



Reference: IGACEP092

Results from 2d Review

Ms Alison Hay
Murdoch Clarke Barristers and Solicitors



Dear Ms Hay

I refer to your letter of 5 July 2012, on behalf of your client, Denis and Sandra Iles as trustee for the Dennis Iles Family Trust (your client), seeking a second review of a decision made by the department under the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program (IGACEP) to offer your client \$571,792.20.

As you are aware, in accordance with the IGACEP Review Guidelines, an independent officer was appointed to undertake the second review of the decision to offer your client \$571,792.20 and make recommendations to me as the independent decision maker in this review.

I am writing to advise that following the second review of your client's circumstances, I have made the decision to affirm the original offer to your client of \$571,792.20 as determined by the original decision on 12 February 2012. The effect of my decision is that there is no change to the amount to be offered to your client under the IGACEP.

Overall, I found that the assessment of your client's application was done in accordance with the program guidelines, was consistent with the assessment process and was within the parameters of the program objectives.

The reasons for my decision to affirm the department's original decision and grant offer amount to your client generally draws on the Advisory Panel's report and in particular, the determinations made by the Panel members to assist in assessing the merit of applications and making funding recommendations to the program decision maker.

These determinations were made to ensure fairness and consistency in the assessment process, to best meet the programs objectives, and to ensure value for money for the Commonwealth. The Panel applied the criteria and decision rules equally against all eligible applicants. I note that the Advisory Panel comprised three members, including an official from the Tasmanian Government, and that determinations were made by consensus.

In addition to the Advisory Panel's report, I also took into account the following:

- Your client's application of 24 November 2012 and subsequent information submitted by them (and WHK Pty Ltd) in relation to that application and this review up until 19 October 2012 (including the information from Gunns Limited and Koppers Pty Ltd of 15 October 2012)
- The IGACEP Grant Program Guidelines October 2011 (the Guidelines)

- The Grant's Application Assessment Plan (the Assessment Plan) November 2011
- Report of the Advisory Panel (the Panel) of February 2012.
- Advice from the IGACEP secretariat on the administration of the program.

* I have noted that the report of the Advisory Panel has not been published and have suggested that the Program Manager consider releasing it. I have explained relevant aspects of the report here to assist you to understand the reasons for my decision.

Ground 1: Inability to Present Additional Information

In assessing ground one, I noted that you submit on behalf of your client that information relating to actual volumes was available at the time of their application at 24 November 2011. I further note that this information was not provided in support of their request for a second review and that:

↑ Un-true ↑

(un-true) ↓

- It was necessary for your client (and the department) to source information about actual volumes after the request for second review had commenced. This information was provided to the department on 15 October 2012
- * There is no evidence to indicate that the department had provided your client or WHK Pty Ltd (representing your client at the relevant time) erroneous advice in relation to the what information should be provided in support of their application
- At page 21 of your client's application, Dallas Frost of WHK Pty Ltd certified on 23 November 2011, that all the total agreed and actual volumes for the business set out in Section D (being Annexure 4.1 provided to the department on 5 December 2011) were accurate. The department relied on this information as complete and correct

The opportunity to source and submit further information in order to seek an increase in the grant offer has not been available to any other applicant. In relation to this, the Advisory Panel made a specific determination on 19 December 2011 that after 3pm 20 December 2011 no further information would be accepted from any applicant and the secretariat would place any late information on the applicant's file with a note stating that it would not be assessed as it was received after the due date. This approach reflected the necessity to act fairly and consistently throughout the process.

While I appreciate that this is a disappointing outcome for your client, this needs to be balanced in light of the competitive nature of the program, the program guidelines and objectives.

Ground 2: Criterion 1 Assessment

In relation to ground two, it was submitted that the department incorrectly used 2009/10 actual volume from public native forests and that it should have applied the first limb of Criterion 1 of the Merit Criteria, that is:

The difference between the business's actual delivered harvest and/or haulage tonnage from Tasmanian public native forests, as defined in section 4, 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.

* In making my decision, I noted that at its meeting of 19 December 2011, the Advisory Panel discussed and agreed on how it would manage the issue of contracted amount versus actual amount. In particular, the schedule of the Panel's decision sheet at Annexure 5 provides:

(4) *Gunns Ltd contracts do not specify private/public breakdown. Gunns have provided the actual in terms of public/private. Panel to consider regarding using the contracted amount or actual.*

- *Will need to decide if panel will use the actual amounts to assess eligibility rather than the contracted amount; also need to check that the process does not disadvantage any applicants who have provided contracted amounts*
- *Forestry Tasmania confirmed that all contractors who worked for them had worked in Tasmanian public native forest*
- *Gunns Ltd stated that "Gunns contracts for harvest and/or carriage are non prescriptive on Land Tenure. The volume could be sourced from either public or private forests. Gunns Ltd hold the agreement to access State Forest (Public Forest), which was carried out by contractors with supply contracts with Gunns Ltd. Gunns Ltd have therefore provided to contractors the breakdown on actual volume from Private and Public Forests for each financial year."*

* *The panel requested advice be sought from the department's grants management area. The grants policy area advised that the important consideration is consistency and to be prepared to manage the expectations of any applications that may have assumed the contracted volume would be used.*

* *The record of the outcome of the meeting of 19 December 2011 indicates that all Panel members agreed that actual figures would be used for merit criterion 1 and 2 and that the Panel formed the view that 'this ensures a consistent approach and aligns with the objectives of the IGA and the program'. Further, the Panel determined that actual tonnage for 2009-10 would be used as this also aligned with the program guidelines.*

The Advisory Panel also determined that *only verified actual tonnage amounts would be used*. The Panel specifically acknowledged that in some cases the calculations based on verified amounts reflected a reduced tonnage and led to offers lower than the amount nominated.

Ground 3: Nominated amount was too low

The Guidelines, Assessment Plan and Advisory Panel Report provide the structure and basis for how the IGACEP would be managed, how applications would be assessed and how offers would be made.

The issues that arose during the Advisory Panel discussions, and decisions reached during their meetings, were recorded in the Decision Sheet which was Annexure 5 to the Panel's report and made with the consensus of the Panel. These determinations applied to all eligible applicants and as noted by the Panel in their report, were made to ensure consistency and best meet the program objectives.

In selecting suitable applicants and making grant offers, I noted that the Advisory Panel looked at a number of other matters including:

- Assessment of the amount nominated by each eligible applicant to exit the industry in conjunction with business financial statements, industry financial information and the results of the independent financial assessment
- Merit scoring of eligible applications – including considering value for money to the Commonwealth represented by the merit criteria 2 score for the dollar amount nominated divided by actual tonnage
- An assessment of each eligible application with respect to the determination to set a cap of \$35.00 per tonne.

The Panel also gave consideration to the overall program objectives (at page 10) in ensuring that grant exit assistance offers could be made to all eligible applicants.

Accordingly, your client was offered \$571,792.20 based on their actual figures of 16,336.92 tonnes at \$35.00 per tonne. Again, this methodology was applied to all eligible applicants.

Ground 4: Forestry Agreement

You have submitted that the Intergovernmental Agreement of 7 August 2011 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", as set out in the Guidelines.

You have also submitted that the assessment of your client's application does not accord with the Agreement as it was based on their figures for 1 July 2009 to 30 June 2010 rather than those provided for the period 1 July 2010 to 30 June 2011.

The Program Guidelines expressly stated that the Program was not designed to compensate for contracts lost or cancelled, and due to the competitive nature of the Program, it was open to the Commonwealth to offer a lower amount than nominated by the business. It was open to the Panel to recommend no offer be made where applications exceeded the funding allocation available.

It was stipulated from the outset that there was no guarantee that applicants would be offered their nominated amount and it was open to applicants to decline a grant funding offer and remain in the industry if they were not satisfied with the offer amount.

This review does not comment on the fact that we claim an annual agreed public native volume as described in our review request application !!!

I trust this assists in explaining the reasons for the original decision and my decision to affirm it. If you are not satisfied with the outcome of my decision you may approach the Commonwealth Ombudsman to review this matter by contacting them on:

In writing:

By telephone:

By Email:

Yours sincerely

Ms Jo Evans
First Assistant Secretary
Trade and Market Access Division
Department of Agriculture, Fisheries and Forestry

/ November 2012