

Doc 148

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E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: dmccarth [NOTES:dmccarth@wlf.com.au]
Cc:
Sent: 12/9/2011 at 12:03 PM
Received:
Subject: Probity Audit - Offer to Gunns Limited - Part 4

Attachments:

- ✓ Ltr - Burke 090911.pdf
- ✓ [Untitled].pdf
- ✓ Forestry Tasmania letter of offer September 2011.pdf
- ✓ Gunns letter of offer September 2011.pdf
- Deed of Release - Crown & Forestry.pdf
- Deed of Release - Crown & Gunns.pdf
- Deed of Release - Forestry & Gunns.pdf

✓ PREMIER TO TONY BURKE RE FLEXIBILITY UNDER IGA

✓ BURKE TO PREMIER RE PROPOSED OFFER TO GUNNS & FT

✓ REVISED OFFER TO GUNNS LIMITED AND FT

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

Telephone (03) 6233 2132
Facsimile (03) 6233 5699
Mobile 0419 329 862

Doc-15

(R)

Office of the Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
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Ph +61 3 6233 3464 Fax +61 3 6234 1572
Email Premier@dpac.tas.gov.au Web www.premier.tas.gov.au



The Hon Tony Burke MP
Minister for Sustainability, Environment, Water,
Population and Communities
Parliament House
CANBERRA ACT 2600

Dear Minister *Tony*

Thank you for your letter of 5 September 2011 outlining the Australian Government's continued support for the implementation of the Tasmanian Forests Intergovernmental Agreement (TFA) and indication of a commitment to resolving the current outstanding issues under the funding provided in the TFA.

As you would be aware, on 26 August 2001, the Tasmanian Government made offers of \$11.5 million to each of Forestry Tasmania and Gunns Limited in return for receiving certain legally binding commitments required to deliver the TFA objectives. These offers were made following advice from the Solicitor-General regarding the legal status of wood supply contracts between Gunns Limited and Forestry Tasmania, relevant legislation binding Forestry Tasmania and on related issues and clauses in the TFA. This advice concluded that to achieve the objectives of the TFA it was necessary and appropriate for the State to secure agreements and releases from both entities in return for the proposed payments. The process for determining the recommended position of the State and the settlements to be made with Gunns Limited and Forestry Tasmania under the TFA was also subject to an external probity review which concluded that the approach was the only one which would give finality to the matter and enable the objectives of the TFA to be achieved.

Forestry Tasmania has accepted the offer made by the State, however, Gunns Limited rejected the offer. Following your letter, the State has instigated a process of re-engaging with the parties. Through this process, the Tasmanian Government intends to make a formal offer of \$23 million to Gunns Limited, on the same terms and conditions as the original offer, which we believe Gunns would accept.

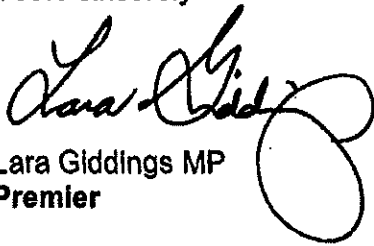
The Tasmanian Government is committed to achieving the objectives of the TFA but given the position taken by Gunns Limited recognises that these objectives will be unable to be achieved without provision of increased funding under the TFA through one of the existing funding streams or the Australian Government agreeing to provide greater flexibility in the way in which funding is used under the TFA.



I therefore request that the Australian Government agree that the total funding required for Forestry Tasmania and Gunns Limited will be made available from within the overall funding level agreed in the TFA. In order to achieve this objective it may be necessary to vary specific clauses in the TFA.

I also seek your agreement to work cooperatively with my Government to identify the mechanism(s) under the TFA through which the funding will be provided. This matter will need to be resolved by 16 September 2011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lara Giddings', with a large, stylized loop at the end.

Lara Giddings MP
Premier



The Hon Tony Burke MP

Minister for Sustainability, Environment, Water, Population and Communities

The Hon Lara Giddings MP
Premier of Tasmania
Executive Building, Level 11
15 Murray Street
HOBART TAS 7000

Lara
Dear Premier

Thank you for your letter of 9 September 2011 providing additional information on the process that the Tasmanian Government has followed, and the legal and probity advice it has relied upon, in determining its approach to ensuring that a sufficient volume of native forest sawlog supply is retired to achieve the objectives of the Tasmanian Forests Intergovernmental Agreement and the requirements of Clause 22 of that Agreement.

I understand from your letter it is the Tasmanian Government's position that the objectives of the Intergovernmental Agreement cannot be achieved without the Tasmanian Government providing some funding to both Gunns Limited and Forestry Tasmania.

Consistent with the requirements of Clause 56 of the Intergovernmental Agreement, I therefore confirm that the Australian Government will work cooperatively with your government to identify potential options to address the matters that you have raised, given that they relate to interpretation and implementation of the Agreement, with the intention of ensuring that the Tasmanian Government is able to meet these funding requirements while still achieving our agreed objectives under the Intergovernmental Agreement.

Yours sincerely

Tony Burke
Tony Burke

9 September 2011

Doc 17

(R)

Office of the Premier

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Email Premier@dpac.tas.gov.au Web 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



Doc-18

(2)

Office of the Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS

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Email Premier@dpac.tas.gov.au Web www.premier.tas.gov.au

WITHOUT PREJUDICE



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.

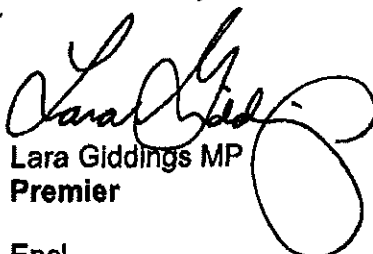
The State has reviewed its previous offer and in accordance with clauses 22 and 34 of the TFA, the State is offering to pay Gunns Limited an amount of \$23 million (excluding GST) in full and final settlement of all rights and obligations under contracts 917 and 918. All other terms and conditions of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



Doc 19



Deed

Dated

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

and

**Forestry Tasmania
(Forestry Tasmania)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: Deed of Release - Crown & Forestry -
Final - 8.9.11

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Deed

Details

Parties	Crown, Forestry Tasmania	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) 6223 2755
	Attention	Secretary
Forestry Tasmania	Name	Forestry Tasmania (being the body corporate established pursuant to section 6 of the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) 6235 8223
	Attention	
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: (i) that Gunns by letter dated the 18 th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
	D	Particularly Gunns claims:

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

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

Date See signing page

Operative provisions

1 Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

- (a) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 917;
- (b) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 918;
- (c) a claim under any indemnity in the China Sale Agreement; or
- (d) rights arising out of clause 16 of 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 day of 2011 or such other date agreed to in writing by both parties.

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

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

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

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

1.2 Interpretation

In this Deed, unless the context otherwise requires:

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

- (k) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;
- (l) a reference to a clause, schedule or appendix is to a clause, schedule or appendix in or to this Deed;
- (m) mentioning any thing after the words **include**, **included** or **including** does not limit the meaning of any thing mentioned before those words;
- (n) a reference to a day must be interpreted as the period of time 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 Gunns whereby:

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

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

2.2 Termination

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

3 Payment

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

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

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

4 Excluded Claims

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

5 Assignment

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

6 GST

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

7 Notices

7.1 Method of giving Notices

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

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

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

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

7.2 Time of receipt of Notices

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

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

7.3 Address for Notices

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

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

8 Law and jurisdiction

8.1 Governing Law

This Deed is governed by the Law of Tasmania.

8.2 Submission to jurisdiction

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

9 General

9.1 Waiver

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

9.2 Amendment

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

9.3 Severability

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

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

9.4 Further assurance

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

9.5 Counterparts

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

Executed as a deed

Signing page

Dated:

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

Signature ←

Signature of witness ←

Name of witness (print)

Address of witness

Occupation

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

Signature ←

Name and position held (print)

Signature ←

Name and position held (print)

Annexure “A”

Tasmanian Forests Intergovernmental Agreement



Deed

Dated

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

and

**Gunns Limited
(Gunns)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
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Deed

Details

Parties	Crown, Gunns	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) 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 th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
	D	Particularly Gunns claims:

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

E Forestry Tasmania and Gunns each deny the other's claims.

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

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

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

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

J The Reserves cannot be created unless:

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

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

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

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

Date

See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

- (a) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 917;
- (b) a claim under the indemnity in clause 8 of Schedule 13 of Wood Supply Agreement 918;
- (c) a claim under any indemnity in the China Sale Agreement; or
- (d) rights arising out of clause 16 of 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 day of 2011 or such other date agreed to in writing by both parties.

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

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

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

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

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

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* (Cwlth):

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



Deed

Dated

**Forestry Tasmania
(Forestry Tasmania)**

and

**Gunns Limited
(Gunns)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: Deed of Release - Forestry & Gunns -
Final - 8.9.11

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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: (i) that Gunns by letter dated the 18 th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15 th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.

D Particularly Gunns claims:

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

E Forestry Tasmania and Gunns each deny the other's claims.

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

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

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

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

Date

See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

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

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

Annexure "B"

Gunns Release Deed

