) each party will have the same Rights and obligations that it would have had as if the parties had never entered into this Deed; and

- (ii) neither party will have a Claim against the other in respect of the subject matter of this Deed.

3 Termination of Wood Supply Agreements

Subject to satisfaction or waiver of the conditions precedent in clause 2.1, on the Settlement Date:

- (a) to the extent that each of the Wood Supply Agreements and the China Sale Agreement are otherwise subsisting as at that date, each of the Wood Supply Agreements and the China Sale Agreement are terminated; and
- (b) each party is released from its obligations and liabilities under each of the Wood Supply Agreements and the China Sale Agreement which relate to any period before, on or after the Settlement Date.

4 Releases

4.1 Release by Forestry Tasmania

Subject to satisfaction or waiver of the conditions precedent in clause 2.1, on the Settlement Date, except for the Excluded Claims, Forestry Tasmania releases Gunns from all Claims that Forestry Tasmania now has or may in the future have against Gunns in connection with or arising out of the Wood Supply Agreements and the China Sale Agreement and/or any breach of them by Gunns.

4.2 Release by Gunns

Subject to satisfaction or waiver of the conditions precedent in clause 2.1, on the Settlement Date, except for the Excluded Claims, Gunns releases Forestry Tasmania from all Claims that Gunns now has or may in the future have against Forestry Tasmania in connection with or arising out of the Wood Supply Agreements and the China Sale Agreement and/or any breach of them by Forestry Tasmania.

5 Excluded Claims

Nothing in this Deed affects any Rights of a party (including any Rights of that party against the other party) in connection with any Excluded Claims.

6 Interdependent obligations

The obligations of each party under clauses 3 and 4 are to be performed on the Settlement Date interdependent with the obligations of the other party under those clauses. Accordingly, a party (the First Party) is not required to perform its obligations under those clauses on the Settlement Date if the other party is unable or refuses to perform its obligations under those clauses on the Settlement Date and the inability or refusal is not attributable to any breach of this Deed by the First Party.

7 Representation and warranties

7.1 Gunns' warranties

Gunns represents and warrants to the Crown that:

- (a) **(incorporation):** Gunns is a corporation duly incorporated and existing under the law of its place of incorporation and has the corporate power to enter into and perform its obligations;
- (b) **(legal disability):** Gunns is not an externally administered body corporate (within the meaning of section 9 of the *Corporations Act 2001* (Cwlth));
- (c) **(controllers):** no controller (within the meaning of section 9 of the *Corporations Act 2001* (Cwlth)) has been appointed over any of Gunns assets and no such appointment has been threatened;
- (d) **(solvency):** Gunns is solvent (within the meaning of section 9 of the *Corporations Act 2001* (Cwlth));
- (e) **(authorisations):** all necessary action has been taken by Gunns to authorise the execution and performance of its obligations under this Deed;
- (f) **(transaction permitted):** the performance by Gunns of its obligations under this Deed will not breach in any respect any provision of:
 - (i) any applicable law or an order or ruling of a Government Body;
 - (ii) any agreement binding on Gunns; or
 - (iii) the Gunns' constitution.

8 Notices

8.1 Method of giving Notices

A notice, consent, approval, application or other communication (each a **Notice**) under this Deed must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (a) sent by pre-paid mail; or
- (b) sent by facsimile,

to that person's address or facsimile number (as applicable).

For the avoidance of doubt, no Notice may be given either orally or by email.

8.2 Time of receipt of Notices

A Notice given to a person is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the day of actual delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day; and
- (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day.

8.3 Address for Notices

For the purposes of this clause 8, a person (the **sender**) may take the address and facsimile number of another person (the **recipient**) to be:

- (a) the address and number set out in the Details above; or
- (b) if the recipient has notified the sender of another address or facsimile number, the last address or facsimile number so notified to the sender.

9 Law and jurisdiction

9.1 Governing Law

This Deed is governed by the Law of Tasmania.

9.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Tasmania and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

10 General

10.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver and such a waiver is effective only in the specific instance and for the specific purpose for which it was given.

10.2 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

10.3 Severability

If any provision of this Deed is or at any time becomes illegal, prohibited, void or unenforceable for any reason in any jurisdiction then, as to that jurisdiction, that provision is severed from this Deed and the remaining provisions of this Deed:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Deed.

10.4 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts as reasonably required of it or them and must carry out and give full effect to this Deed and the Rights and obligations of the parties under it.

10.5 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) A party may execute this Deed by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.

Executed as a deed

Signing page

Dated:

**The common seal of
Forestry Tasmania**
was hereunto affixed by the authority of
its Board in the presence of:

Signature

Name and position held (print)

Signature

Name and position held (print)

**The common seal of
Gunns Limited**
was hereunto affixed in accordance with
section 127 of the *Corporations Act*
2001 (Cwlth):

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure "A"

Forestry Tasmania Release Deed

Annexure "B"

Gunns Release Deed



Deed

Dated

**The Crown in Right of Tasmania
(Crown)**

and

**Gunns Limited
(Gunns)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: Deed of Release Between Crown and
Gunns (Clean)

Contents

1	Definitions and Interpretation	4
1.1	Definitions	4
1.2	Interpretation	5
1.3	No contra proferentum	6
1.4	Headings	6
2	Condition	7
2.1	Condition	7
2.2	Termination	7
3	Payment	7
4	Excluded Claims	8
5	Assignment	8
6	GST	8
7	Representation and warranties	9
7.1	Gunns' warranties	9
8	Notices	9
8.1	Method of giving Notices	9
8.2	Time of receipt of Notices	10
8.3	Address for Notices	10
9	Law and jurisdiction	10
9.1	Governing Law	10
9.2	Submission to jurisdiction	10
10	General	10
10.1	Waiver	10
10.2	Amendment	11
10.3	Severability	11
10.4	Further assurance	11
10.5	Counterparts	11
	Annexure "A"	13
	Tasmanian Forests Intergovernmental Agreement	13

Deed

Details

Parties	Crown, Gunns	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) [##insert facsimile number##]
	Attention	Secretary
Gunns	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7310
	Facsimile	(03) [##insert facsimile number##]
	Attention	Managing Director
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: (i) that Gunns by letter dated the 18 th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
	D	Particularly Gunns claims:

- (i) that its letter dated the 18th day of April 2011 was not legally effective to terminate the Wood Supply Agreements;
- (ii) that Forestry Tasmania is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement and as a consequence Gunns has incurred loss and damage which is claimed from Forestry Tasmania.

E Forestry Tasmania and Gunns each deny the others claims.

F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18th day of April 2011 was legally effective to terminate the Wood Supply Agreements then Forestry Tasmania is legally obliged to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of Pulpwood (as defined in Wood Supply Agreement 917) and Supply Products (as defined in Wood Supply Agreement 918).

G Gunns has indicated that it wishes to exit native forest logging operations in Tasmania.

H The Crown has entered into the Tasmanian Forests Intergovernmental Agreement with the Commonwealth.

I Under the Tasmanian Forests Intergovernmental Agreement the Commonwealth has agreed to provide funding to the Crown for the purposes of enabling the creation of the Reserves.

J The Reserves cannot be created unless:

- (i) there is certainty that Forestry Tasmania is not legally obligated to make any further supplies of wood to Gunns pursuant to the Wood Supply Agreements and the China Sale Agreement; or
- (ii) if the Wood Supply Agreements have been terminated, there is legal certainty that Forestry Tasmania is not under a legal obligation to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of pulpwood (as defined in Wood Supply Agreement 917) and the Supply Products (as defined in Wood Supply Agreement 918).

K By virtue of clause 22 of the Tasmanian Forests Intergovernmental Agreement the Crown is obliged to ensure that a sufficient volume of native forest sawlog supply is retired to achieve the objects set out in clauses 17 and 29 of that Agreement.

L The parties have entered into this Deed to facilitate the requirements of the Tasmanian Forests Intergovernmental

Agreement by ensuring the termination of the Wood Supply Agreements and the China Sale Agreement and, except for Excluded Claims, to resolve all claims Gunns has against Forestry Tasmania arising out of the Wood Supply Agreements and the China Sale Agreement.

Date

See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

China Sale Agreement means the agreement known as 'the China Sale Agreement' constituted by the letter dated 9 June 2010 from Forestry Tasmania to Gunns, and countersigned by Greg L'Estrange as an authorised representative of Gunns.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

- (a) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 917;
- (b) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 918;
- (c) a claim under any indemnity in the China Sale Agreement; or
- (d) rights arising out of clause 16 of the Wood Supply Agreements.

Forestry Tasmania means Forestry Tasmania ABN 91 628 769 359.

Reserves means the reserves which are to be created pursuant to the Tasmanian Forests Intergovernmental Agreement.

Rights includes a right, a power, a remedy, a discretion or an authority.

Settlement Date means the day of 2011 or such other date agreed to in writing by both parties.

Tasmanian Forests Intergovernmental Agreement means the agreement made between the Commonwealth and the Crown on the 7th day of August 2011, a copy of which is annexed to this Deed marked "A".

Tasmanian Forests Statement of Principles means the principles agreed by forest industries stakeholders as a basis for agreement on the restructure of the

Tasmanian forest industry as presented to the Tasmanian Government in October 2010.

Triabunna Agreement means the Agreement for Sale dated around mid-July 2011 whereby Gunns and others agreed to sell the Triabunna Mill to Jan Cameron and Graeme Wood (or a company or companies associated with or controlled by them).

Triabunna Mill means the woodchip mill including the freehold real estate, plant and equipment and other assets necessary for its continued operation at 555 Freestone Road, Triabunna.

Wood Supply Agreements mean Wood Supply Agreement 917 and Wood Supply Agreement 918.

Wood Supply Agreement 917 means contract for sale No. 917 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'LONG TERM PULPWOOD SUPPLY AGREEMENT'.

Wood Supply Agreement 918 means contract for sale No. 918 dated 20 December 2007 made between Forestry Tasmania and Gunns and titled 'SAWLOG AND OTHER PRODUCTS SUPPLY AGREEMENT'.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to this Deed, or any document referred to in this Deed or another document, includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) **person** includes a firm, a body corporate, an unincorporated association, a responsible authority, or other entity, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (f) a reference to writing includes a reference to printing, typing and each other method of producing words, figures or symbols in visible form;
- (g) a reference to a body (other than a party to this Deed) whether or not it is a statutory body:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to any other body,

refers to the body which replaces it or which substantially succeeds to its powers or functions;

- (h) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them, jointly and severally;
- (i) words importing any gender include all other genders, as applicable;
- (j) a reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (k) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;
- (l) a reference to a clause, schedule or appendix is to a clause, schedule or appendix in or to this Deed;
- (m) mentioning any thing after the words **include**, **included** or **including** does not limit the meaning of any thing mentioned before those words;
- (n) a reference to a day must be interpreted as the period of time in the Crown commencing at midnight and ending 24 hours later;
- (o) reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in Hobart, Tasmania, even if the obligation is to be performed elsewhere;
- (p) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning; and
- (q) references to '\$' and 'dollars' are to Australian dollars.

1.3 No contra proferentum

In the interpretation of this Deed, no rule of construction will apply to disadvantage a party because that party proposed a provision of this Deed or the Deed itself.

1.4 Headings

Headings are included for convenience only and do not affect the construction or interpretation of this Deed.

1.5 Defined terms

Terms used in this Deed and not defined herein and which are defined in the Tasmanian Forests Intergovernmental Agreement have the meaning given to them in the Tasmanian Forests Intergovernmental Agreement.

2 Condition

2.1 Condition

Each party's obligations under clauses 3 and 5 of this Deed are subject to the conditions precedent that on or before the Settlement Date the Crown enter into a deed with Forestry Tasmania whereby:

- (a) Forestry Tasmania releases Gunns in the same terms as clause 3(a) of this Deed;
- (b) Forestry Tasmania agrees to the termination of and to treat as terminated the Wood Supply Agreements and the China Sale Agreement in the terms of clause 3(b) of this Deed;
- (c) Forestry Tasmania releases Gunns from all its obligations and liabilities under the Wood Supply Agreements and the China Sale Agreement in the terms of clause 3(c) of this Deed; and
- (d) Forestry Tasmania agrees to assign the residual rights and obligations under the Wood Supply Agreements and the China Sale Agreement in the same terms as clause 5 of this Deed.

2.2 Termination

- (a) Either party may elect to terminate this Deed by notice in writing to the other if the condition in clause 2.1 is not satisfied on or before the Settlement Date.
- (b) If this Deed is terminated pursuant to clause 2.2(a) then:
 - (i) each party will have the same Rights and obligations that it would have had as if the parties had never entered into this Deed; and
 - (ii) neither party will have a Claim against the other in respect of the subject matter of this Deed.

3 Payment

In consideration of the payment on the Settlement Date by the Crown to Gunns of the sum of \$12,650,000.00 (GST inclusive):

- (a) Gunns agrees to release Forestry Tasmania from all Claims, except for the Excluded Claims, that Gunns now has, or may in the future have, against Forestry Tasmania in connection with or arising out of the Wood Supply Agreements and the China Sale Agreement including any breach of the same by Forestry Tasmania;
- (b) Gunns agrees to the termination of and to treat as terminated the Wood Supply Agreements and the China Sale Agreement as at the Settlement Date;

- (c) Gunns agrees to release Forestry Tasmania from its obligations and liabilities under the Wood Supply Agreements and the China Sale Agreement whether arising before on or after the Settlement Date;
- (d) Gunns must waive or confirm as satisfied, effective as at the Settlement Date, all conditions in the Triabunna Agreement which currently preclude or might preclude in the future the reopening and continued operation of the Triabunna Mill particularly but without limitation any condition regarding implementation of the Tasmanian Forests Statement of Principles or like condition;
- (e) Gunns must do everything and anything required of it under the Triabunna Agreement to enable the reopening and continued operation of the Triabunna Mill; and
- (f) Gunns must cause any related party of it to, as may be required under the Triabunna Agreement, also waive or confirm as satisfied any condition in the terms of clause 3(d) and to do anything required of it to enable the reopening and continued operation of the Triabunna Mill.

4 Excluded Claims

Nothing in this Deed affects any Rights of a party (including any Rights of that party against the other party) in connection with any Excluded Claims.

5 Assignment

- (a) Subject to clause 4, to the extent that the Wood Supply Agreements and the China Sale Agreement may subsist or that there are continuing Rights and obligations of Gunns arising out of those Agreements after the Settlement Date then Gunns assigns to the Crown absolutely the benefit of those Agreements.
- (b) Gunns consents to the assignment of the Wood Supply Agreements and the China Sale Agreement by Forestry Tasmania to the Crown.

6 GST

- (a) The consideration payable by the Crown to Gunns as expressed in this Deed is GST inclusive.
- (b) On the Settlement Date Gunns must provide to the Crown a valid tax invoice for the consideration.
- (c) In this clause 6 unless the context otherwise requires:
 - (i) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) and the related imposition Acts of the Commonwealth; and

- (ii) expressions defined in the GST Act have the same meaning when used in this clause 6.

7 Representation and warranties

7.1 Gunns' warranties

Gunns represents and warrants to the Crown that:

- (a) **(incorporation)**: Gunns is a corporation duly incorporated and existing under the law of its place of incorporation and has the corporate power to enter into and perform its obligations;
- (b) **(legal disability)**: Gunns is not an externally administered body corporate (within the meaning of section 9 of the *Corporations Act 2001*(Cwlth));
- (c) **(controllers)**: no controller (within the meaning of section 9 of the *Corporations Act 2001* (Cwlth)) has been appointed over any of Gunns assets and no such appointment has been threatened;
- (d) **(solvency)**: Gunns is solvent (within the meaning of section 9 of the *Corporations Act 2001* (Cwlth));
- (e) **(authorisations)**: all necessary action has been taken by Gunns to authorise the execution and performance of its obligations under this Deed;
- (f) **(transaction permitted)**: the performance by Gunns of its obligations under this Deed will not breach in any respect any provision of:
 - (i) any applicable law or an order or ruling of a Government Body;
 - (ii) any agreement binding on Gunns; or
 - (iii) the Gunns' constitution.

8 Notices

8.1 Method of giving Notices

A notice, consent, approval, application or other communication (each a **Notice**) under this Deed must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (a) sent by pre-paid mail; or
- (b) sent by facsimile,

to that person's address or facsimile number (as applicable).

For the avoidance of doubt, no Notice may be given either orally or by email.

8.2 Time of receipt of Notices

A Notice given to a person is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the day of actual delivery if delivered after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day; and
- (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed after 9.00am and before 4.00pm on a Business Day, otherwise on the next Business Day.

8.3 Address for Notices

For the purposes of this clause 8, a person (the **sender**) may take the address and facsimile number of another person (the **recipient**) to be:

- (a) the address and number set out in the Details above; or
- (b) if the recipient has notified the sender of another address or facsimile number, the last address or facsimile number so notified to the sender.

9 Law and jurisdiction

9.1 Governing Law

This Deed is governed by the Law of Tasmania.

9.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Tasmania and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

10 General

10.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver and such a waiver is effective only in the specific instance and for the specific purpose for which it was given.

10.2 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

10.3 Severability

If any provision of this Deed is or at any time becomes illegal, prohibited, void or unenforceable for any reason in any jurisdiction then, as to that jurisdiction, that provision is severed from this Deed and the remaining provisions of this Deed:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Deed.

10.4 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts as reasonably required of it or them and must carry out and give full effect to this Deed and the Rights and obligations of the parties under it.

10.5 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) A party may execute this Deed by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.

Executed as a deed

Signing page

Dated:

**Signed for and on behalf of The
Crown in Right of Tasmania by
The Honourable Larissa Tahireh
Giddings MP, Premier of Tasmania
in the presence of:**

Signature ←

Signature of witness ←

Name of witness (print)

Address of witness

Occupation

**The common seal of
Gunns Limited
was hereunto affixed in accordance with
section 127 of the *Corporations Act*
2001 (Cwth):**

Signature of director ←

Signature of director/company secretary
(Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

Annexure "A"

Tasmanian Forests Intergovernmental Agreement