

Part 2 – Documents for Release

Department of Treasury and Finance

October 2014

Submission to the House of Assembly Committee on Community Development – Triabunna Inquiry

Index

Triabunna Pulp Mill Parliamentary Inquiry Release Documents	Page Number
II_101701 20110622 SPM advice re Triabunna tolling arrangement	1
II_101709 20110617 Advice from DEDTA Board decision on Triabunna mill loan	3
II_101710 Advice to DEDTA Treasury's comments on Triabunna mill loan	4
II_101710 Attachment 1 20110616 Advice to DEDTA proposed loan assistance to Fibre Plus	5
II_101971 Memo to Minister for Economic Development re loan assistance for Fibre Plus	7
II_101973 Draft Response for Minister for Economic Development to TDR - Loan Assistance	8
II_101973 Attach 1 Draft Response for Minister for Economic Development to TDR - Loan Assistance .pdf	9
II_101973 Attachment 2 Memo to Minister for Economic Development re loan assistance for Fibre Plus	10
II_104211 20110705 MJW File Note on Forestry Tasmania Fibre Plus	11
II_105969 ECONOMIC ~ re request for loan assistance from Fibre Plus (Tas) to purchase Triabunna wood chip facility_Part 1	15
II_105973 Email to Martin with Links to Memo re Loan Assistance for Fibre Plus that was forwarded to the Treasurer	16
II_109740 Email from TDR confirming that State has no loans with Gunns	17
II_113490 Brief Forestry Tasmania - Financial Impacts Triabunna	19
II_117730 Brief Forestry Tasmania - Financial Impacts - Triabunna	21
II_117730 Attachment 1 - II_113490 Brief Forestry Tasmania - Financial Impacts - Triabunna_3_	22
II_126134 Probity Advice Terms of Reference	24
II_128232 20110620 email to Gary Swain and Rhys Edwards Commercial in Confidence	26
II_128232 Attachment 1 DPAC 38146 Deed Release 2 10_06_11	27
II_128909 20110817 email to Rhys Edwards re Proposed Engagement - Review of process for determining Forestry Transactions	42
II_128909 Attachment 1 Probity Advice Terms of Reference	43
II_128909 Attachment 2 Letter to Danny McCarthy Probity Adviser	45
II_129012 20110818 email to Tony Ferrall re Gunns ASX release	47
II_129012 Attachment 1 Gunns release 18 August 2011	48
II_129037 20110624 email to Cam Crawford re FTas nett position at 31 May	51
II_129863 Memo from Treasurer to Minister for Energy and Resources	53
II_130233 20110603 email from Tony Ferrall re media release Jobs axed as woodchip mill closes Triabunna	115
II_130321 20110621 email from Greg L'Estrange re FTas - nett position at 31 May	117
II_130386 20110810 email from Karen Vadasz re Letter from Greg L'Estrange	119
II_130386 LETTER - PREMIER ACTING (GREEN Bryan) 2011 08 09	121
II_130394 20110816 email from Tony Ferrall re Proposed Engagement - Review of process for determining Forestry Transactions	122
II_130395 20110817 email from Tony Ferrall re Fw FT Deed IGA	126
II_130396 20110817 email from Tony Ferrall re Request from Michael Leary of the DAC	128
II_130417 20110628 email from Bob Rutherford re FW Emailing Triabunna Wood Chip Mill Briefing Note, Letter to the Treasurer Government Business Enterprises Act 1995 GBE Act Section 10 Notice	129
II_130662 With covering letter - Wise Lord and Fer~ew of Process Gunns Limited and Forestry Tasmania - Intergovernmental Agreement	130

Index

11_130672 Without Prejudice - Letter from Premier to Mr G LEstrange, Managing Director, Gunns Limited	152
11_130674 Letter from Premier to Mr A Kloeden, Chairman, Forestry	212
11_131033 20110826 Letter from Premier to Greg L'Estrange, Gunns	271
11_131033 Attachment 1 Letter from Premier to Mr G L Estrange, Managing Director, Gunns Limited	272
11_131037 20110826 Letter from Premier to Forestry	332
11_131037 Attachment 1 Letter from Premier to Mr A Kloeden, Chairman, Forestry	333
11_131060 20110704 email to Nick Merse re Gunns Letter	392
11_131060 20110704 email to Nick Merse re Gunns Letter	394
11_136031 20110902 email from Tony Ferrall to Greg L'Estrange re Deeds forwarded by email 26_8_2011	395
11_136031 Attachment 1 Deed of Release - Crown & Forestry - 1.9.11 - Clean	396
11_136031 Attachment 2 Deed of Release - Forestry & Gunns - 1.9.11 - Clean	410
11_136031 Attachment 3 Deed of Release - Crown & Gunns - 1.9.11 - Clean	424
11_137184 ForestryGunns Deeds	439
11_137479 Min31403 Without Prejudice - Letter from Greg LEstrange, Gunns	440
11_138183 20110909 email to Mark Sayer from Tony Ferrall	443
11_138228 20110909 email from Tony Ferrall to Mark Sayer re Letter from Premier	444
11_138228 Attachment 1 Deed of Release - Crown & Forestry	445
11_138228 Attachment 2 Deed of Release - Crown & Gunns	459
11_138228 Attachment 3 Deed of Release - Forestry & Gunns	474
11_138230 20110909 email from Tony Ferrall to Mark Sayer re Premiers Letter	488
11_138230 Attachment 1 Deed of Release - Crown & Forestry	489
11_138230 Attachment 2 Deed of Release - Crown & Gunns	503
11_138230 Attachment 3 Deed of Release - Forestry & Gunns	518
11_138234 20110909 email from Mark Sayer to Tony Ferrall re Premiers letter of offer and deeds	532
11_138235 20110909 email from Mark Sayer to Tony Ferrall re Letter of offer from Premier	578
11_139049 20110913 email from Tony Ferrall to Bob Gordon re Forestry Deeds of Release	623
11_139049 Attachment 1 Deed of Release - Crown & Forestry - Final - 13.9.11	625
11_139049 Attachment 2 Deed of Release - Crown & Gunns - Final - 13.9.11	626
11_139049 Attachment 3 Deed of Release - Forestry & Gunns - Final - 13.9.11	641
11_139061 20110913 email from Tony Ferrall to Wayne Chapman re Executed Documents	655
11_139091 Response from Treasurer to min31403-4- LEstrange	657
11_139098 Letter of response to Kloeden from Treasurer Min31403-4	658
11_139312 20110914 TF s notes on Probity Review for media discussion	659
11_140859 Clearance Sheet Question Without Notice - Forestry Tasmania - Gunns Debts	662
11_141859 20110919 email from Danny McCarthy to Tony Ferrall re IGA Gunns	663
11_141861 20110919 email from Mark Sayer to Tony Ferrall re Gunns ASX Announcement	665
11_141914 Scanned Deeds for Website	670
11_141917 Scanned Probity Report and Letters for Website	797
11_143880 Letter from Tony Burke on Sources of funding within Tasmanian Forests IGA	822
11_146022 Letter to Adrian Kloeden from the Premier re Additional Payment	825

Index

11_148976 20110922 email from Nick Merse to Tony Ferrall re Forest Tasmania invoice copy	826
11_148979 20110923 email from Wayne Champan to Tony Ferrall re Gunns Limited Settlement	832
11_148986 20110923 email from Wayne Champan to Tony Ferrall re Invoice Settlement Gunns	834
11_150019 20110818 email from Cam Crawford re Gunns Release (1)	836
11_150019 Attachment 1 20110818 email from Cam Crawford re Gunns Release (2)	837
11_153830 Min34852 Triabunna Wharf lease	840
11_154089 Memo to Minister for Infrastructure re Assignment of Triabunna Wharf Lease by Tasports	843
11_157048 FW exchange of letters between Premier Giddings and Minister Burke - Forestry Tasmania, Gunns and funding under the Tasmanian Forests Intergovernmental Agreement	844
11_157048 Attachment 1 SKMBT_C55211092112280	845
11_166595 Min31403-6 Forestry Tasmania - Payment to FT under Deed of Release - Clause 35 TFA	847
11_166766 Email to Tony Ferrall \$1.1m log subsidy payment to Forestry Tasmania	850
11_140482 20110919 Question without Notice - Forrest - Gunns debt to Forestry Tasmania	851
11_70578 FW Glamorgan Spring Bay Council - Funding for Triabunna Port Studies (Transfer from DIER to DEDTA)	853
11_70578 Attachment 1 Signed letter to David Metcalf	855
11_70578 Attachment 2 Triabunna Port transfer	856
11_70579 Triabunna Port transfer(2)	859
11_72265 2954 2010-11 TRANSFER Triabunna port Funding from DIER	862
11_92662 20110616 Advice to DEDTA proposed loan assistance to Fibre Plus	864
11_97827 Gunns Forestry Tasmania - Forestry Agreement	866
12_71191 MIN52099 - Confirmation of Gunns Ltd and Tasmania agreement RE Termination of Gunns former contracts for supply of sawlogs	869
14_113615 Email - media release - Triabunna Mill	871
14_78806 Deeds forwarded by email 26_8_2011	873
14_78806 Attachment 1 Deed of Release - Forestry & Gunns - 1.9.11 - Clean	874
14_78806 Attachment 2 Deed of Release - Crown & Forestry - 1.9.11 - Clean	888
14_78806 Attachment 3 Deed of Release - Crown & Gunns - 1.9.11 - Clean	902
14_79115 20110816 email from Tony Ferrall to Harvey Gibson re Proposed Engagement - Review of process for determining Forestry Transactions	917
14_79115 Attachment 1 Letter to Danny McCarthy Probity Adviser	918
14_79115 Attachment 2 Probity Advice Terms of Reference	919
14_79211 20110923 email from Tony Ferrall to Wayne Chapman re Settlement	921
14_79212 20110923 email from Tony Ferrall to Wayne Chapman re Settlement	922
14_79225 20111023 email from Tony Ferrall to Martin Wallace re Triabunna - Tasports	925

100%

100%

100%

100%

100%

100%

100%

100%

100%

100%

To: David Richardson/FSq/TreasFin@DTF, Jonathon Bellette/FSq/TreasFin@DTF
 cc:
 From: Andrew Rayner/FSq/TreasFin
 Date: 22/06/2011 10:45:38 AM
 Subject: Fw: Triabunna

FYI as discussed

----- Forwarded by Andrew Rayner/FSq/TreasFin on 22/06/2011 10:45 AM -----

Wendy
 Sawford/FSq/TreasFin To Andrew Rayner/FSq/TreasFin@DTF
 22/06/2011 09:15 AM cc
 Subject Fw: Triabunna

FYI - not sure whether you were aware of this as a result of your discussions with SPM

Wendy Sawford
 Deputy Secretary, Economic & Financial Policy
 Phone: 03 6233 3773

----- Forwarded by Wendy Sawford/FSq/TreasFin on 22/06/2011 09:14 AM -----

Martin
 Wallace/FSq/TreasFin To Dale Hickman/FSq/TreasFin@DTF
 22/06/2011 08:25 AM cc Nick Merse/FSq/TreasFin@DTF, Sarah
 Christopher/FSq/TreasFin@DTF, Wendy Sawford
 Subject Re: Triabunna

Dale

Thanks - I hadn't been aware of this. Presumably we need to remind FT of this and they need to seek approval from the Minister with a letter from him to the Treasurer asking for her approval?

Wendy - I think the Minute to the Treasurer should note the requirement below and indicate that the Minister will need to seek her approval for this arrangement before the tolling agreement with Aprin (Fibre Products Tas Pty Ltd?) can take effect.

My understanding is that the sale will proceed on Friday unless Gunns determines that their SoP cp has not been met. I am not sure what the chances of that are, but I presume there is a back to back agreement between Aprin and FT which triggers the tolling arrangement?

If anyone disagrees with this approach, or if my understanding is not correct, please let me know.

thanks
 Martin

Dale Hickman/FSq/TreasFin

Dale Hickman/FSq/TreasFin

To Martin Wallace/FSq/TreasFin@DTF

20/06/2011 05:22 PM

cc Nick Merse/FSq/TreasFin@DTF, Sarah
Christopher/FSq/TreasFin@DTF
Subject Triabunna

Martin

At the request of Ecopol, we have reviewed the TDR Board Paper in respect to the Aprin/Gunns deal on Triabunna.

We noticed that there is a profit sharing component to the arrangement where Aprin and FT share any upside on prices over that estimated.

Under section 10(6) of the GBE Act, there is a requirement that " ...a GBE must not exercise its powers to participate in....the sharing of profits unless the Portfolio Minister, after consultation with the Treasurer, has approved the exercise of that power."

Not sure if this has been taken into account already, but we thought it worthwhile to bring it to your attention.


Dale

To: Andrew Rayner/FSq/TreasFin@DTF, Jonathon Bellette/FSq/TreasFin@DTF
cc:
From: David Richardson/FSq/TreasFin
Date: 17/06/2011 09:27:58 AM
Subject: TD Board decision

Nic Waldron just called. The TD Board approved the recommendation in the paper (ie that a loan be provided).

Nic will be shortly sending over a covering Minute seeking the Treasurer's approval for the loan by 23 June (the Minister for Economic Development's agreement will also be sought at the same time).

Cheers
David

To: Nic Waldron <Nic.Waldron@development.tas.gov.au>
cc: Wendy Sawford/FSq/TreasFin@DTF, Andrew Rayner/FSq/TreasFin@DTF, Jonathon Bellette/FSq/TreasFin@DTF
From: David Richardson/FSq/TreasFin
Date: 16/06/2011 01:45:05 PM
Subject:  Re: Treasury's comments on TD Board paper

Hi Nic,

Please find attached a scanned copy of Treasury's comments on the TD Board paper.

Appreciate it if you could arrange for the comments to be circulated at the Board meeting this afternoon.

Cheers
David
x7214



- 20110616 Advice to DEDTA proposed loan assistance to Fibre Plus.PDF

Department of Treasury and Finance

The Treasury Building
21 Murray Street, HOBART, Tas 7000
GPO Box 147, HOBART, Tas 7001 Australia
Telephone: (03) 6233 3100 Facsimile: (03) 6223 2755
Email: secretary@treasury.tas.gov.au Web: www.treasury.tas.gov.au



Mr M Kelleher
Secretary
DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND THE ARTS

Attention: Nic Waldron

PROPOSED LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to an electronic memorandum of 15 June 2011 from Mr Nic Waldron of your Department requesting Treasury's comments on a proposal to provide loan assistance of up to \$6 million to the above company under section 35 of the *Tasmanian Development Act 1983*. I note the very limited time available for Treasury to provide comment.

The proposed loan is being considered at a time of great uncertainty in the Tasmanian forestry industry.

Based on information provided in the Board paper, the industry has experienced a significant downturn in recent years. It appears that this downturn has been driven by a range of factors, including a decline in demand from Japan and the Australian dollar being at record levels. However, it is not yet clear whether the downturn is of a cyclical or structural nature.

Gunns Limited is currently undertaking a strategic review of its operations and the Government has announced that a similar review will be undertaken of Forestry Tasmania. Further, the Tasmanian Forests Statement of Principles process remains ongoing and is likely to have a significant impact on the future operation of the industry.

The paper to the Board states that the continuing operation of the Triabunna wood mill is crucial to the viability of the local economy of Triabunna and the southern Tasmanian native forest industry. However, this assertion is not robustly supported by rigorous evidence in the Board paper.

For example, potential alternative arrangements are outlined in the paper. One potential alternative, suggested by industry participants, is for in-field chipping operations to be established as a means of maintaining a viable southern native forest sawmilling industry. Another alternative is the routing of all sawmill residue and pulp logs from the southern forests to the woodchip facilities at Bell Bay.

Whilst these options would have some marginal increase in costs, the economic impacts of pursuing these alternatives have not been fully considered and it is therefore unclear whether the proposed option is the only viable alternative. In addition, it is not clear that the industry will be viable on an ongoing basis even if the mill is retained.

I note that prior to the acquisition, Gunns Limited temporarily closed the Triabunna mill in April 2011 due to a lack of market for native forest woodchips. Two other native-forest wood chipping facilities owned by Gunns, at Bell Bay and Hampshire, have also been closed. It is therefore not clear that a change of ownership, facilitated by the proposed loan, would enhance the sustainability of the industry.

The parent company, Aprin Group, has been the recipient of around \$2.6 million in financial assistance from the State and Australian Governments since 2007. It has also produced operating losses over the last four years and is highly geared.

The proposed Agreement between Forestry Tasmania and the company is critical to the capacity of the company to repay the proposed loan. It appears that the Agreement would effectively result in Forestry Tasmania underwriting the proposed loan by providing a guaranteed level of revenue to the company through the proposed tolling arrangements. That is, the risk of adverse fluctuations in production volume and international export markets would be fully borne by Forestry Tasmania.

The Agreement has not yet been finalised and given its critical importance to the proposal, Treasury strongly supports DEDTA's proposed condition precedent, in the event that the proposal is recommended, that the proposed Agreement is reviewed by the Crown Solicitor to confirm that it is acceptable from a financing risk perspective and delivers to the company and, therefore the Department, the guaranteed revenue streams on the basis that has been described by the Department.

In the paper, DEDTA highlight the importance of this condition in providing adequate security to make the proposed loan acceptable. However, the draft conditions precedent and other conditions included in the recommendation do not appear to fully reflect the requirement that the agreement provides adequate cash flow through the tolling arrangements to repay the loan within the required timeframe. I therefore recommend that, should the Board agree to recommend the proposed loan to the Government, the conditions to the loan should reflect the intent outlined in the discussion in the Board paper.

I also note that in the event of default, very limited security is available to the Government to recoup its loan.


M J Wallace
SECRETARY

16 June 2011

Contact: Andrew Rayner
Phone: 6233 6732
Our Ref: D/1053 JB/DR

Office of the Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
GPO Box: 123, Hobart TAS 7001 Australia
Ph +61 3 6233 3464 Fax +61 3 6234 1572
Email Premier@dpac.tas.gov.au Web www.premiertas.gov.au



Hon David O'Byrne MP
MINISTER FOR ECONOMIC DEVELOPMENT

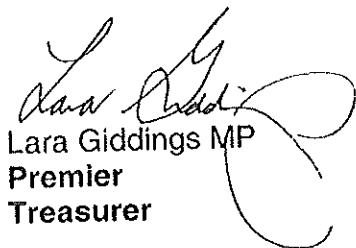
- 5 JUL 2011

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to the request by the Chief Executive officer of Tasmania Development and Resources, dated 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill. This is in the context of any possible organisational restructure of Forestry Tasmania.

As you would be aware, Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. I acknowledge that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured. Attached is a draft letter you may wish to send to the Tasmania Development Board.


Lara Giddings MP
Premier
Treasurer

Mr M Kelleher
Chief Executive Officer
TASMANIA DEVELOPMENT AND RESOURCES

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to your letter of 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill.

Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. It is acknowledged that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured.

David O'Byrne MP
Minister for Economic Development

Mr M Kelleher
Chief Executive Officer
TASMANIA DEVELOPMENT AND RESOURCES

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to your letter of 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill.

Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. It is acknowledged that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured.

David O'Byrne MP
Minister for Economic Development

Office of the Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
GPO Box: 123, Hobart, TAS 7001 Australia
Ph +61 3 6233 3464 Fax +61 3 6234 1572
Email Premier@dpac.tas.gov.au Web www.premiertas.gov.au



Hon David O'Byrne MP
MINISTER FOR ECONOMIC DEVELOPMENT

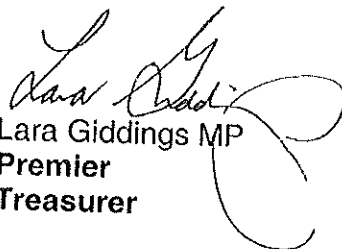
- 5 JUL 2011

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to the request by the Chief Executive officer of Tasmania Development and Resources, dated 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill. This is in the context of any possible organisational restructure of Forestry Tasmania.

As you would be aware, Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. I acknowledge that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured. Attached is a draft letter you may wish to send to the Tasmania Development Board.


Lara Giddings MP
Premier
Treasurer

FILE NOTE


DATE: 5 July 2011
SUBJECT: FORESTRY TASMANIA/FIBRE PLUS
FILE NO:

On 5 July 2011 Treasury received a request for advice in relation to a request from the CEO of TDR, dated 4 July 2011 for an assurance that the government would honour contractual commitments entered into by Forestry Tasmania to Fibre Plus (Tas), that enable the purchase of the Triabunna woodchip facility by Fibre Plus. The request was couched in the context of "a potential inability to meet such commitments as a result of a possible organisational restructure..."

Advice was received that this letter was required by 3.30pm on 5 July to enable the TD Board to finalise its consideration of the loan to Fibre Plus.

The request was discussed with the Treasurer at the RWM on 5 July, and a letter was prepared for the Treasurer's signature which effectively noted that such corporate restructures do not absolve FT or the government as its owner, from contractual commitments or obligations that may have been entered into by the pre-existing legal entity.

A copy of this letter is attached.


M. J. Wallace
SECRETARY

Hon David O'Byrne MP
MINISTER FOR ECONOMIC DEVELOPMENT

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to the request by the Chief Executive officer of Tasmania Development and Resources, dated 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill. This is in the context of any possible organisational restructure of Forestry Tasmania.

As you would be aware, Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. I acknowledge that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured. Attached is a draft letter you may wish to send to the Tasmania Development Board.

Lara Giddings MP
Premier
Treasurer

Mr M Kelleher
Chief Executive Officer
TASMANIA DEVELOPMENT AND RESOURCES

LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to your letter of 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmania with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operations of the Triabunna wood chip mill.

Treasury has instigated a strategic review of Forestry Tasmania to examine the future structures, governance and business models under which Forestry Tasmania may operate in the new Tasmanian forest industry. It is acknowledged that the outcome of the review may result in some form of organisational restructure of Forestry Tasmania. That said, any corporate restructure of Forestry Tasmania would not absolve Forestry Tasmania, or the Government as owners, from any existing commitments, including any contractual obligations, that have been entered into by Forestry Tasmania as the previous legal entity.

Accordingly, the Tasmania Development Board should be satisfied that any contractual commitments entered into by Forestry Tasmania will be honoured.

David O'Byrne MP
Minister for Economic Development

• Department of Economic Development, Tourism and the Arts

22 Elizabeth Street, Hobart TAS 7000
GPO Box 646 Hobart TAS 7001 Australia
Ph (03) 6233 5888 Fax (03) 6233 5800
Email info@development.tas.gov.au Web www.development.tas.gov.au



Hon David O'Byrne MP
MINISTER FOR ECONOMIC DEVELOPMENT

Dear Minister

As you are aware on 16 June 2011 the Tasmania Development Board (TD Board) considered a request for loan assistance from Fibre Plus (Tas) to enable purchase of the Triabunna wood chip facility.

During its deliberations the TD Board discussed the position of the government with regard to Forestry Tasmania's contractual commitments. This was in the context of a potential inability to meet such commitments as a result of a possible organisational restructure or for other reasons.

The Crown Solicitor has advised officers of the Department of Economic Development, Tourism and the Arts that the issue of capacity of Forestry Tasmania to meet its obligations and the obtaining of some form of assurance in this regard are critical.

The TD Board has asked that it be provided with an assurance in writing that the government would honour such contractual commitments in the event such circumstances arise.

Accordingly, I would be grateful if you could arrange for the provision of such advice on the Government's behalf as soon as possible.

Yours sincerely

Mark Kelleher
Chief Executive Officer
Tasmania Development and Resources

4 July 2011

Hon David O'Byrne MP
Minister for Economic Development
Minister for Innovation, Science and Technology
Minister for Infrastructure
Minister for Police and Emergency Management
Minister for Workplace Relations

Level 9, 15 Murray Street, Hobart Tas 7000
Ph +61 3 6233 8892 Fax +61 3 6233 7663
david.o'byrne@parliament.tas.gov.au



Mr M Kelleher
Chief Executive Officer
TASMANIAN DEVELOPMENT AND RESOURCES


LOAN ASSISTANCE TO FIBRE PLUS (TAS) PTY LTD

I refer to your letter of 4 July 2011, seeking an assurance from the Government that it would honour any contractual commitment entered into by Forestry Tasmanian with Fibre Plus (Tas) Pty Ltd in relation to the ongoing operation of the Triabunna wood chip mill.

Please find attached a letter from the Premier outlining her response to this matter.

David O'Byrne MP
Minister for Economic Development



To: Martin Wallace/FSq/TreasFin@DTF
 cc: Richard Sulikowski/FSq/TreasFin@DTF
 From: Dale Hickman/FSq/TreasFin
 Date: 05/07/2011 04:19:14 PM
 Subject:  Re:

Martin

Attached as requested:



Draft Response for Minister for Economic Development - Loan Assistance.tr5



Memo to Minister for Economic Development re Loan Assistance.tr5

Dale

Martin Wallace/FSq/TreasFin

Martin
 Wallace/FSq/TreasFin
 05/07/2011 04:16 PM

To: Richard Sulikowski
 cc: Dale Hickman/FSq/TreasFin@DTF
 Subject

Richard or Dale

Could one of you send me, asap, an electronic copy of the letter the Treasurer sent to the Min this afternoon on the TD Board requirement in relation to approval of the fibre plus sale please?

Thanks Martin

To: Nick Merse
 cc:
 From: Jason O'Neill/FSq/TreasFin
 Date: 15/07/2011 11:59:10 AM
 Subject: Fw: Quick question

FYI and can you please TRIM with the reply.

Thanks.

----- Forwarded by Jason O'Neill/FSq/TreasFin on 15/07/2011 11:59 AM -----

Nic Waldron
 <Nic.Waldron@development.tas.gov.au>
 15/07/2011 11:30 AM
 To "Jason.O'Neill@treasury.tas.gov.au"
 <Jason.O'Neill@treasury.tas.gov.au>
 cc
 Subject RE: Quick question

Hi Jason,

The department does not have any outstanding loans with Gunns, either via TDR or the Crown.

Cheers
 Nic

-----Original Message-----

From: Jason.O'Neill@treasury.tas.gov.au
 [mailto:Jason.O'Neill@treasury.tas.gov.au]
 Sent: Friday, 15 July 2011 11:27 AM
 To: Nic Waldron
 Subject: Quick question

Hi Nic,

We're responding to a very brief constituent email to the Premier which refers to "make Gunns repay its loans to the State". I'm assuming that it is meant to refer to money owed by Gunns to Forestry Tas. Are you able to confirm that Gunns doesn't currently have any industry assistance loans with the Crown?

Happy to discuss further and thanks.

Jas

Assistant Director
 Shareholder Policy and Markets Branch
 Department of Treasury and Finance
 (03) 6233 7930

 CONFIDENTIALITY NOTICE AND DISCLAIMER - The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please advise this Office and delete all copies of the transmission from your records. No liability is accepted for any unauthorised use of the information contained in this

transmission.

CONFIDENTIALITY NOTICE AND DISCLAIMER

The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this Office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return at our cost. No liability is accepted for any unauthorised use of the information contained in this transmission. If the transmission contains advice, the advice is based on instructions in relation to, and is provided to the addressee in connection with, the matter mentioned above. Responsibility is not accepted for reliance upon it by any other person or for any other purpose.

BRIEFING NOTE

TO: Martin Wallace
CC: Tony Ferrall
DATE: 19 July 2011
SUBJECT: FORESTRY TASMANIA – FINANCIAL IMPACTS TRIABUNNA
FILE NO: D/11300

-
- Closure of Triabunna by Gunns in early April resulted in reduction in actual total wood volume sold compared to budget of 38% for April 2011 and 47% for May 2011.
 - Operating loss for April 2011 was \$3.4 million and \$1.2 million for May 2011.
 - Forestry Tasmania has advised they have been managing the closure by not paying contractors for pulpwood and by harvesting coupes with lower pulpwood volumes. FT has not advised how long this can continue for.
 - The additional approved borrowings of \$20 million are expected to be used in July, August and September to offset the operating cash shortfall (\$6.9m for July, \$3.0m for August and \$3.4m for September) and for CAPEX (between \$1.0m and \$1.6m a month).
 - FT has assumed that the \$20 million additional borrowings will be converted to equity in June 2012.
 - The improvement in the cash position is on the assumption that export chip sales commence in August 2011.
 - The superannuation investment has almost been exhausted. Balance at end of March was \$15.5 million with the expected balance at 30 June is to be around \$2.5 million
 - Net superannuation liability as at 30 June 2011 has been calculated as \$122.4 million. Annual payments of pensions is approx \$5 million and growing due to recent retirements.

- The Corporate Plan includes some of the risks to the budgeted operating profit \$290 000 including:
 - Loss of Gunns China sale 800 000 tonnes – profit reduced by \$10.7 million; and
 - Export chip sales to Chen Ming not secured – profit reduced by \$4.0 million.
- The Plan assumes total profits from exports to be \$9.2 million, and as there is currently only a small (if any) margin on whole log exports this was reliant on the success of export chips. YTD May 2011 loss on export sales (of whole logs) was \$94 127 with more favourable exchange rates.
- The Plan also includes the sensitivity of volume reductions on profit:
 - Sawlogs – 10% reduction - profit reduction \$1.1 million.
 - Domestic Peeler – 10 % reduction – profit reduction \$0.8 million.
 - Pulpwood – 10% reduction – profit reduction \$2.0 million.
- In the absence of a viable alternative to direct chip sales through Triabunna FT will continue to make large operating and cash losses, which it is unable to manage beyond the short-term.

Sarah Christopher
PRINCIPAL BUSINESS ANALYST

To: Martin Wallace, Tony Ferrall
cc: Sarah Christopher/FSq/TreasFin@DTF
From: Richard Sulikowski/FSq/TreasFin
Date: 19/07/2011 05:16:06 PM
Subject: Brief Forestry Tasmania - Financial Impacts - Triabunna

Martin/Tony,

As discussed, Sarah has prepared the attached briefing note on FT's position.

Let me know if you require any further details.

Richard Sulikowski
Director
Shareholder Policy and Markets Branch
Department of Treasury and Finance
21 Murray Street
HOBART TAS 7000

Ph: 03 6233 2600

Fax: 03 6233 2492



- t0M0A34B.tr5

BRIEFING NOTE

TO: Martin Wallace
CC: Tony Ferrall
DATE: 19 July 2011
SUBJECT: FORESTRY TASMANIA – FINANCIAL IMPACTS TRIABUNNA
FILE NO: D/11300

-
- Closure of Triabunna by Gunns in early April resulted in reduction in actual total wood volume sold compared to budget of 38% for April 2011 and 47% for May 2011.
 - Operating loss for April 2011 was \$3.4 million and \$1.2 million for May 2011.
 - Forestry Tasmania has advised they have been managing the closure by not paying contractors for pulpwood and by harvesting coupes with lower pulpwood volumes. FT has not advised how long this can continue for.
 - The additional approved borrowings of \$20 million are expected to be used in July, August and September to offset the operating cash shortfall (\$6.9m for July, \$3.0m for August and \$3.4m for September) and for CAPEX (between \$1.0m and \$1.6m a month).
 - FT has assumed that the \$20 million additional borrowings will be converted to equity in June 2012.
 - The improvement in the cash position is on the assumption that export chip sales commence in August 2011.
 - The superannuation investment has almost been exhausted. Balance at end of March was \$15.5 million with the expected balance at 30 June is to be around \$2.5 million
 - Net superannuation liability as at 30 June 2011 has been calculated as \$122.4 million. Annual payments of pensions is approx \$5 million and growing due to recent retirements.

- The Corporate Plan includes some of the risks to the budgeted operating profit \$290 000 including:
 - Loss of Gunns China sale 800 000 tonnes – profit reduced by \$10.7 million; and
 - Export chip sales to Chen Ming not secured – profit reduced by \$4.0 million.
- The Plan assumes total profits from exports to be \$9.2 million, and as there is currently only a small (if any) margin on whole log exports this was reliant on the success of export chips. YTD May 2011 loss on export sales (of whole logs) was \$94 127 with more favourable exchange rates.
- The Plan also includes the sensitivity of volume reductions on profit:
 - Sawlogs – 10% reduction - profit reduction \$1.1 million.
 - Domestic Peeler – 10 % reduction – profit reduction \$0.8 million.
 - Pulpwood – 10% reduction – profit reduction \$2.0 million.
- In the absence of a viable alternative to direct chip sales through Triabunna FT will continue to make large operating and cash losses, which it is unable to manage beyond the short-term.

Sarah Christopher
PRINCIPAL BUSINESS ANALYST

**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**

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."

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 exists 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 relating to wood supply contracts WS917 and WS918 between Gunns Limited and Forestry Tasmania.

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.

SCOPE

The following issues will need to be addressed in the review:

1. The requirement 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 for 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 must resolve the settlement of all outstanding claims and demands by each party against the other, in relation to the relevant wood supply contracts.

TIMEFRAME EXPECTATIONS

The Government has an expectation that the probity adviser will be able to provide a report on the findings of the review, addressing points 1 to 4 above, by close of business on Wednesday, 24 August 2011.

CONSULTATION

The following parties should be interviewed as part of the review:

- Mr Martin Wallace, Secretary of the Department of Treasury and Finance;
- Mr Leigh Sealy, Solicitor-General;
- Mr Grant Kench, Acting Crown Solicitor; and
- either, Mr Rhys Edwards, Secretary of the Department of Premier and Cabinet, or Mr Greg Johannes, Deputy Secretary of the Department of Premier and Cabinet, regarding the requirements of the Intergovernmental Agreement.

To: gary.swain@dpipwe.tas.gov.au, Rhys.Edwards@dpac.tas.gov.au
cc:
From: Martin Wallace/FSq/TreasFin
Date: 20/06/2011 04:47:56 PM
Subject: Commercial in Confidence

Attached is the draft agreement referred to in the previous email with Gunns mark ups.



DPAC_38146_Deed Release_2 - 10.06.11.DOC



Deed of release

Dated

**Forestry Tasmania
(FT)**

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: DPAC_38146_Deed Release_2 -
10.06.11.DOCDPAC_38146_Deed Release_2

Contents

1	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	4
1.3	Business Days	5
1.4	No contra proferentum	6
1.5	Headings	6
2	Conditions precedent	6
2.1	Conditions	<u>76</u>
2.2	Benefit and waiver of conditions precedent	<u>76</u>
2.3	Termination	7
3	Termination of Wood Supply Agreements	7
3.1	Termination by agreement	<u>87</u>
3.2	Payment by Forestry Tasmania to Gunns	<u>87</u>
4	Releases	8
4.1	Release by Forestry Tasmania	8
4.2	Release by Gunns	8
4.3	Excluded Claims not affected	8
5	Interdependent obligations	<u>98</u>
6	Representation and warranties by Gunns	98
6.1	Gunns' warranties	9
7	GST	9
8	Notices	<u>109</u>
8.1	Method of giving Notices	10
8.2	Time of receipt of Notices	10
8.3	Address for Notices	<u>1140</u>
9	Law and jurisdiction	11
9.1	Governing Law	11
9.2	Submission to jurisdiction	11
10	General	11
10.1	Waiver	11
10.2	Amendment	11
10.3	Severability	<u>1244</u>
10.4	Further assurance	<u>1244</u>
10.5	Counterparts	12
	Signing page	12
		13

Deed of release 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))
	ARBN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) [##insert facsimile number##]
	Attention	General Manager
Gunns	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7250340
	Facsimile	(03) 63355491 [##insert facsimile number##]
	Attention	Managing Director
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania claims that:
	(1)	as at the date of this Deed, Gunns owes Forestry Tasmania the sum of \$[##amount to be inserted##] pursuant to the Wood Supply Agreements;
	(2)	on 1 July 2011, an amount of \$[##amount to be inserted##] will become owing by Gunns to Forestry Tasmania pursuant to the Wood Supply Agreements;
	(3)	as at the dated of this Deed, Gunns owes Forestry Tasmania the sum of \$[##amount to be inserted##] pursuant to the China Sale Agreement; and
	(4)	Gunns terminated each of the Wood Supply Agreements by letter dated 18 April 2011 to Forestry Tasmania, and that, as a consequence, the Wood Supply Agreements will terminate on 15 October 2011,
		(the FT Claims).
	C	Gunns denies the FT Claims.

D Gunns claims that:

- (1) its letter dated 18 April 2011 was not legally effective to terminate the Wood Supply Agreements;
- (2) even if the letter dated 18 April 2011 was legally effective to terminate the Wood Supply Agreements, Forestry Tasmania is legally obligated to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of pulpwood and the Supply Products (as defined in Wood Supply Agreement No 918);
- (3) Forestry Tasmania has breached the Wood Supply Agreements and the China Sale Agreement; and
- (4) as a consequence of these breaches Gunns has incurred losses and damages to the value of \$[] which are claimed from Forestry Tasmania.

(the Gunns Claims).

E Forestry Tasmania denies the Gunns Claims.

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

G The Commonwealth has agreed to provide funding to the State for the purposes of enabling the creation of the Reserves.

H The Reserves cannot be created unless:

- (1) 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; or
- (2) 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 and the Supply Products (as defined in Wood Supply Agreement No 918).

I Gunns is the owner of the Specified Assets.

J Gunns has announced that it intends to dispose of the Specified Assets.

K Forestry Tasmania is concerned that the Specified Assets are disposed of by Gunns in a manner that is in the best interests of the Tasmanian forestry industry and the ongoing operations of Forestry Tasmania.

L The parties have entered into this Deed for the purposes of:

- (1) except for 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

- (2) terminating the Wood Supply Agreements 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:

Bank means a bank authorised to carry on banking business in Australia and which has an office in Hobart.

Bank Cheque means an unendorsed bank cheque drawn by a Bank.

Business Day means any day on which Banks are generally open for business in Hobart but does not include a Saturday, Sunday or a statutory holiday for the purposes of *Statutory Holidays Act 2000* (Tas) observed in Hobart.

China Sale Agreement means 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:

- (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; or
- (c) a claim under any indemnity in the China Sale Agreement.

Reserves means the following reserves which are to be created:

[this can probably be defined by reference to HCV rather than specific sites which may not be known for some time]##details to be provided##.

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

Government Body means any government (federal, state or local) or any governmental, administrative or judicial body, department, authority commission, tribunal, delegate, instrumentality or agency.

month means calendar month.

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

Settlement Date means the date on or by which all of the conditions subsequent in clause 2.1 have been satisfied or, in accordance with clause 2.2(b), waived, or such other date (if any) agreed to in writing by both parties to be the Settlement Date.

Southwood Huon Sawmill means the hardwood sawmill facility located at the Forestry Tasmania Southwood centre;

Formatted: Font: Not Bold

Specified Assets means the following assets owned by Gunns as at the date of this Deed:

- (a) the wood chip mill at Triabunna Woodchip Mill in Tasmania; and
- (b) all assets including without limitation the buildings, plants and equipment required to operate the Southwood Huon Sawmill ("Southwood Assets").

Formatted: Font: Bold

State means the Crown in Right of the State of Tasmania.

Triabunna Woodchip Mill means the business of export woodchipping located at Freestone Point, Triabunna;

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

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

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

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

1.2 Interpretation

In this Deed, unless the context otherwise requires:

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

- (ii) whose powers or functions are transferred to any other body,
refers to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them, jointly and severally;
- (i) words importing any gender include all other genders, as applicable;
- (j) a reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (k) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;
- (l) a reference to a clause, schedule or appendix is to a clause, schedule or appendix in or to this Deed;
- (m) mentioning any thing after the words **include**, **included** or **including** does not limit the meaning of any thing mentioned before those words;
- (n) a reference to a day must be interpreted as the period of time in the State 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 Business Days

If the day on or by which any act, matter or thing is to be done under this Deed is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

1.4 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.

1.5 Headings

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

2 Conditions precedent

2.1 Conditions

The parties obligations under clauses 3 and 4 are subject to satisfaction or, in accordance with clause 2.2, waiver of the following conditions precedent on or before 30 June 2011:

- (a) **(funding of Forestry Tasmania):** Forestry Tasmania receiving from the Commonwealth or the State an amount of \$[~~##amount to be inserted##~~] for the purposes of enabling Forestry Tasmania:
 - (i) to make the payment to Gunns required by clause 3.2 for the purposes of facilitating the surrender by Gunns of the Wood Supply Agreements with effect on and from the Settlement Date; and
 - (ii) to establish and maintain the Reserves;
- (b) **(disposal of the Triabunna Woodchip Mill Specified Assets):** Gunns notifying Forestry Tasmania of the identity of the purchaser of the Triabunna Woodchip Mill and the purchaser being a current operator in the Tasmanian forest industry; being satisfied that the Specified Assets have been disposed of by Gunns in a manner that is in the best interests of the Tasmanian forestry industry and the ongoing operations of Forestry Tasmania;
- (b)(c) **(disposal of the Southwood Assets Huon Sawmill):** Gunns transferring ownership of the Southwood Assets plant and equipment assets of the Southwood Sawmill to Forestry Tasmania; and
- (c)(d) **(representations and warranties):** Forestry Tasmania being satisfied that each of the representations and warranties given by Gunns in clause 6.1 is true and correct as to the Settlement Date.

Formatted: Indent: Left: 2.5 cm

Formatted: Bullets and Numbering

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Bullets and Numbering

2.2 Benefit and waiver of conditions precedent

- (a) The conditions precedent in clause 2.1 are for the benefit of Forestry Tasmania.
- (b) Forestry Tasmania may waive a condition precedent in clause 2.1 by notice in writing to Gunns at any time on or before 20 June 2011.

2.3 Termination

- (a) Forestry Tasmania or Gunns may elect to terminate this Deed by notice in writing to the other of them if a condition precedent in clause 2.1 is not satisfied or, waived by Forestry Tasmania by notice in writing to Gunns, on or before 30 June 2011.
- (b) If this Deed is terminated pursuant to clause 2.3(a):
 - (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) no party will have any Claim against the other in respect of the subject matter of this Deed.

3 Termination of Wood Supply Agreements

3.1 Termination by agreement

Subject to satisfaction or, in accordance with clause 2.2, waiver of the conditions precedent in clause 2.1, on the Settlement Date, to the extent that each of the Wood Supply Agreements are otherwise subsisting as at that date:

- (a) each of the Wood Supply Agreements are terminated; and
- (b) each party is released from its obligations and liabilities under each of the Wood Supply Agreements which relate to any period before on or after Settlement Date; and
- ~~(b)~~(c) the sawlog supply volume made available under the Wood Supply Agreements is held in trust by the [Minister].

Formatted: Bullets and Number

3.2 Payment by Forestry Tasmania to Gunns

In consideration of Gunns agreeing to:

- (a) the immediate termination of each Wood Supply Agreement; and
- (b) the transfer of the Southwood Assets to Forestry Tasmania

on the Settlement Date, Forestry Tasmania must pay, by Bank Cheque, to Gunns the sum of \$[##amount to be inserted##] on the Settlement Date.

4 Releases

4.1 Release by Forestry Tasmania

- (a) Subject to satisfaction or, in accordance with clause 2.2, waiver of the conditions precedent in clause 2.1, on the Settlement Date, except for 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:
 - (i) Wood Supply Agreement No. 917;
 - (ii) Wood Supply Agreement No. 918;
 - (iii) the China Sale Agreement; or
 - (iv) any breach of any of the above by Gunns.

- (b) In consideration of the releases given by Forestry Tasmania to Gunns pursuant to clause 4.1(a), Gunns must pay to Forestry Tasmania, by Bank Cheque, the sum of \$[##amount to be inserted##] on the Settlement Date.

4.2 Release by Gunns

Subject to satisfaction or, in accordance with clause 2.2, waiver of the conditions precedent in clause 2.1, on the Settlement Date, except for 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:

- (a) Wood Supply Agreement No. 917;
- (b) Wood Supply Agreement No. 918;
- (c) the China Sale Agreement; or
- (d) any breach of any of the above by Forestry Tasmania.

4.3 Excluded Claims not affected

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 Interdependent obligations

The obligations of each party under clauses 3 and 4 to be performed on the Settlement Date are interdependent by the other party of its obligations under those clauses to be performed on the Settlement Date. 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.

6 Representation and warranties by Gunns

6.1 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) **(authorisations)**: all necessary action has been taken by Gunns to authorise the execution and performance of its obligations under this Deed;
- (e) **(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.

7 GST

- (a) Unless expressly stated otherwise, amounts expressed payable or any other consideration provided, or to be provided, under or in connection with this Deed, are GST exclusive.
- (b) Unless expressly stated otherwise, a party (**Supplier**) making a taxable supply under or in connection with this Deed, may recover from the party (**Recipient**) to whom the taxable supply is made, an additional amount of GST calculated by multiplying the value of the consideration payable or to be provided for the supply (without any deduction or set-off) by the prevailing GST rate (**Additional Amount**).
- (c) The Additional Amount must be paid at the same time and in the same manner when payment of the consideration for the taxable supply is due if the consideration is monetary. If the consideration is non-monetary, the Additional Amount must be paid within 10 Business Days after the Supplier provides a tax invoice to the Recipient.
- (d) The Supplier must provide a valid tax invoice to the Recipient for any taxable supply made under or in connection with this Deed.
- (e) A Supplier's right to payment for a taxable supply is subject to a valid tax invoice being delivered to the Recipient of the taxable supply.
- (f) If the amount of GST recovered by the Supplier from the Recipient differs from the amount of GST payable at law by the Supplier in respect of the supply, the amount payable by the Recipient to the Supplier must be adjusted accordingly.
- (g) Where any amount payable under this Deed is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 7 as if it were an actual payment made pursuant to this Deed.
- (h) In this clause 7 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 7.

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;
 - (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.

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)

To: Rhys.Edwards@dpac.tas.gov.au
 cc:
 From: Martin Wallace/FSq/TreasFin
 Date: 17/08/2011 07:57:11 AM
 Subject: Fw: Proposed Engagement - Review of process for determining Forestry Transactions

Rhys

FYI

Also, I need to talk to you prior to the Crown Confidentiality meeting today - I will ring around 8,45.

Martin

Tony Ferrall/FSq/TreasFin
 16/08/2011 06:08 PM

To hgibson@wlf.com.au
 cc richard.sulikowski@treasury.tas.gov.au, Jason O'Neill/FSq/TreasFin@DTF
 Subject Proposed Engagement - Review of process for determining Forestry Transactions

Harvey

As discussed earlier today, I attach for your attention a proposed engagement letter and TOR for 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. I understand from our discussion that Danny McCarthy will be available to perform the proposed review.

This engagement is highly important and it is critical that the engagement is completed as soon as practicable, but in any event no later than Wednesday 24 August.

I would be grateful if you/Danny would review the proposal and contact me early tomorrow to discuss.

Regards

Tony

Tony Ferrall
 Deputy Secretary
 Department of Treasury and Finance

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



- Probity Advice Terms of Reference.DOC



- Letter to Danny McCarthy Probity Adviser.DOC

**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**

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."

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 exists 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 relating to wood supply contracts WS917 and WS918 between Gunns Limited and Forestry Tasmania.

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.

SCOPE

The following issues will need to be addressed in the review:

1. The requirement 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 for 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 must resolve the settlement of all outstanding claims and demands by each party against the other, in relation to the relevant wood supply contracts.

TIMEFRAME EXPECTATIONS

The Government has an expectation that the probity adviser will be able to provide a report on the findings of the review, addressing points 1 to 4 above, by close of business on Wednesday, 24 August 2011.

CONSULTATION

The following parties should be interviewed as part of the review:

- Mr Martin Wallace, Secretary of the Department of Treasury and Finance;
- Mr Leigh Sealy, Solicitor-General;
- Mr Grant Kench, Acting Crown Solicitor; and
- either, Mr Rhys Edwards, Secretary of the Department of Premier and Cabinet, or Mr Greg Johannes, Deputy Secretary of the Department of Premier and Cabinet, regarding the requirements of the Intergovernmental Agreement.

COMMERCIAL IN CONFIDENCE

Mr Danny McCarthy
Partner
Wise, Lord & Ferguson
GPO Box 1083
HOBART TAS 7001

Dear Mr McCarthy

REVIEW OF PROCESS FOR DETERMINING FORESTRY TRANSACTIONS

I refer to recent discussions regarding your appointment to conduct an independent review of the process undertaken for determining the recommended position of the State and settlements to be put to Gunns Limited and Forestry Tasmania, in accordance with the Tasmanian Forests Intergovernmental Agreement.

Please find enclosed the terms of reference for conducting the review. It is my expectation that the review can be completed at a cost of less than \$10 000. On that basis I am able to appoint you directly and understand that your hourly rate for this review will be \$250, excluding GST.

Treasury holds a number of documents that relate to agreements, legal advice and communications between the interested parties. Treasury can also provide you with the contact details of parties that should be consulted during the conduct of the review. Arrangements can be made at your earliest convenience to view these documents and contact details.

Given the importance and pressing nature of this matter it would be appreciated if you could provide your written findings by the close of business on Wednesday, 24 August 2011.

Should you need further information in relation to your appointment to conduct this review, or to assist you with the review, please contact Mr Jason O'Neill, Assistant Director, Shareholder Policy and Markets Branch on (03) 6233 7930.

Yours sincerely

M J Wallace
SECRETARY

October 2014

Encl

Contact: Jason O'Neill
Phone: 6233 7930
Our Ref: D/11300 JO/RS

To: Tony Ferrall
 CC:
 From: Martin Wallace/FSq/TreasFin
 Date: 18/08/2011 05:39:08 PM
 Subject:

FYI

----- Forwarded by Martin Wallace/FSq/TreasFin on 18/08/2011 05:38 PM -----

"Crawford, Cam (DPaC)"
 <Cam.Crawford@dpac.tas.gov.au>

18/08/2011 05:30 PM

To "Sayer, Mark (DPaC)" <Mark.Sayer@dpac.tas.gov.au>, "Stedman, Michael (DPaC)" <Michael.Stedman@dpac.tas.gov.au>, "Edwards, Rhys (DPaC)" <Rhys.Edwards@dpac.tas.gov.au>, Martin Wallace/FSq/TreasFin <Martin.Wallace@treasury.tas.gov.au>, "Giddings, Lara (DPaC)" <l.g@dpac.tas.gov.au>, "Swain, Gary (DPaC)" <Gary.Swain@dpac.tas.gov.au>

cc

Subject

From ASX site this afternoon

CONFIDENTIALITY NOTICE AND DISCLAIMER

The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return at our cost. No liability is accepted for any unauthorised use of the information contained in this



transmission. gunns release 18 August 2011.pdf



18 August 2011

Company Announcements Platform
Australian Securities Exchange

Forest Agreement Negotiations

Please find attached a media release regarding the Triabunna mill sale.

Yours sincerely

A handwritten signature in black ink, appearing to be "Wayne Chapman", written in a cursive style.

Wayne Chapman
Company Secretary



MEDIA RELEASE

18 August 2011

FOREST AGREEMENT NEGOTIATIONS

Gunns Limited Managing Director, Mr Greg L'Estrange, today welcomed the Tasmanian Government's decision to appoint a probity auditor to review Gunns' contracts but sought assurances that the process would be expedited to end the onerous uncertainty the decision has created.

Mr L'Estrange said the transparency that an audit process should bring was welcomed but was concerned with recent comments made about Gunns involvement in the Forest Agreements process.

"We feel misled. We were asked to take part in a process to end the 30 year conflict over Tasmania's native forestry," Mr L'Estrange said.

"When we made a decision early in 2010 that we would exit the native forest industry to focus on our plantation strategy, there were two plain choices: sell our businesses as going concerns for material value, or seek to assist in the restructure of the native forest industry through the Forest Principles process," he said.

"Gunns decided in good faith to go through what we expected to be a transparent process to bring to an end what was essentially an ongoing battle over native forests, to provide the balance for a continuing industry and a conservation outcome."

"Having been at the epicentre of that conflict for many years, we decided that it wasn't in the best interests of Tasmania to hand the poison chalice to someone else. We could have easily sold those native forest businesses and gotten on with building a pulp mill."

"But we were encouraged by all of the parties to stay in there with the explicit understanding of funding for a smooth transition out of native forestry."

GUNNS LIMITED | ABN 29 009 478 148

PO Box 572 Launceston Tasmania Australia 7250 | 78 Lindsay Street Launceston Tasmania Australia 7250

T 03 6335 5201 | F 03 6335 5406 | www.gunns.com.au

"Our position from the start was that we were happy to be party to the process, and we have said from day one that we would stay the course if our employees, contractors and shareholders were fairly compensated."

"There are precedents in most other states where this has been done in a fair and objective manner."

"We chose to stick with an open, collaborative process and now it appears that we are being punished for that," he said.

Mr L'Estrange urged the Premier and the Government to stick to commitments made, especially in relation to timing.

"When the Inter-Governmental Agreement was announced, Ms Giddings said it would take seven days to resolve the financial outcomes. It has now taken two weeks to reach what is still essentially a non-decision," he said.

"We have contractors out there waiting for a decision on this, workers waiting to see if Tasmania is going to be mature enough to manage the restructure of the native forest industry and to develop a world scale plantation business."

"There has been a reference to forest workers being angry about Gunns' decision. It is my understanding that the union poll earlier this year around the forest agreement found overwhelming support for action."

Mr L'Estrange said he would also like to remind the Government that a decision to exit the native forest industry was directly linked to Gunns' ability to bring the Bell Bay pulp mill project to a reality.

"The pulp mill is the largest single private investment in Tasmania, a venture whose success is dependent on a plantation-only environment. Tasmania's global reputation needs a plantation industry, not a continuation of the conflict," he said.

Gunns is giving up over 3,500 kilometres of forest roads, which Gunns has constructed on public land, licences for over 210,000 cubic metres of high quality sawlog per annum and two million green metric tonnes of pulp wood per annum.

Given this background, to characterise Gunns involvement in this process as a "grab for cash", as propounded by some participants in the debate, is both misleading and offensive.

Contact

Company: Greg L'Estrange – 03 6335 5211

Media: Matthew Horan – 0403 934 958

To: Nick Merse/FSq/TreasFin@DTF
 cc:
 From: Martin Wallace/FSq/TreasFin
 Date: 24/06/2011 11:33:51 AM
 Subject: Fw: FTas - nett position at 31 May

----- Forwarded by Martin Wallace/FSq/TreasFin on 24/06/2011 11:33 AM -----

Greg L'Estrange
 <Greg.L'Estrange@gunns.com.au>
 21/06/2011 01:58 PM
 To martin.wallace@treasury.tas.gov.au
 cc
 Subject Fw: FTas - nett position at 31 May

Greg L'Estrange
Managing Director

78 Lindsay Street
 LAUNCESTON Tas 7250 ☎ 03 6335 5406
 ☎ 03 6335 5201 switch ☎ greg.lestrange@gunns.com.au
 ☎ 03 6335 5211 direct ☎ www.gunns.com.au

Making Sustainability Our Business



----- Forwarded by Greg L'Estrange/Gunns on 21/06/2011 01:49 PM -----

From: Steven M Butt/Gunns
 To: Greg L'Estrange/Gunns@Gunns
 Cc: Wayne Chapman/Gunns@Gunns, Bryan E Hayes/Gunns@Gunns
 Date: 21/06/2011 11:51 AM
 Subject: FTas - nett position at 31 May

Greg - balance of position with Ftas as of 31/5 as below.

Hope this is clear - please let me know if you have any queries.

thanks
 Steve

Owed by Gunns to Ftas

\$'000

Acknowledged:

Pulpwood - March	\$ 3,754
Pulpwood / Sawlog - April	\$ 1,883
Pulpwood / Sawlog - May	\$ 487
Leases	\$ 1,580
other misc invoices	\$ 89
	<u>\$ 7,773</u>

in progress

Invoice charges - calculations to be validated

\$ 214\$ 7,986**net owed by Gunns**\$ 1,008 k**disputed**

misc. amounts in dispute	\$ 242
amounts on FT Statement - further details required	\$ 97
Take or Pay claim	\$ 9,881
	<u>\$ 10,220</u>

Total Amount owing per Ftas statements

\$ 18,206**Note:**

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. The Company and any of its subsidiaries each reserve the right to monitor all e-mail communications through its networks.

Any views expressed in this message are those of the individual sender, except where the message states otherwise and the sender is authorised to state them to be the views of any such entity.

Thank You.

Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
GPO Box 123, Hobart, TAS 7001 Australia
Ph +61 3 6233 3464 Fax +61 3 6234 1572
Email Premier@dpac.tas.gov.au Web www.premier.tas.gov.au



26 AUG 2011

Bryan Green MP
MINISTER FOR ENERGY AND RESOURCES

TASMANIAN FORESTS INTERGOVERNMENTAL AGREEMENT


I refer to the Tasmanian Forests Intergovernmental Agreement (TFA) and the appointment of Mr Danny McCarthy of Wise, Lord & Ferguson to independently review the process undertaken in determining the State's preferred position, and the appropriateness of that position, in relation to resolving the complex commercial settlement of outstanding matters between Gunns Limited and Forestry Tasmania.

Mr McCarthy has provided a final report addressing the following matters:

1. The requirement to give effect to the TFA, particularly clauses 22, 29 and 34.
2. The advice provided by the Department of Treasury and Finance on options for 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.

Mr McCarthy's probity audit has not identified any issues of concern requiring rectification. Given this finding, there is no impediment to the Government presenting its respective offers to Gunns Limited and Forestry Tasmania, in accordance with Clause 34 of the TFA.

Copies of the letters of offer to the Chairman of Forestry Tasmania and the Managing Director of Gunns Limited are attached for your information. Each letter prescribes a deadline for acceptance of the agreement of close of business on 2 September 2011 and has attached three Deeds of Release as prepared by the Office of the Crown Solicitor.


Lara Giddings MP
Premier

Encl



Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
GPO Box 123, Hobart, TAS 7001 Australia
Ph +61 3 6233 3464 Fax +61 3 6234 1572
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

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

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

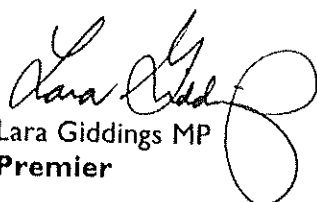
In accordance with Clause 34 of the TFA, the State is offering to pay Forestry Tasmania an amount of \$12.650 million (GST included). In return for this payment, Forestry Tasmania must sign the attached two Deeds of Release and agree to the conditions contained within.

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

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

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

Yours sincerely


Lara Giddings MP
Premier

Encl



Premier

Level 11, Executive Building, 15 Murray Street, Hobart TAS
GPO Box 123, Hobart, TAS 7001 Australia
Ph +61 3 6233 3464 Fax +61 3 6234 1572
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 your letter of 12 July 2011 to the Deputy Premier, the Hon Bryan Green MP, regarding the Forestry Statement of Principles process.

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

The State has determined under this Agreement and based on Crown legal advice, that it is appropriate to make an offer of payment to Gunns, as provided under clauses 22 and 34 of the TFA, in return for particular commitments to enable essential processes that are required to give effect to the TFA's objectives, to be immediately progressed.

I wish to emphasise that this payment is not for the purchase of sawlog allocations or as compensation for relinquishing licence rights, as proposed in your letter of 12 July 2011. It is the State's view that you terminated the relevant contracts of sale, 917 and 918, on 18 April, with six months notice. Therefore, the valuation of these contracts, attached to your letter of 12 July 2011, is not considered relevant for determining a proposed settlement.

However, it is clear that to give effect to the TFA, commercial certainty needs to be provided by removing any possibility of ongoing action between the parties in relation to the past or surviving rights, and to immediately settle all amounts, including actual debts, disputed amounts and counter-claims in relation to these contracts – in order that the contracts can be immediately extinguished and the relevant areas used for meeting TFA objectives.

In accordance with clauses 22 and 34 of the TFA, the State is offering to pay Gunns Limited an amount of \$12.650 million (GST included) in full and final settlement of all rights and obligations under contracts 917 and 918.

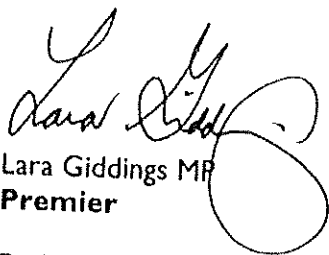
I attach two Deeds of Release for your consideration. The first is between the Crown and Gunns and describes in detail the conditions required by the State in return for this payment. The second is between Forestry Tasmania and Gunns and terminates the relevant agreements between the two parties and 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 information.

I note that the offer contained within Deed between the Crown and Gunns is of similar net value to the proposal in your letter of 23 June 2011. Given this, and the need to bring this matter to finality, Gunns Limited has until close of business on 2 September 2011 to accept this offer. If acceptance is not received by way of signing the two Deeds of Release by that date, the State will pursue other avenues to achieve the TFA objectives.

Yours sincerely

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

Lara Giddings MP
Premier

Encl



Deed

Dated

The Crown in Right of Tasmania
(Crown)

and

Gunns Limited
(Gunns)

The Crown Solicitor of Tasmania

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

Contents

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

Deed

Details

Parties	Crown, Gunns	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) [##insert facsimile number##]
	Attention	Secretary
Gunns	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7310
	Facsimile	(03) [##insert facsimile number##]
	Attention	Managing Director
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: <ul style="list-style-type: none"> (i) that Gunns by letter dated the 18th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
	D	Particularly Gunns claims:

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

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

Date See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

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

Forestry Tasmania means Forestry Tasmania ABN 91 628 769 359.

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

In this Deed, unless the context otherwise requires:

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

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

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

1.3 No contra proferentum

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

1.4 Headings

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

1.5 Defined terms

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

2 Condition

2.1 Condition

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

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

2.2 Termination

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

3 Payment

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

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

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

4 Excluded Claims

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

5 Assignment

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

6 GST

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

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

7 Representation and warranties

7.1 Gunns' warranties

Gunns represents and warrants to the Crown that:

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

8 Notices

8.1 Method of giving Notices

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

- (a) delivered;
 - (a) sent by pre-paid mail; or
 - (b) sent by facsimile,
- to that person's address or facsimile number (as applicable).

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

8.2 Time of receipt of Notices

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

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

8.3 Address for Notices

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

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

9 Law and jurisdiction

9.1 Governing Law

This Deed is governed by the Law of Tasmania.

9.2 Submission to jurisdiction

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

10 General

10.1 Waiver

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

10.2 Amendment

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

10.3 Severability

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

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

10.4 Further assurance

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

10.5 Counterparts

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

Executed as a deed

Signing page

Dated:

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

Signature

Signature of witness

Name of witness (print)

Address of witness

Occupation

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



Australian Government

**Tasmanian Forests Intergovernmental Agreement
between**

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

7 August 2011



Tasmanian
Government

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

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

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

STREAM ONE: SUPPORT FOR WORKERS, CONTRACTORS AND COMMUNITIES

Support for forest industry workers

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

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

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

Voluntary Exits for Native Forest Haulage, Harvest and Silvicultural Contractors

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

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

Legislated sustainable timber supply/Sustainable forestry industry

17. Wood supply for the remaining industry will be guaranteed:

- At least 155 000 thousand cubic metres per year of high quality sawlog, by regulation.
- 265 000 metres per year of peeler billets.
- A speciality timber supply, noting that the industry claim is 12,500 cubic metres per year, subject to verification.

18. Contracts for native wood supply that are in existence at the time of this Agreement will be honoured. The Governments recognise the importance of this commitment for the successful implementation of the whole Agreement, particularly in relation to the guaranteed supply of peeler billets under their

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

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

Conservation

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

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

30. The Tasmanian Government will introduce legislation no later than 30 June 2012 into the Parliament to formally protect the areas of reserve in Clause 29 with appropriate land tenure.
31. The Governments expect that Signatories to the Statement of Principles will support the provision of Forest Stewardship Council and/or Australian Forest Standard certification for appropriate remaining forestry activity in Tasmania. Progress towards agreement by Signatories to a process for achieving certification will be considered under Clause 45.
32. The Governments expect that the Triabunna mill will reopen and be operated in accordance with the Statement of Principles. If this does not occur, either Government may request a review of the terms of this Agreement, with a review to occur only if both Governments agree.
33. If legislation to give effect to Clauses 17 and 29 is not in place within three months of its introduction, either Government may request a review of the future funding under this Agreement.
34. The Commonwealth will provide \$43 million to the Tasmanian Government to assist the State to facilitate the implementation of this Agreement. At least \$15 million of this funding will be used by the State to support voluntary compensable exits by saw-millers wishing to exit the industry (as set out in Clause 23), and \$5 million is to be used in accordance with purposes and conditions to be agreed with the Commonwealth to support provision of information and consultation with affected communities.
35. The Commonwealth Government will provide an immediate payment of \$7 million to the Tasmanian Government in financial year 2011-12 to support management of the additional reserves. Following formal legislative protection by the Tasmanian Government of the areas of reserve identified in Clause 29, the Commonwealth will provide \$7 million per financial year, indexed to CPI, with a review of the base funding after 5 years.
36. Prior to formal legislative protection of the areas of reserve identified in Clause 29, and until completion of the independent verification process in accordance with Clause 20, the 430,000 hectares referred to in Clause 25 will be protected under a Conservation Agreement between the State, Forestry Tasmania and the Commonwealth under the *Environment Protection and Biodiversity Conservation Act*, with management of these new areas of reserve by the Forestry Tasmania. Following the completion of the independent verification process in accordance with Clause 20, this initial Conservation Agreement will lapse and all areas determined by the independent verification process for the purposes of Clause 29 will be

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

STREAM 3: ECONOMIC DIVERSIFICATION

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

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

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

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

Nature of Obligations under this Agreement and relationship to other agreements

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

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

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

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

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

Reporting

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

Data Use and Access

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

Funding

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

Treatment of Funding by the Commonwealth Grants Commission

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

Termination

52. With the exception of Clause 53, this Agreement may only be terminated by the Commonwealth with the consent of the State; or by the State with the consent of the Commonwealth; or where the dispute resolution clauses have been observed.
53. This Agreement may be terminated by the Commonwealth, where the State has been given a 30 day period of notice on:
- i. a failure to proclaim the new Formal Reserves in accordance with Clause 30; or

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

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

Duration and Extension of Agreement

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

Cooperation and Response to Requests

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

Dispute Resolution

57. The Governments agree that if a dispute arises between the Governments it must be resolved expeditiously in accordance with the following:

- When a dispute arises, either Government may serve a notice on the other specifying the nature and substance of the matter or issue in dispute.
- Within 7 days of the notice being served the Governments must attempt to settle the dispute.
- Each of the Governments agrees to use its best endeavours to resolve the dispute.

Notices

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

The Commonwealth

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

The State

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

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

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

.....
Julia Gillard MP
Prime Minister

.....
Lara Giddings
Premier

Launceston
7 August 2011

Definitions:

In this Agreement unless the contrary intention appears:

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

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

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

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

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

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

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

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

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

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

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

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

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

Tasmanian Forest Agreement - Forest Reserve Map



Legend

Roads

Existing Formal Reserves

State Forest

Forest Reserve Areas

Immediate Protected Area (430,000 ha)

Interim Forest Areas (as per Kelly Process)



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: Dead of Release Between Crown and
Forestry (Clean)

Contents

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

Deed

Details

Parties	Crown, Forestry Tasmania	
Crown	Name	The Crown in Right of Tasmania represented by the Department of Treasury and Finance
	Short form name	The Crown
	Address	21 Murray Street HOBART Tasmania 7000
	Facsimile	(03) [##insert facsimile number##]
	Attention	Secretary
Forestry Tasmania	Name	Forestry Tasmania (being the body corporate established pursuant to section 6 of the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) 6235 8223
	Attention	
Recitals	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: <ul style="list-style-type: none"> (i) that Gunns by letter dated the 18th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.
	D	Particularly Gunns claims:

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

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

Date See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

Commonwealth means the Commonwealth of Australia.

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

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

Gunns means Gunns Limited ABN 29 009 478 148.

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

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

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

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

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

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

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

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

1.2 Interpretation

In this Deed, unless the context otherwise requires:

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

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

1.3 No contra proferentum

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

1.4 Headings

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

1.5 Defined terms

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

2 Condition

2.1 Condition

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

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

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

2.2 Termination

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

3 Payment

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

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

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

4 Excluded Claims

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

5 Assignment

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

6 GST

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

7 Notices

7.1 Method of giving Notices

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

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

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

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

7.2 Time of receipt of Notices

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

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

7.3 Address for Notices

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

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

8 Law and jurisdiction

8.1 Governing Law

This Deed is governed by the Law of Tasmania.

8.2 Submission to jurisdiction

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

9 General

9.1 Waiver

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

9.2 Amendment

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

9.3 Severability

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

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

9.4 Further assurance

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

9.5 Counterparts

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

Executed as a deed

Signing page

Dated:

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

Signature ←

Signature of witness ←

Name of witness (print)

Address of witness

Occupation

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

Signature ←

Name and position held (print)

Signature ←

Name and position held (print)

Annexure "A"

Tasmanian Forests Intergovernmental Agreement



Deed

Dated

Forestry Tasmania
(Forestry Tasmania)

and

Gunns Limited
(Gunns)

The Crown Solicitor of Tasmania

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

Contents

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

Deed

Details

Parties		
Forestry Tasmania, Gunns		
Forestry Tasmania	Name	Forestry Tasmania (being the body corporate established pursuant to section 6 of the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Short form name	Forestry Tasmania
	Address	79 Melville Street HOBART Tasmania 7000
	Facsimile	(03) 6235 8223
	Attention	
Gunns		
	Name	Gunns Limited
	ACN	009 478 148
	Short form name	Gunns
	Address	78 Lindsay Street LAUNCESTON Tasmania 7310
	Facsimile	(03) [##insert facsimile number##]
	Attention	Managing Director
Recitals		
	A	Forestry Tasmania and Gunns are parties to the Wood Supply Agreements and the China Sale Agreement.
	B	Forestry Tasmania and Gunns are in dispute with respect to each party's obligations arising out of the Wood Supply Agreements and the China Sale Agreement and the continued existence of the Wood Supply Agreements themselves.
	C	Particularly Forestry Tasmania claims: <ul style="list-style-type: none"> (i) that Gunns by letter dated the 18th day of April 2011 terminated the Wood Supply Agreements with that termination to take effect on the 15th day of October 2011; (ii) that Gunns is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement by virtue of its failure to pay all sums of money accruing and due in accordance with the terms of those Agreements.

- D** Particularly Gunns claims:
- (i) that its letter dated the 18th day of April 2011 was not legally effective to terminate the Wood Supply Agreements;
 - (ii) that Forestry Tasmania is in breach of the terms of the Wood Supply Agreements and the China Sale Agreement and as a consequence Gunns has incurred loss and damage which is claimed from Forestry Tasmania.
- E** Forestry Tasmania and Gunns each deny the others claims.
- F** Forestry Tasmania and Gunns are agreed that in the event that the letter of the 18th day of April 2011 was legally effective to terminate the Wood Supply Agreements then Forestry Tasmania is legally obliged to enter into good faith negotiations with Gunns about the terms of new agreements for the supply of Pulpwood (as defined in Wood Supply Agreement 917) and Supply Products (as defined in Wood Supply Agreement 918).
- G** Gunns has indicated that it wishes to exit native forest logging operations in Tasmania.
- H** The parties have entered into this Deed for the purpose of:
- (i) except for the Excluded Claims extinguishing on and from the Settlement Date all Claims which each party has against the other in connection with the Wood Supply Agreements and the China Sale Agreement; and
 - (ii) terminating the Wood Supply Agreements and the China Sale Agreement on the Settlement Date.

Date

See signing page

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

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

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

this Deed means this deed of release.

Excluded Claims means the following claims or rights:

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

Forestry Tasmania means Forestry Tasmania ABN 91 628 769 359.

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

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

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

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

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

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

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

1.2 Interpretation

In this Deed, unless the context otherwise requires:

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

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

1.3 No contra proferentum

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

1.4 Headings

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

2 Condition

2.1 Condition

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

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

2.2 Termination

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

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

3 Termination of Wood Supply Agreements

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

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

4 Releases

4.1 Release by Forestry Tasmania

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

4.2 Release by Gunns

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

5 Excluded Claims

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

6 Interdependent obligations

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

7 Representation and warranties

7.1 Gunns' warranties

Gunns represents and warrants to the Crown that:

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

8 Notices

8.1 Method of giving Notices

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

- (a) delivered;
 - (a) sent by pre-paid mail; or
 - (b) sent by facsimile,
- to that person's address or facsimile number (as applicable).

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

8.2 Time of receipt of Notices

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

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

8.3 Address for Notices

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

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

9 Law and jurisdiction

9.1 Governing Law

This Deed is governed by the Law of Tasmania.

9.2 Submission to jurisdiction

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

10 General

10.1 Waiver

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

10.2 Amendment

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

10.3 Severability

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

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

10.4 Further assurance

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

10.5 Counterparts

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

Executed as a deed

Signing page

Dated:

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

Signature ←

Name and position held (print)

Signature ←

Name and position held (print)

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

Signature of director ←

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

Name of director (print)

Name of director/company secretary (print)

Annexure "A"

Forestry Tasmania Release Deed

Annexure "B"

Gunns Release Deed

To: martin.wallace@treasury.tas.gov.au
 cc:
 From: Tony Ferrall/FSq/TreasFin
 Date: 03/06/2011 02:05:34 PM
 Subject: Triabunna

Jobs axed as woodchip mill closes

Updated 1 hour 16 minutes ago

Gunns' Triabunna mill is on the market. (ABC News)

- [Map: Triabunna 7190](#)

The Australian Manufacturing Workers Union has been told Gunns will close its Triabunna woodchip mill on Tasmania's east coast, with the loss of 50 jobs.

Mill workers were stood down temporarily in April as part of a two-month shutdown caused by volatile woodchip markets.

The Triabunna mill is on the market under Gunns' plans for a mass asset sale to help finance its \$2.3 billion Tamar Valley pulp mill.

Mr Clark says workers have been told they will be made redundant by Monday.

"[There's] a notice period which varies between three to five weeks," he said.

"During that notice period, the employees will be loading any boats that are arranged through the Gunns contracts and some maintenance work which will hopefully assist in the sale of the mill."

Full entitlements and redundancy payments have been secured.

The union says the forestry industry is on its knees.

Mr Clark says while market volatility is to blame, the situation has been exacerbated by pressure from green groups.

"The minority groups which have run a propaganda campaign for some time now has very cleverly brought the forestry industry to its knees," he said.

The company has been contacted for comment

Tony Ferrall
 Deputy Secretary
 Department of Treasury and Finance

Telephone (03) 6233 2132
 Facsimile (03) 6233 5699

Mobile 0419 329 862

To: martin.wallace@treasury.tas.gov.au
 CC:
 From: Greg L'Estrange <Greg.L'Estrange@gunns.com.au>
 Date: 21/06/2011 01:58:58 PM
 Subject: Fw: FTas - nett position at 31 May

Greg L'Estrange
Managing Director

78 Lindsay Street
 LAUNCESTON Tas 7250 ☎ 03 6335 5406
 ☎ 03 6335 5201 switch ✉ greg.lestrange@gunns.com.au
 ☎ 03 6335 5211 direct ☎ www.gunns.com.au

Making Sustainability Our Business



----- Forwarded by Greg L'Estrange/Gunns on 21/06/2011 01:49 PM -----

From: Steven M Butt/Gunns
 To: Greg L'Estrange/Gunns@Gunns
 Cc: Wayne Chapman/Gunns@Gunns, Bryan E Hayes/Gunns@Gunns
 Date: 21/06/2011 11:51 AM
 Subject: FTas - nett position at 31 May

Greg - balance of position with Ftas as of 31/5 as below.

Hope this is clear - please let me know if you have any queries.

thanks
 Steve

Owed by Gunns to Ftas

\$'000

Acknowledged:

Pulpwood - March	\$	3,754
Pulpwood / Sawlog - April	\$	1,883
Pulpwood / Sawlog - May	\$	487
Leases	\$	1,560
other misc invoices	\$	89
	\$	<u>7,773</u>

In progress

Invoice charges - calculations to be validated

\$	<u>214</u>
----	------------

\$	<u>7,986</u>
----	--------------

nett owed by Gunns

\$	<u>1,008</u>	k
----	--------------	---

disputed

misc. amounts in dispute	\$	242
amounts on FT Statement - further details required	\$	97
Take or Pay claim	\$	9,881
	\$	<u>10,220</u>

Total Amount owing per Ftas statements

\$	<u>18,206</u>
----	---------------

Note:

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. The Company and any of its subsidiaries each reserve the right to monitor all e-mail communications through its networks.

Any views expressed in this message are those of the individual sender, except where the message states otherwise and the sender is authorised to state them to be the views of any such entity.

Thank You.

To: "Sayer, Mark (DPaC)" <Mark.Sayer@dpac.tas.gov.au>
 cc: "martin.wallace@treasury.tas.gov.au" <martin.wallace@treasury.tas.gov.au>,
 "Swain, Gary (DPaC)" <Gary.Swain@dpac.tas.gov.au>
 From: "Vadasz, Karen (DPaC)" <Karen.Vadasz@dpac.tas.gov.au>
 Date: 10/08/2011 03:54:29 PM
 Subject: FW: Letter from Greg L'Estrange

Hi Mark

This letter has been logged in our office today. It was apparently forwarded to the Deputy Premier's parliament email address late yesterday afternoon.

It was resent to the Minister today, with a c.c. to me.

For your information.

Cheers

Karen.

From: Raelene Bates [mailto:Raelene.Bates@gunns.com.au]
Sent: Wednesday, 10 August 2011 2:37 PM
To: bryan.green@parliament.tas.gov.au
Cc: Vadasz, Karen (DPaC)
Subject: Fw: Letter from Greg L'Estrange


FYI

Raelene Bates
Executive Assistant to the Managing Director, Greg L'Estrange

78 Lindsay Street
 LAUNCESTON Tas 7250 ☎ 03 6335 5406
 ☎ 03 6335 5201 switch ✉ raelene.bates@gunns.com.au
 ☎ 03 6335 5211 direct 🌐 www.gunns.com.au

Making Sustainability Our Business

Gunns LIMITED



----- Forwarded by Raelene Bates/Gunns on 10/08/2011 02:36 PM -----

From: Raelene Bates/Gunns
 To: bryan.green@parliament.tas.gov.au
 Date: 09/08/2011 05:05 PM
 Subject: Letter from Greg L'Estrange

Dear Acting Premier

Please find attached a letter from Greg.

Regards
 Rae

Raelene Bates*Executive Assistant to the Managing Director, Greg L'Estrange*

78 Lindsay Street

LAUNCESTON Tas 7250

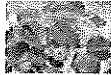
☎ 03 6335 5406

☎ 03 6335 5201 switch

✉ raelene.bates@gunns.com.au

☎ 03 6335 5211 direct

🌐 www.gunns.com.au

Making Sustainability Our Business**Note:**

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. The Company and any of its subsidiaries each reserve the right to monitor all e-mail communications through its networks.

Any views expressed in this message are those of the individual sender, except where the message states otherwise and the sender is authorised to state them to be the views of any such entity.

Thank You.**CONFIDENTIALITY NOTICE AND DISCLAIMER**

The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return at our cost. No liability is accepted for any unauthorised use of the information contained in this



transmission. LETTER - PREMIER ACTING (GREEN Bryan) 2011 08 09.pdf



9 August 2011

The Hon. Bryan Green
Acting Premier

Email - bryan.green@parliament.tas.gov.au

Dear Acting Premier

I refer to the recently announced signing of the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania dated 7 August 2011.

Under clause 22 of the agreement it envisages the State Government and Gunns to engage in negotiations to retire sawlog contracts to achieve the objectives of clauses 17 and 29.

The company seeks the Government to enter into such negotiations as a matter of urgency to ensure that the continued uncertainty can be eliminated.

As previously advised by the Board, the management of Gunns Limited will conduct such negotiations with the State and it would be appreciated if you could advise who will represent the State in this matter and when this could be achieved.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. L'Estrange", with a long horizontal flourish extending to the right.

Greg L'Estrange
Managing Director

cc – Chris Newman, Chairman, Gunns Limited Board

To: martin.wallace@treasury.tas.gov.au
 cc:
 From: Tony Ferrall/FSq/TreasFin
 Date: 16/08/2011 06:09:20 PM
 Subject: Fw: Proposed Engagement - Review of process for determining Forestry Transactions

FYI - you may want to send to Rhys?

Tony Ferrall
 Deputy Secretary
 Department of Treasury and Finance

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

----- Forwarded by Tony Ferrall/FSq/TreasFin on 16/08/2011 06:08 PM -----

Tony Ferrall/FSq/TreasFin
 16/08/2011 06:08 PM

To hgibson@wlf.com.au
 cc richard.sulikowski@treasury.tas.gov.au, Jason O'Neil/FSq/TreasFin@DTF
 Subject Proposed Engagement - Review of process for determining Forestry Transactions

Harvey

As discussed earlier today, I attach for your attention a proposed engagement letter and TOR for 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. I understand from our discussion that Danny McCarthy will be available to perform the proposed review.

This engagement is highly important and it is critical that the engagement is completed as soon as practicable, but in any event no later than Wednesday 24 August.

I would be grateful if you/Danny would review the proposal and contact me early tomorrow to discuss.

Regards

Tony

Tony Ferrall
 Deputy Secretary
 Department of Treasury and Finance

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



- Probity Advice Terms of Reference.DOC



- Letter to Danny McCarthy Probity Adviser.DOC

**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**

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."

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 relating to wood supply contracts WS917 and WS918 between Gunns Limited and Forestry Tasmania.

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.

SCOPE

The following issues will need to be addressed in the review:

1. The requirement 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 for 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 must resolve the settlement of all outstanding claims and demands by each party against the other, in relation to the relevant wood supply contracts.

TIMEFRAME EXPECTATIONS

The Government has an expectation that the probity adviser will be able to provide a report on the findings of the review, addressing points 1 to 4 above, by close of business on Wednesday, 24 August 2011.

CONSULTATION

The following parties should be interviewed as part of the review:

- Mr Martin Wallace, Secretary of the Department of Treasury and Finance;
- Mr Leigh Sealy, Solicitor-General;
- Mr Grant Kench, Acting Crown Solicitor; and
- either, Mr Rhys Edwards, Secretary of the Department of Premier and Cabinet, or Mr Greg Johannes, Deputy Secretary of the Department of Premier and Cabinet, regarding the requirements of the Intergovernmental Agreement.