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E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: kim.hudson [NOTES:kim.hudson@treasury.tas.gov.au]
Cc:
Sent: 16/9/2011 at 10:41 AM
Received:
Subject: Documents to be tabled

Kim

The documents to be tabled in parliament next week will be as follows:

Certified Copy of the Deed between The Crown in Right of Tasmania and Gunns Limited executed on 14 September 2011

Certified Copy of the Deed between The Crown in Right of Tasmania and Forestry Tasmania executed on 14 September 2011

Certified Copy of the Deed between Forestry Tasmania and Gunns Limited executed on 14 September 2011

Review of the process for determining the recommended position of the State and Settlements to be made to Gunns Limited and Forestry Tasmania Under the Tasmanian Forests Intergovernmental Agreement

Letter from Wise Lord and Ferguson dated 13 September 2011 relating to the further probity review of the offer to Gunns Limited and Forestry Tasmania

Letter from Wise Lord and Ferguson dated (not received yet?) relating to the final probity review of the offer to Gunns Limited and Forestry Tasmania.

I should have the final letter on Monday.

Thanks

Tony

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

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

Doc 23

11/14/845

2

E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: dmccarth [NOTES:dmccarth@wlf.com.au]
Cc: Grant Kench [NOTES:Grant.Kench@justice.tas.gov.au]
Sent: 15/9/2011 at 11:06 AM
Received:
Subject: Review of the process for determining the recommended position of the State and Settlements to be made to Gunns Limited and Forestry Tasmania Under the Tasmanian Forests Intergovernmental Agreement

Attachments: Deed of Release - Crown & Forestry - Final - 13.9.11.pdf
Deed of Release - Crown & Gunns - Final - 13.9.11.pdf
Deed of Release - Forestry & Gunns - Final - 13.9.11.pdf

Danny

As discussed, Gunns Limited and Forestry Tasmania have accepted the offer made by the State in respect of the negotiated settlement relating to the contractual and legal issues and disputes over payments.

Part of the scope of the Probity Review conducted by Wise Lord and Ferguson is to:

"In the event that an offer is subsequently made to both parties and following any negotiation, accepted by Gunns Limited and Forestry Tasmania, the appropriateness of the final executed agreement(s). Any agreement between the State and either party against the other, in relation to the relevant wood supply contracts".

Accordingly, I would be grateful if you would undertake the final component of the Review.

I attach for your attention, PDF copies of the relevant final Deeds of Release. Executed copies are held by Treasury and can be made available for your inspection if required.

Should you wish to discuss any of the legal aspects of the Deeds it would be appropriate for you to contact the Assistant Crown Solicitor (Grant Kench) directly.

Regards

Tony

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

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



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: Ip026936

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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 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.

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



Deed

Dated

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

and

**Gunns Limited
(Gunns)**

The Crown Solicitor of Tasmania

Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6233 3922
Facsimile: (03) 6233 2874
File Ref: DPAC | 38146
Doc Ref: lp026937

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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 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 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

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 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".



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

Doc 24

2

11/139411

E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: mark.sayer [NOTES:mark.sayer@dpac.tas.gov.au]
Cc:
Sent: 14/9/2011 at 12:16 PM
Received:
Subject: Notes on Probity Review for Media Discussion

Attachments: Notes on Probity Review for media discussion.doc

As discussed:

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

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

- 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;
 - to enable certain commercially forested areas to be turned into reserves; and
 - to 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 undertaken 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;

- 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 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 provided 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.
- The State held further without discussions and negotiations with Gunns Limited.

- 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 process 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.

Doc 25

11/139405

(2)

E-mail Message

From: Tony Ferrall [NOTES:CN=Tony Ferrall/OU=FSq/O=TreasFin]
To: Michael Stedman [NOTES:Michael.Stedman@dpac.tas.gov.au]
Cc: Andrew Rhodes [NOTES:Andrew.Rhodes@dpac.tas.gov.au], Mark Sayer [NOTES:Mark.Sayer@dpac.tas.gov.au]
Sent: 14/9/2011 at 10:52 AM
Received:
Subject: TRIM: Re: forestry documents for release

Attachments: IGA Report 24 August 2011.pdf
20110913170103201.pdf

Michael

I understand we will be releasing:
probity auditors report on initial process; and
probity auditors report on most recent negotiations.

These are attached below - can I assume you will have copies for the media?

Tony

Tony Ferrall
Deputy Secretary
Department of Treasury and Finance

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

"Stedman, Michael (DPaC)"
14/09/2011 09:50 AM

To
"Tony.Ferrall@treasury.tas.gov.au"
cc
"Sayer, Mark (DPaC)" , "Rhodes, Andrew (DPaC)"

Subject
forestry documents for release

Hi Tony,

Are you able to forward me and Andrew the documents that can be released as part of the forestry package today?

Can you include the final version of the auditor's report and letter?

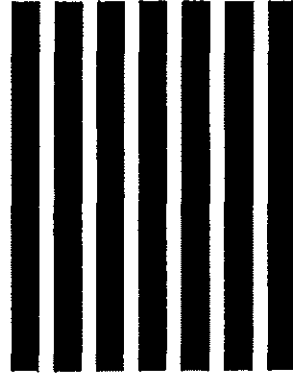
Also, Mark, have we got word from Burke's office on whether we can release the Commonwealth's letter?

Michael Stedman
Media Adviser
Office of the Hon Lara Giddings MP
Premier of Tasmania
03 62327065
0438631399

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Review of the process for determining the recommended position of the State and Settlements to be made to Gunns Limited and Forestry Tasmania Under the Tasmanian Forests Intergovernmental Agreement.



Wise Lord & Ferguson



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Introduction

We have been appointed by way of letter dated 17 August 2011 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.

Introduction (Cont'd)

Terms of Reference - Background

The Commonwealth and Tasmanian Governments signed the Tasmanian Forests Intergovernmental Agreement on 7 August 2011. The Agreement is designed to support the State's forest industry to transition to a more sustainable and diversified setting and to build regional economic diversification.

Clauses 22 and 34 of the Intergovernmental Agreement refer to the actions necessary and compensation payable in order to achieve key objectives as set out in clauses 19, 20 and 29 of the Agreement. These clauses make clear the requirement to extinguish wood supply contracts to the extent required to create reserved areas as referred to in clause 29.

Clause 22 of the agreement states that:

'...the State will enter 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.'



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Introduction (Cont'd)

Terms of Reference – Background (Cont'd)

Clause 34 states that:

“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 parties”.

Given these prescribed allocations, there is a maximum of \$23 million available from the \$43 million to facilitate the Agreement through the extinguishment of specific wood supply contracts. The Government has agreed to give effect to the Intergovernmental Agreement by resolving the uncertainty surrounding the contract issues in relation to wood supply contracts WS917 and WS918 between Gunns Limited and Forestry Tasmania.



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Introduction (Cont'd)

Terms of Reference – Background (Cont'd)

To support this process the Government has agreed to appoint a suitably qualified and registered Probity Auditor to provide advice on the process undertaken in determining a preferred State position and the appropriateness of that position in relation to resolving the complex commercial settlement of outstanding matters between Gunns Limited and Forestry Tasmania.

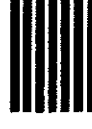


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Introduction (Cont'd)

Terms of Reference – Scope

1. The requirements to give effect to the Intergovernmental Agreement, particularly clauses 22, 29 and 34.
2. The advice provided by the Department of Treasury and Finance on options resolving these issues.
3. The legal advice provided by the Crown Solicitor and the Solicitor-General in relation to these matters.
4. The appropriateness of the Government's proposed offer to both Gunns Limited and Forestry Tasmania.
5. In the event that an offer is subsequently made to both parties and following any negotiation, accepted by Gunns Limited and Forestry Tasmania, the appropriateness of the final executed agreement(s). Any agreement between the State and either party against the other, in relation to the relevant wood supply contracts.



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Background

Through an eight month process independent of Government but funded by the Commonwealth Government, Bill Keltz facilitated a statement of principles signed by the stakeholders in Tasmanian Forestry invited to participate in the process who elected to do so. Significantly the two key operational stakeholders in forestry in Tasmania being Gunns Limited and Forestry Tasmania were not involved in that process.

The report from that process was submitted to Government in early July 2011.

On 24 July 2011 a Tasmanian Forest Agreement Heads of Agreement was signed by the Prime Minister and the Minister for the Environment on behalf of the Commonwealth of Australia and by the Premier and Deputy Premier on behalf of the State of Tasmania.

Subsequently on the 7 August 2011 the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania was signed .



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Background (cont'd)

The following paragraphs of that Agreement are germane to this report.

Paragraph 8 of the Intergovernmental Agreement states:

“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.”*



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Background (Cont'd)

Paragraph 22 of the Intergovernmental Agreement states:

"Pursuant to outcome (iii) to 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 objectives of clauses 17 and 29."

Paragraph 29 of the Intergovernmental Agreement states:

"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."



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Background (Cont'd)

Paragraph 34 of the Intergovernmental Agreement states

"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."



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The Review Process

Documents Reviewed

Correspondence

- Gunns to Forestry Tasmania 1 December 2010
- Forestry Tasmania to Gunns 9 February 2011
- Gunns to Forestry Tasmania 18 April 2011
- Forestry Tasmania To Gunns 4 May 2011
- Gunns to Treasury 23 June 2011
- Forestry to Bill Kely 29 June 2011
- Memorandum Lipman Karam to Gunns re Contracts 917 and 918 dated 28 June 2011.
- Gunns to Forestry Tasmania 30 June 2011
- Briefing note Forestry Tasmania to Minister for Energy and Resources 30 June 2011
- Gunns to the Premier of Tasmania 12 July 2011
- Briefing note Forestry Tasmania to the Treasurer and the Minister for Energy and Resources 29 July 2011



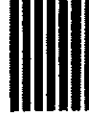
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The Review Process (Cont'd)

Documents Reviewed

Correspondence

- Letter of request for advice from the Crown Solicitor to the Solicitor-General of 29 July 2011 regarding the status of Wood Supply Agreements between Gunns and Forestry Tasmania
- Advice from the Solicitor-General dated 5 August 2011 regarding the Wood Supply Contracts
- Advice from the Solicitor-General to DIER of 5 August 2011 regarding specific questions concerning the relationship of Forestry Tasmania to the Portfolio Ministers
- Email of 8 August 2011 from the Solicitor General to Mark Sayer
- Gunns to ASX of 8 August 2011 re suspension of trading
- Email from the Solicitor-General to the Crown solicitor re legal advice dated 8 August 2011



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The Review Process (Cont'd)

Documents Reviewed

Correspondence

- Email to Forestry Tasmania from the Crown solicitor dated 11 August 2011
- Email from the Crown Solicitor to Secretary of the Treasury of 11 August 2011
- File note from Forestry Tasmania re the draft agreement dated 12 August 2011



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The Review Process (Cont'd)

Advice and Agreements

- Tasmanian Forest Agreement – Heads of Agreement 24 July 2011.
- Tasmanian Forests Intergovernmental Agreement 7 August 2011.
- Minute to the Treasurer of recommendations with respect to the Intergovernmental Agreement Payments under clause 34 of 11 August 2011.

Draft Agreements

Draft deed between the Crown and Forestry Tasmania.

Draft deed between the Crown and Gunns.

The Review Process (Cont'd)

Parties Interviewed

- Mr Martin Wallace, Secretary of the Department of Treasury and Finance
- Mr Tony Ferrall, Deputy Secretary of the Department of Treasury and Finance
- Mr Leigh Sealy, Solicitor General
- Mr Grant Kench, Acting Crown Solicitor
- Mr Greg Johannes, Deputy Secretary of the Department of Premier and Cabinet
- Mr Rhys Edwards, Secretary of the Department of Premier and Cabinet



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The Review Process (Cont'd)

Process

In completing this review I have taken the following steps.

1. Read all of the documents provided so as to understand the transaction and also the process by which the transaction was conducted.
2. Interviewed each of the parties above regarding the transaction and in particular regarding the process by which the transaction was completed.
3. In the context of 1 and 2 above I have considered in particular the issues detailed at 1 to 4 of the Scope.
i.e.
 - The requirements to give effect to the Intergovernmental Agreement , particularly clauses 22, 29 and 34.
 - The advice provided by the Department of Treasury and Finance on options resolving these issues.
 - The legal advice provided by the Crown solicitor and the Solicitor-General in relation to these matters.
 - The appropriateness of the Government's proposed offer to both Gunns Limited and Forestry Tasmania.



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Chronology of the Transaction

The Cogent Facts of the Transaction

1. Heads of Agreement.

The Heads of Agreement is the foundation stone of the restructure process providing the necessary support for the transaction.

2. Legal Opinions.

The legal opinions define that there is a real legal dispute and its scope. The essence of the advice is that if a negotiated settlement is not arrived at through the current process, but left to Gunns and Forestry Tasmania to resolve, there will be protracted and expensive legal action which will be resolved long after this opportunity for restructure has passed. Without resolution of the legal dispute streams one, two and three of paragraph 8 of the Intergovernmental Agreement cannot proceed.



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Chronology of the Transaction

The Cogent Facts of the Transaction

3. Intergovernmental Agreement.

This confirms the agreement between the State and the Commonwealth as to what is to be achieved and how it is to be funded. The pathway provided by clauses 6 (iii), 22, 29 and 34 provides the mechanism for removal of the legacy issues between Gunns and Forestry Tasmania.

4. Implementation of the Intergovernmental Agreement.

The advice of Treasury to the Treasurer of 11 August 2011 is a succinct summary of the possible ways to implement the agreement.



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Treasury Options Paper

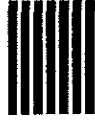
I will not attempt to summarise the Treasury options paper here. I will deal with it in the context of the four issues included in the scope.

1. The requirements to give effect to the Intergovernmental Agreement , particularly clauses 22,29 and 34.

The Treasury advice concludes that to give effect to the Intergovernmental Agreement the existing contractual arrangements between Gunns and Forestry Tasmania needs to be extinguished before the Agreement can proceed.

2. The advice provided by the Department of Treasury and Finance on options resolving these issues.

The Treasury advice provides four options available. They recommend option 2 as the only option which would see an immediate extinguishment of the existing contractual arrangements between Gunns and Forestry Tasmania.



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Treasury Options Paper (Cont'd)

3. The legal advice provided by the Crown Solicitor and the Solicitor-General in relation to these matters.

The legal advice confirms that there are disputed contractual arrangements between Gunns and Forestry Tasmania and these need to be extinguished if the Agreement is to proceed in a timely manner. Paragraph 8 requires streams one, two and three to commence now. This cannot happen if the legal dispute between Gunns and Forestry Tasmania has not been extinguished.

4. The appropriateness of the Government's proposed offer to both Gunns Limited and Forestry Tasmania.

The Treasury advice concludes that there is no right answer with respect to what is required to extinguish the existing contractual arrangements. They have recommended to split the available money equally between the parties.



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Conclusion

It is our view that the process through which the Secretaries of the Departments of Treasury and Finance and Premier and Cabinet reviewed and concluded on the transaction is guided by and is consistent with the:

- Heads of Agreement,
- Intergovernmental Agreement ;and
- Legal advice provided by the Crown Solicitor and the Solicitor-General.

The recommendation in the minute to the Treasurer is the only one which will give finality to the matter and enable Government to proceed with its other objectives and the timeframe set out in paragraph 8.



Wise Lord & Ferguson
advice to advantage
Chartered Accountants

13 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

I refer to your emails of 12 September 2011 in which you updated me regarding the most recent events in relation to the Government's offer to Gunns Limited and you instructed me to conduct a further probity review.

I have reviewed the following documents:

- Letter to Gunns Ltd from the Premier dated 26 August 2011 making an offer to settle.
- Letter to Forestry Tasmania from the Premier dated 26 August 2011 making an offer to settle.
- Meeting notes dated 30 August 2011 reflecting a meeting of representatives of the State with representatives of Gunns Ltd to discuss the State's offer.
- Letter from the Assistant Crown Solicitor dated 1 September 2011 to yourself commenting on requests from Forestry Tasmania to amend the settlement deed.
- Letter dated 2 September 2011 from Gunns Limited rejecting the State's offer.
- File note dated 6 September 2011 made by Mr G Swain of a telephone conversation between Mr G L'Estrange of Gunns Ltd and Mr M Sayer of the Premier's office.
- Letter from Tony Burke faxed from the office of the PM on 5 September 2011 indicating support for the process.
- Letter dated 7 September 2011 from Gunns Ltd returning marked up copies of the draft deed and stating that they would accept an offer of \$23M.
- Letter to yourself dated 8 September 2011 from the Assistant Crown Solicitor advising regarding the marked up deed provided by Gunns Ltd.
- Undated letter from the Premier to Tony Burke, the Federal Minister for Sustainability, Environment, Water, Population and Communities advising the current status of the negotiations and requesting his agreement.
- Letter dated 9 September 2011 from Tony Burke confirming the agreement of the Commonwealth to the proposals of the Premier in her letter.
- Undated letter to Forestry Tasmania advising that the offer of the State to Forestry Tasmania was conditional on Gunns Ltd accepting the offer made to them.
- Undated letter from the Premier to Gunns Ltd making a further offer.
- Various copies of the three Deeds of Settlement.



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 Internet: www.wlf.com.au

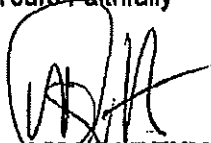
Partners: Peter Beven, Harvey Gibson, Danny McCarthy, Douglas Thomson,
Joanne Doyle, Stuart Clutterbuck, Ian Wheeler, Dean Johnson, Marg Marshall
Managers: Alice Leis, Melanie Richardson, Nick Carter, Paul Lyons,
Simon Jones, Shaun Evans, Trent Queen

It is our view that the process reflected in the documents reviewed is a continuation of the process considered in my previous report. We therefore conclude that it is consistent with the:

- Heads of Agreement,
- Intergovernmental Agreement; and
- Legal advice provided by the Crown Solicitor and the Solicitor-General.

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

Yours Faithfully

A handwritten signature in black ink, appearing to read 'D.J. McCarthy', written over a circular stamp or seal.

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

