



## 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  
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## Deed

## Details

Parties		
<b>Forestry Tasmania, Gunns</b>		
<b>Forestry Tasmania</b>	Name	<b>Forestry Tasmania</b> (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	
<b>Gunns</b>		
	Name	<b>Gunns Limited</b>
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7250
	Facsimile	(03) 6335 5498
	Attention	Managing Director
<b>Recitals</b>		
	<b>A</b>	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	<b>B</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.
	<b>C</b>	Particularly Forestry Tasmania claims: <ul style="list-style-type: none"> <li>(i) that Gunns by letter dated the 18<sup>th</sup> day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15<sup>th</sup> day of October 2011;</li> <li>(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.</li> </ul>

**D** Particularly Gunns claims:

- (i) that its letter dated the 18<sup>th</sup> 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 other's claims.**F** Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18<sup>th</sup> 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 including without limitation anything that arises out of Schedule 12 of the Wood Supply Agreements or the China Sale Agreement.

**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 Schedule 13 of each 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 Gunns 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 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.

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## **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.



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## 7 Representation and warranties

### 7.1 Gunns' warranties

Gunns represents and warrants to Forestry Tasmania 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.

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# 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

To: Wayne Chapman <Wayne.Chapman@gunns.com.au>  
 cc:  
 From: Tony Ferrall/FSq/TreasFin  
 Date: 13/09/2011 04:47:31 PM  
 Subject:  Re: Tony, Could you confirm your address to mail (express post) the executed docs. will send tonight. rgds Wayne

Wayne

Pls send to

The Treasury Building  
 21 Murray St  
 Hobart TAS 7000

Refer: Tony Ferrall

Thanks

Tony

Tony Ferrall  
 Deputy Secretary  
 Department of Treasury and Finance

Telephone (03) 6233 2132  
 Facsimile (03) 6233 5699  
 Mobile 0419 329 862  
 Wayne Chapman <Wayne.Chapman@gunns.com.au>

Wayne Chapman  
 <Wayne.Chapman@gunns.com.au>

13/09/2011 04:34 PM

To Tony.Ferrall@treasury.tas.gov.au  
 <Tony.Ferrall@treasury.tas.gov.au>

cc

Subject Tony, Could you confirm your address to mail (express post) the executed docs. will send tonight. rgds Wayne

**Wayne Chapman**  
**Company Secretary**

78 Lindsay Street  
 LAUNCESTON Tas 7250 ☎ 03 6335 5491  
 ☎ 03 6335 5201 switch ☒ wayne.chapman@gunns.com.au  
 ☎ 03 6335 5224 direct ☒ www.gunns.com.au

**Making Sustainability Our Business**



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**Thank You.**

---



## Office of the Premier

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WITHOUT PREJUDICE



Tasmania

12 SEP 2011

Mr G L'Estrange  
Managing Director  
Gunns Limited  
78 Lindsay Street  
LAUNCESTON TAS 7250

Dear Mr L'Estrange

I refer to my letter of 26 August 2011 regarding the Forestry Statement of Principles process.

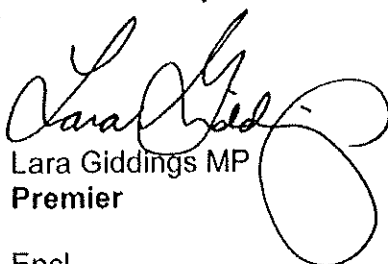
The State has reviewed its previous offer and in accordance with clauses 22 and 34 of the TFA, the State is offering to pay Gunns Limited an amount of \$23 million (excluding GST) in full and final settlement of all rights and obligations under contracts 917 and 918. All other terms and conditions of the offer detailed in my previous correspondence remain unchanged.

I attach two Deeds of Release for your consideration. The first is between the Crown and Gunns and describes in detail the conditions required by the State in return for this payment. The second is between Forestry Tasmania and Gunns and terminates the relevant agreements between the two parties and any rights or obligations ascribed to them. A pre-condition of the offer is that the State will also procure, by agreement with Forestry Tasmania, the release of Gunns from any debt or right or obligation under contracts 917 and 918 and the China Sale Agreement, to Forestry Tasmania.

A copy of the Deed of Release between the Crown and Forestry Tasmania has also been attached for your information.

I would be grateful if you would indicate your acceptance of this offer by signing the attached Deeds of Release by 13 September 2011.

Yours sincerely



Lara Giddings MP  
Premier

Encl



## Office of the Premier

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Ph +61 3 6233 3464 Fax +61 3 6234 1572

Email [Premier@dpac.tas.gov.au](mailto:Premier@dpac.tas.gov.au) Web [www.premier.tas.gov.au](http://www.premier.tas.gov.au)

WITHOUT PREJUDICE



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

Dear Mr Kloeden

I refer to my letter of 26 August 2011 regarding the Forestry Statement of Principles process.

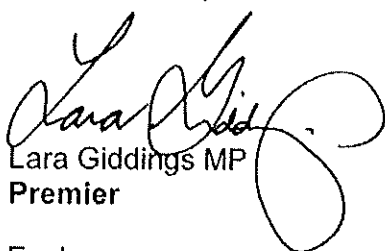
As you would be aware, a pre-condition of the offer made to Forestry Tasmania was the agreement, by Gunns Limited, to an offer by the State in settlement of all rights and obligations under Contracts 917 and 918.

This offer was rejected by Gunns Limited and the State has subsequently revised its previous offer to Gunns Limited. Notwithstanding the revised offer to Gunns Limited, the State maintains its original offer to Forestry Tasmania on the same terms and conditions outlined in my letter of 26 August 2011.

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

I would be grateful if you would indicate your acceptance of this offer by signing the attached Deeds of Release by 13 September 2011.

Yours sincerely



Lara Giddings MP  
Premier

Encl



- The Commonwealth and State signed the TFA IGA on Sunday 7 August 2011.
- The key objectives of the IGA are to:
  - assist workers and contractors affected by the reduction in the native forest industry;
  - enable certain high conservation value areas to be considered for future reserves; and
  - provide certainty for the industry that remains, whose contractual entitlements are to be honoured.
- The key impediment to the second of these objectives is a set of contractual and legal issues, and disputes over payments, between Forestry Tasmania and Gunns.
- The IGA recognises these and refers to the need to resolve them - and provides financial capacity to do so.
- Once the IGA was signed, advice was sought from Crown Law and Treasury on the best way to give effect to this.
- Treasury advice was based on the legal advice, the provisions of the IGA and other relevant factors, such as the urgency of certain events.
- The Government accepted this advice but before it was put into effect, sought a probity review to be conducted. This was sought due to:
  - the complex legal and commercial issues which required resolution; and
  - the need for the information and documents underpinning the process to remain confidential due to;
    - legal privilege; and
    - the fact that supporting documentation was provided in confidence and related to the business affairs of third parties.
- Wise Lord and Ferguson was appointed on 17 August to conduct a review of the process for determining the recommended position of the State and settlements to be put to Gunns Limited and Forestry Tasmania under the Tasmanian Forests Intergovernmental Agreement.
- The scope of the engagement is detailed in the initial report from Wise Lord and Ferguson, but it focussed on:
  - The advice provided by Treasury to the Government regarding options for resolving the issues;
  - The legal advice provided by the Crown Solicitor and Solicitor-General in relation to the matters; and

- The appropriateness of the Government's proposed offer to both Gunns Limited and Forestry Tasmania.
- Wise Lord and Ferguson is also required to review the final agreements entered into by the State; Gunns Limited and Forestry Tasmania. This component of the Review will be finalised by Wise Lord and Ferguson over the next couple of days.
- Wise Lord and Ferguson was provided with access to all documentation relating to this matter, including:
  - Correspondence between the parties detailing the nature of the disputed issues;
  - Internal file notes, emails and Minutes and briefings provided to the Government;
  - Advice from the Solicitor General and the Crown Solicitor;
  - Draft Agreements between the Crown; Forestry and Gunns Limited.
- Wise Lord and Ferguson also interviewed relevant parties within Government, including the Secretaries of Treasury and Premier and Cabinet; the Solicitor General and the Acting Crown Solicitor.
- The key conclusions reached by Wise Lord and Ferguson in its first report were:
  - The legal opinions identify that if a negotiated settlement was not reached between the parties there would be a protracted and expensive legal dispute which would prevent the Intergovernmental Agreement proceeding;
  - The Intergovernmental Agreement provided appropriate mechanisms to resolve the issues between Gunns Limited and Forestry Tasmania;
  - The process through which the Secretaries of Treasury and Premier and Cabinet reviewed and concluded on the transactions was guided by and is consistent with the:
    - Heads of Agreement;
    - Intergovernmental Agreement; and
    - Legal advice provide by the Crown Solicitor and the Solicitor-General.
  - Wise Lord and Ferguson concluded that the recommended approach was the only one which would give finality to the matter and enable Government to give effect to the Intergovernmental Agreement.
- Gunns Limited rejected the offer made by the State and provided advice to this effect on 2 September 2011.
- Between 2 and 9 September the State held further discussions and negotiations with Gunns Limited and Forestry Tasmania.

- Following extensive discussions with the Commonwealth, on 9 September the State made a further offer to Gunns Limited and Forestry Tasmania.
- Wise Lord and Ferguson reviewed the documentation related to the subsequent discussion and negotiations and concluded that:
  - The process was a continuation of the process considered in its previous report; and that it was consistent with:
    - The Heads of Agreement;
    - The Intergovernmental Agreement; and
    - Legal advice provided by the Crown Solicitor and the Solicitor General
- Wise Lord and Ferguson is now required to review the final agreements between the Crown, Forestry Tasmania and Gunns Limited and assure that the final agreements are consistent with their previous findings.

Clearance Sheet
-----------------

**Minister:** Lara Giddings MP  
Treasurer

**Subject:** Question Without Notice - Forestry Tasmania - Gunns  
Debts

Cleared by:

---

Tony Ferrall  
**ACTING SECRETARY**

**Date:** September 2011

**Prepared/QA:** SC/RS

**Contact Officer:** Richard Sulikowski  
Director  
Shareholder Policy and Markets  
Branch  
**Phone:** (03) 6233 2600

To: Tony.Ferrall@treasury.tas.gov.au  
cc:  
From: danny.mccarthy@wlf.com.au  
Date: 19/09/2011 03:32:06 PM  
Subject: IGA Gunns

Tony

Please find attached my final report.

*(See attached file: 20110919152231141.pdf)*

Regards

Danny

---

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19 September 2011

**Wise Lord & Ferguson**



*advice to advantage*  
**Chartered Accountants**

Mr T Ferrall  
Deputy Secretary  
Department of Treasury and Finance  
21 Murray Street  
HOBART TAS 7000

Dear Sir

Further to your email of 15 September 2011 in which you confirmed that Gunns Limited and Forestry Tasmania had accepted the offer made by the State in respect of the negotiated settlement I advise as follows.

I have reviewed the following signed documents:

- Deed between The Crown in Right of Tasmania and Gunns Limited.
- Deed between The Crown in Right of Tasmania and Forestry Tasmania. And
- Deed between Forestry Tasmania and Gunns Limited.

These documents are essentially the same as draft documents previously provided to me and accurately reflect the outcomes referred to in my letter of 13 September 2011.

I would be pleased to discuss any of the above with you.

Yours faithfully

**D J MCCARTHY**  
PARTNER  
**WISE LORD & FERGUSON**  
CHARTERED ACCOUNTANTS



1st Floor 160 Collins Street Hobart TAS 7000 GPO Box 1083 Hobart TAS 7001  
Tel: (03) 6223 6155 Fax: (03) 6223 8993 Email: [email@wlf.com.au](mailto:email@wlf.com.au) Internet: [www.wlf.com.au](http://www.wlf.com.au)

Partners: Peter Beven, Harvey Gibson, Danny McCarthy, Douglas Thomson,  
Joanne Doyle, Stuart Clutterbuck, Ian Wheeler, Dean Johnson, Marg Marshall  
Managers: Alicia Lels, Melanie Richardson, Nick Carter, Paul Lyons,  
Simon Jones, Shaun Evans, Trent Queen



To: "Tony.Ferrall@treasury.tas.gov.au" <Tony.Ferrall@treasury.tas.gov.au>  
cc:  
From: "Sayer, Mark (DPaC)" <Mark.Sayer@dpac.tas.gov.au>  
Date: 19/09/2011 03:51:37 PM  
Subject: FW: Gunns ASX Announcement

**From:** Vadasz, Karen (DPaC)  
**Sent:** Monday, 19 September 2011 10:17 AM  
**To:** Swain, Gary (DPaC)  
**Cc:** Sayer, Mark (DPaC); Crawford, Cam (DPaC)  
**Subject:** Gunns ASX Announcement

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transmission. ASX RELEASE - 2011 09 19 - Market Update.pdf

19 September 2011

Company Announcements Platform  
Australian Securities Exchange

## MARKET UPDATE

In the company's February 2010 release and subsequent market updates the company has outlined the process and progress of its strategic review. Specifically the review entails:

- The sale of non-core assets.
- Consolidation of timber processing businesses and associated assets.
- Progression of negotiations with potential equity partners for the elemental chlorine free bleached Kraft pulp mill, and associated infrastructure, at Bell Bay in Tasmania (Project), with the aim of advancing to financial close with a selected partner.
- Consolidation of the company's forestry and associated infrastructure assets to facilitate investment in the Project.

### Tasmanian Forests Agreement

The announcement by the Tasmanian State Government on 14 September 2011 provides the necessary certainty for the company to continue to progress with the pulp mill project.

It is the company's view that satisfactory settlement of the Tasmanian Forests Agreement (TFA) and the company's exit from operations based on Tasmanian native forests is critical to providing an acceptable investment environment for both a mill equity partner and the company in Tasmania. The change in global customer demands for plantation based products is consistent with stakeholder views and requirements so as to necessitate the company's decision.

Key aspects of the agreement reached with both the Tasmanian State Government and Forestry Tasmania are:

- 1 Payment of \$23 million to Gunns.
- 2 Termination of certain wood supply agreements between the company and Forestry Tasmania and assignment of any subsisting or continuing rights and obligations under those agreements to the Tasmanian State Government.
- 3 Mutual release between the company and Forestry Tasmania from certain current and future claims arising out of those agreements.
- 4 Subject to assignment of the Triabunna wharf lease to Triabunna Investments Pty Ltd, the company will work with the owners of the Triabunna woodchip facility to progress arrangements for operations at the site.

The company ceased receiving wood sourced from native forests in Tasmania in the course of the 2011 financial year. The sale of the remaining assets of this business, primarily the sell down of inventory and sale of decommissioned sites, is expected to generate approximately \$60 million in cash flow in the 2012 year.

### **Business Restructure**

Since February 2010, the company has conducted a structured process to finalise equity investment for the Bell Bay pulp mill project. This process involves engagement and negotiation with a number of parties. Confidentiality is a strict term of this process. Negotiations are now well advanced but not yet complete.

The selection of an investment partner in the Project will lead to a fundamental reshaping of the company. The contemplated transaction structure and the intended transfer of assets into the Project vehicle may include but not be limited to, Gunns' Tasmanian land and forest assets and associated infrastructure. This will materially change the underlying nature and structure of the group business and operations.

The company's announcement of 25 August 2011 included a revaluation of the company's core assets to reflect fair market value. The final agreed values for assets to be vended into the pulp mill project vehicle are material to the company's asset value. These values will be determined in negotiations with the investor parties in the coming weeks. The company will inform the market of the outcome of these negotiations in accordance with the Listing Rules requirements.

Given the nature and scale of the potential changes to the company's operations as currently contemplated, the company intends to seek shareholder approval for implementation of the Project equity investment transaction in due course.

The conclusion of negotiations with an equity partner will determine the outcome of certain restructuring transactions. A number of these transactions were outlined to the market in the recent company year end results release, notably:

- 1 The conclusion of the sale of the Green Triangle Forest estates.
- 2 The consolidation of the company's timber processing operations as a standalone business in order to participate in future industry consolidation or the sale of the company's timber processing business as part of ongoing industry consolidation.
- 3 The sale of the MIS loan book.

Further to these processes the resolution of the pulp mill equity investment will determine whether a process is initiated to sell the company's Tasmanian land and tree assets.

### **Financing**

The company's primary debt facility matures in January 2012 and as a result the company will be required to retire \$340 million of debt. The company has a range of asset sale processes in progress to meet this requirement. Completion of the pulp mill Project equity investment process is a material factor in determining the company's approach to meeting that obligation. If the investment negotiations are not concluded with required certainty in the timeframes outlined, the scope of the company's asset sales program will be expanded to enable it to reduce its core debt level. Completion of key components of the asset sale program will then be integral to the completion of debt retirement.

Until the outcome of the current negotiations with an equity investor is known, the company is not able to inform the market as to which course of action it will follow. The alternatives will have very different outcomes for the value of the company and the nature and scope of its future assets and operations.

### **Pulp Mill Project Works**

The company has executed a contract for bulk earthworks at the site and these works commenced on 29 August 2011. The company has undertaken substantial investment and works on the project. Expenditure of over \$200 million to date has been incurred to finalise approvals, complete site roading and vegetation clearing, prepare construction, operation and monitoring plans and procure equipment.

It is a condition of the State Pulp Mill Permit that "substantial commencement of the project" occurred by 30 August 2011. The Director of the Tasmanian Environmental Protection Authority is currently undertaking an assessment to determine compliance with this condition. The company has provided a detailed submission to the EPA to facilitate the assessment. It is expected that a determination will be made during September 2011.

The status of the pulp mill permit is a significant and material matter for consideration by the Directors in determining asset values in finalising accounts for the year ended 30 June 2011. The company's announcement of 25 August 2011 included a revaluation of the company's core assets to reflect fair market value and a valuation of assets related to the pulp mill based on the view of Directors that it is probable that the pulp mill project will be completed on the assumption that the existing regulatory framework for the project remains effective. These assets include the Tasmanian land and standing timber estate, valued at approximately \$680 million and capitalised investment in the pulp mill project valued at approximately \$217 million.

### **Trading Outlook**

The company has current market guidance of underlying earnings before interest and tax for the 2012 financial year based on the current business structure in the range of \$40-50 million.

Whilst forecast underlying earnings is consistent with the 2011 results, significantly it reflects the completion of the transition of the company's hardwood woodchip business from its historical native forest base to a plantation resource. Based on the current market outlook plantation hardwood woodchip sales volume for the 2012 year is forecast at 2.4 million gmt. This supply will be largely sourced from mainland based operations.

The company confirms it is in compliance with the Listing Rules and in particular Listing Rule 3.1.

### **Contact**

Company: Greg L'Estrange – 03 6335 5211

Media: Matthew Horan – 0403 934 958

**E-mail Message**

---

**From:** Penni Wakefield [NOTES:CN=Penni Wakefield/OU=RGD/O=TreasFin]  
**To:** Jason O'Neill [NOTES:CN=Jason O'Neill/OU=FSq/O=TreasFin@DTF]  
**Cc:**  
**Sent:** 20/9/2011 at 10:39 AM  
**Received:** 20/9/2011 at 10:40 AM  
**Subject:** Deeds (have to email the docs in three parts as they are so big!)

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**Attachments:** Deed#3.pdf  
Deed#1.pdf  
Deed#2.pdf

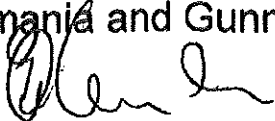
---

Regards,

Penni Wakefield  
Assistant Research Officer  
Shareholder Policy and Markets Branch  
Department of Treasury and Finance

Phone: 6233 5997  
Email: penni.wakefield@treasury.tas.gov.au

I certify this to be a true copy of the Deed between The Crown in Right of Tasmania and Gunns Limited executed on 14 September 2011. 671



.....  
Grant Kench  
Assistant Crown Solicitor  
15 September 2011



## 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 826 Hobart Tasmania 7001  
Telephone: (03) 6233 3922  
Facsimile: (03) 6233 2874  
File Ref: DPAC | 38148  
Doc Ref: lp028978

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## 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) 6223 2755
	Attention	Secretary
Gunns	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7250
	Facsimile	(03) 6335 5498
	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 <sup>th</sup> day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 <sup>th</sup> 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 18<sup>th</sup> 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 other's claims.
- F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18<sup>th</sup> 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

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### 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 including without limitation anything that arises out of Schedule 12 of the Wood Supply Agreements or the China Sale Agreement.

**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 Schedule 13 of each 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 23<sup>rd</sup> day of September 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 7<sup>th</sup> 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.

**Triabunna Wharf Lease** means the lease between the Hobart Ports Corporation Pty Ltd and Gunns for the Triabunna Wharf commencing 1 November 2002.

**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 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 enters 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 \$25,300,000.00 (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) Subject to the Tasmanian Ports Corporation Pty Ltd consenting to an assignment of the Triabunna Wharf Lease from Gunns to Triabunna Investments Pty Ltd 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) Subject to the Tasmanian Ports Corporation Pty Ltd consenting to an assignment of the Triabunna Wharf Lease from Gunns to Triabunna Investments Pty Ltd, Gunns must do everything and anything reasonably required of it under the Triabunna Agreement to enable the reopening and continued operation of the Triabunna Mill; and
- (f) Subject to Tasmanian Ports Corporation Pty Ltd consenting to an assignment of the Triabunna Wharf Lease from Gunns to Triabunna Investments Pty Ltd, 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 reasonably 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* (Cwith):

\_\_\_\_\_  
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



**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 be 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.

.....  
**Julia 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.

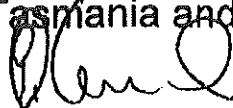
**"Intergovernmental Taskforce"** means a high level group of senior officials nominated by each government to oversee implementation of this Agreement.

**"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.

I certify this to be a true copy of the Deed between The Crown in Right of Tasmania and Forestry Tasmania executed on 14 September 2011. 699



.....  
Grant Kench  
Assistant Crown Solicitor  
15 September 2011



## 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 3822  
Facsimile: (03) 6233 2874  
File Ref: DPAC | 38146  
Doc Ref: lp026977

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## Deed

## Details

Parties	Crown, Forestry Tasmania	
Crown	Name	<b>The Crown in Right of Tasmania</b> represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) 6223 2755
	Attention	Secretary
Forestry Tasmania	Name	<b>Forestry Tasmania</b> (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
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 <sup>th</sup> day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 <sup>th</sup> 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 18<sup>th</sup> 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 other's claims.
- F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18<sup>th</sup> 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.

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Date	See signing page
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## Operative provisions

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### 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 including without limitation anything that arises out of Schedule 12 of the Wood Supply Agreements or the China Sale Agreement.

**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 Schedule 13 of each 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 23<sup>rd</sup> day of September 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 7<sup>th</sup> 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 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.

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## **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 enters 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.

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## 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;

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#### **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.

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#### **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.

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#### **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.

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## **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.

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## **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.

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# **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 be 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.

.....

**Julia Gillard MP**  
**Prime Minister**

Launceston  
7 August 2011

.....

**Lara Giddings**  
**Premier**

## 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.

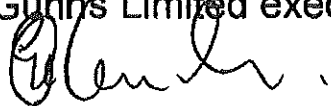
**"Native Forest Industry Workers"** means individuals employed predominantly in the harvest, haulage or processing of wood from Tasmanian native forests.

**"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.



I certify this to be a true copy of the Deed between Forestry Tasmania 727  
and Gunns Limited executed on 14 September 2011.



.....  
Grant Kench  
Assistant Crown Solicitor  
15 September 2011



## 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 826 Hobart Tasmania 7001  
Telephone: (03) 6233 3922  
Facsimile: (03) 6233 2874  
File Ref: DPAC | 38146  
Doc Ref: Ip026979

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## 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 7250
	Facsimile	(03) 6335 5498
	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: <ul style="list-style-type: none"> <li>(i) that Gunns by letter dated the 18<sup>th</sup> day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15<sup>th</sup> day of October 2011;</li> <li>(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.</li> </ul>

- D** Particularly Gunns claims:
- (i) that its letter dated the 18<sup>th</sup> 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 other's claims.
- F** Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18<sup>th</sup> 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 including without limitation anything that arises out of Schedule 12 of the Wood Supply Agreements or the China Sale Agreement.

**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 Schedule 13 of each 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 Gunns 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 23<sup>rd</sup> day of September 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 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 Forestry Tasmania 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



## 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: Ip026977

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## Deed

## Details

Parties		Crown, Forestry Tasmania
Crown	Name	<b>The Crown in Right of Tasmania</b> represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) 6223 2755
	Attention	Secretary
Forestry Tasmania	Name	<b>Forestry Tasmania</b> (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: <ul style="list-style-type: none"> <li>(i) that Gunns by letter dated the 18<sup>th</sup> day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15<sup>th</sup> day of October 2011;</li> <li>(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.</li> </ul>
	D	Particularly Gunns claims:

- (i) that its letter dated the 18<sup>th</sup> 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 other's claims.
- F Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18<sup>th</sup> 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 including without limitation anything that arises out of Schedule 12 of the Wood Supply Agreements or the China Sale Agreement.

**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 Schedule 13 of each 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 23<sup>rd</sup> day of September 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 7<sup>th</sup> 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 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.

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## **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 enters 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.

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## 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;

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#### **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.

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#### **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.

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#### **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.

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## **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.

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## **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.

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# **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 Tahlreh  
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.

.....  
**Julia 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.