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Second Review Request

MURDOCH CLARKE

BARRISTERS  
AND  
SOLICITORS

5 July 2012

Department of Agriculture, Fisheries & Forestry  
Agricultural Productivity Division



Attention: Jeremy Cook

Dear Sir

**TASMANIAN FORESTS INTERGOVERNMENTAL AGREEMENT  
CONTRACTORS VOLUNTARY EXIT GRANTS PROGRAM ("IGACEP")  
- DENNIS & SANDRA ILES as trustee for the Dennis Iles Family Trust**

I act on behalf of Dennis and Sandra Iles.

I refer to your letter dated 28 May 2012 refusing to revise the grant previously offered to Mr and Mrs Iles. Mr and Mrs Iles now seek a review of that decision on the grounds outlined below.

**1. APPLICATION FOR REVIEW**

- 1.1. By application dated 23 November 2011, Mr and Mrs Iles made application to you for a voluntary exit grant of \$1.135 million under IGACEP.
- 1.2. You subsequently offered \$571,792.20 (GST exclusive) and did not revise your decision upon review (your letter dated 28 May 2012).
- 1.3. My clients accepted your offer with the caveat that a review of your decision would take place.
- 1.4. The Honourable Mr Brian Green sought a review on my clients' behalf. Yet, my clients have been advised by you both orally and in your letter dated 28 May, to seek a formal review. They do so now.
- 1.5. My clients make application for a review on the express understanding of the conversation which preceded an email from your Paula Ogilvie dated 21 June 2012. That is, this review can take place irrespective of

**PARTNERS**

DM WHITEHOUSE

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K B PROCTER SC

D F EGAN

P KUZIN

R S REID

A I GAGGIN

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A L HAY

**SENIOR ASSOCIATES**

M G FOSTER

A G BURROWS-CHENG

R C MANNING

C R HIGGINS

**ASSOCIATES**

L N GOLDING

J F O'SHANNESSEY

B R DANCE

**CONSULTANTS**

K M DRAKE

R J BADENACH



acceptance of any previous offer. I confirm that review is still an option available.

## 2. Grounds for Review

### Ground 1: Inability to present additional information

2.1. The last paragraph of your letter dated 28 May 2012 advises that my client may seek a further review of the decision by the DAFF, but that no new information can be considered. I do seek to include 'additional' information but only because it was available to Mr and Mrs Iles at the time of submitting their application but they were erroneously led to believe that the information was not required.

2.2. I enclose my clients' figures for actual harvested volumes of public native forest. You will see these figures are different from those supplied to you by Gunns largely because they include volumes for other products besides pulpwood – including sawlogs, power poles and rotary veneer logs in public native forest.

2.3. The figures for 2009/2010 and 2010/2011 need to be adjusted as follows:

- 1) 2009/2010: An additional 4,797.58t of public native forest was harvested and hauled, taking the actual volume from public native forest to:

Cartage 12,966.04 (+4,797.58t)

Ground Based 12,966.04 (+4,797.58t)

25,932.08t.

- 2) 2010/2011: An additional 10,037t of public native forest was harvested and hauled, taking the actual volume from public native forest to:

Cartage 25,392.21 (+10,037t)

Thin 6,752.86

Ground Based 18,639.35 (+10,037t)

50,784.42t

- 2.4. This information was not originally supplied to the DAFF despite it being available because Mr Iles was informed that the actual tonnage figures





were to be supplied by Gunns and that DAFF would not receive any other information as to actual harvest quantities. In addition, Mr Iles thought that once the Gunns figures demonstrated he was eligible for the grant, the assessment was based on contracted volumes and not the actual harvested volumes. In other words, there was no point showing these figures.

2.5. However, the guidelines clearly state otherwise:

- 1) *Harvest and haulage businesses will be required to provide information to assist the department in determining the tonnage of harvested and hauled wood.....(page 3)*
- 2) *It is your responsibility to correctly fill out the application form and to provide all requested information.... (page 8)*
- 3) *documents showing the actual tonnage of the business.... (page 9)*

2.6. My client now appreciates the Guidelines and the assessment criteria however it was originally of the understanding that the assessment was on contracted volumes, not actual harvested volumes. While actual harvested volumes as supplied by Gunns were annexed to my client's application, these were limited to pulpwood and my client did not fully understand the significance of these figures. They now offer this 'additional' information which is verifiable through business records so as the department can assess the application correctly and in accordance with the guidelines. In my submission, criteria 1 ought increase on account of this 'additional' information.

#### Ground 2: Criterion 1 Assessment

2.7. My client's application was assessed on the 2009/2010 figures for actual volume from public native forests. These figures were:

Cartage	8,168.46
Thinning	-
Ground Based	8,168.46
	16,336.92

2.8. As noted above, this figure should actually be 25,932.08t.

2.9. According to the Guidelines, the department could only refer to the 2009/2010 figures where "there is no annual agreed tonnage". It is my view that there is an annual agreed tonnage at present and that the department has incorrectly used the 2009/2010 figures when it should have applied the first limb of Criterion 1 of the Merit Criteria.





2.10. The first limb of Criterion 1 is:

*The difference between the business's actual delivered harvest and/or haulage tonnage from Tasmanian public native forests for the period 1 July 2010 to 30 June 2011 and the business's annual agreed tonnage from Tasmanian public native forests under ongoing contracts or ongoing arrangements.*

2.11. Your decision to use the 2009-2010 actual tonnage figures (second limb of Criterion 1) has been questioned by Mr Iles. In answer to specific questions, you stated in your letter dated 18 May 2012 that:

*"A decision was made to use 2009-10 actual tonnage as public native forest contracted amounts could not be provided by Gunns Limited contractors..."*

And:

*"The Advisory Panel made a determination to use actual tonnages for 2009-10 for the purposes of calculation of merit criterion 1 and 2. The program guidelines allowed for this if annual contracted public native forest tonnage could not be supplied."*

2.12. Actual annual contracted public native forest tonnage is currently 0. My client's contracts with Gunns Limited specify a harvest contract volume of 45,000t but the nominated quota is contractually "at the discretion of [Gunns]" and Gunns have the right to "reduce the base quota". In April 2011 this volume was reduced to zero, as per the enclosed letter from Gunns Limited dated 5 April 2011. This quota has remained at zero since April 2011. It is my submission that this zero quota is the annual agreed tonnage from Tasmania public native forests, and it is this zero quota that is to be deducted from the actual harvest and haulage from Tasmanian public native forests for the period 1 July 2010 to 30 June 2011. This interpretation would be consistent with the definition of "ongoing arrangements".

2.13. Accordingly, the calculation for Criterion 1 ought read:

*actual delivered harvest and/or haulage tonnage from Tasmanian public native forests for the period 1 July 2010 to 30 June 2011:*

Cartage	25,392.21
Thin	6,752.86
Ground Based	<u>18,639.35</u>





50,784.42t

**LESS**

*annual agreed tonnage from Tasmanian public native forests under ongoing contracts or ongoing arrangements (0t).*

- 2.14. Accordingly, Criterion 1 ought to have been assessed as 50,784.42t as opposed to 16,336.92t. To have assessed my client based on the second limb of Criterion 1 causes them undue hardship and is not in line with the program's objectives.
- 2.15. I enclose a copy of correspondence from the Hon. Bryan Green MP, Deputy Premier and Minister for Energy and Resources to the Hon. Joe Ludwig, Minister for Agriculture, Fisheries and Forestry dated 20 June 2012. I reiterate the Minister's comments in that correspondence, particularly in reference to the Advisory Panel's use of the 2009/2010 figures in assessing my client's application and the lack of alignment with the Agreement and intention behind the IGACEP.

**Ground 3: Nominated Amount too low**

- 2.16. Given your offer and the ultimate basis for assessment, my client's assessment of what he would take to voluntarily exit was understated.
- 2.17. I refer again to the correspondence from the Hon. Bryan Green MP, Deputy Premier and Minister for Energy and Resources to the Hon. Joe Ludwig, Minister for Agriculture, Fisheries and Forestry dated 20 June 2012. I reiterate the Minister's comments in that correspondence, particularly in reference to "offers of fair value" and the lack of alignment with the Agreement and intention behind the IGACEP.

**Ground 4: Forestry Agreement**

- 2.18. The Tasmanian Forests Intergovernmental Agreement dated 7 August 2011 between the Commonwealth of Australia and the State of Tasmania ("the Agreement") was designed to "assist the Tasmanian public native forest industry to adjust to industry downturn and to the reduced scale of native forest harvesting, through voluntary exit assistance to eligible harvest, haulage and silvicultural contracting businesses" (Grant Program Guidelines, October 2011).
- 2.19. Whilst not designed to be 'compensation', the Agreement suggests as an aspect of fairness; that there is a significant proportion of the Tasmanian community relying on the public native forest industry, and that with the necessary reduction in this industry this proportion of the community would suffer hardship and would need assistance.



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**MURDOCH CLARKE**  
It is my view that the assessment of my client's application does not accord with the Agreement, as it was based on my client's figures for 1 July 2009 to 30 June 2010, and not 1 July 2010 to 30 June 2011.

- 2.21. Further, the IGACEP requires that my client, as with all applicants, exit the forest industry nationally for a period of 10 years (except to the extent of existing contractual arrangements in the mainland sector, the Tasmanian private native forest sector or the Tasmanian plantation sector). To place this condition on my client, when his application has not been appropriately assessed, is unfair and not in the spirit of the Agreement.

I look forward to acknowledgement of this application for review and ultimately, your response.

Should you have any additional questions, please do not hesitate to contact me

Yours faithfully  
**MURDOCH CLARKE**

Per:

**ALISON HAY**

BARRISTERS  
AND  
SOLICITORS

PAKINER  
L M WHITE HOUSE  
A J DENEELY  
K B PROCTOR SC  
D F EGAN  
P K ZIS  
R S RICE  
A I GILPIN  
B S SWAIN  
A L HAY

SENIOR ASSOCIATES  
M G FOSTER  
A G BURROWS CHENG  
C C MANNING  
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