



SOUTH EAST FOREST RESCUE

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Committee Secretary
Senate Standing Committees on Rural Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra, ACT 2600

By email: rrat.sen@aph.gov.au

3 April 2013

Dear Committee,

RE: INQUIRY INTO AUDITOR GENERAL'S REPORTS ON TASMANIAN FOREST GRANTS PROGRAMS

There are currently Tasmanian loggers on both the north and south coast of New South Wales logging native forest. These loggers have expressed the view that after the five year term of their funding is ended they will be returning to Tasmania. The focus of this evidence is on the south coast of NSW. There are two Tasmanian logging companies that we are aware of – Wilson Logging and Kasun Logging Pty Ltd ('Kasun Logging'). Our main focus is on Kasun Logging.

In our view Kasun Logging has broken both the Deed of Undertaking and the Funding Deed. There is question of their initial eligibility. The period for determination of eligibility was for 1 January 2009 to 30 June 2010.

1. Kasun Logging received an exit assistance package from the Commonwealth Government in January 2011 to exit native forest logging;¹ ('Appendix A') and

¹ Tasmanian Forest Contractors Exit Assistance Program Grant Program Guidelines November 2010, (online) <http://daff.gov.au/forestry/national/tfceap/successful_applicants>; Application for Tasmanian Forest Contractors Exit Assistance Grants 2010; see also The Hobart Mercury (online) <http://www.themercury.com.au/article/2011/02/18/208081_tasmania-news.html>.

2. Kasun Logging had been living in Narooma NSW and logging in the Dampier State forests on the south coast since 2 June 2010;² ('Appendix B') and

3. Kasun Logging then changed the address of the company to a New South Wales address in February 2011.³ ('Appendix C')

1. Deed of Undertaking

The Deed of Undertaking states:

It is a condition of payment that successful applicants will agree to:

- cease operating the business within two months of receiving the initial exit grant payment.⁴

To receive the second grant payment of 25 per cent of the grant amount, the grantee must be able to demonstrate that:

- they have sold the business machinery or can demonstrate that the business machinery will not be used by the applicant in the native forest harvest and/or haulage contracting sector.

If these conditions were not met, a second payment should not have been made and the amount of grant already paid to the person is recoverable by the Commonwealth as a debt due to the Commonwealth.⁵

The Funding Deed states at cl.2.3:

- (b) A Nominated Individual must inform the Commonwealth within five years of the Grantee receiving the first Milestone payment if he or she enters into business which is indicative of a return to native forest harvesting and/or haulage contracting.

At cl.3 it provides that the project objectives are:

² Forestry Corporation NSW, Southern Monthly Plan of Operations, September 2010.

³ Australian Securities Investment Commission Form 484 *Corporations Act 2001* Change to Company Details, Document No 7E3500622, Lodgement date/time: 25-02-2011 14:56:19, Reference Id: 81761224.

⁴ Deed of Undertaking Relating to Exit Assistance Under the Tasmanian Forest Contractors Exit Assistance Program 2010.

⁵ Funding Deed for Tasmanian Forest Contractors Exit Assistance Commonwealth of Australia, Department of Agriculture, Fisheries and Forestry (Cth) 2010.

- (a) Business ceasing operations;

Kasun were required to 'Provide the following details of all your Tasmanian native forest harvesting and/or haulage contracts (operative or inoperative), quota or delivery arrangements for the period 1 January 2009 to 30 June 2010' on the application form.

It would seem that Kasun was logging plantation prior to coming to NSW. To be eligible Kasun needed 'to conduct its activities predominantly in the Tasmanian native forest harvest and/or Tasmanian native forest haulage contracting sector' and were judged on the size of contracted volume percentages.

There is no mention in the Deed, Guidelines or Application Form of pre-existing contracts. It is a principle of contract law that contracts must be honoured otherwise liability will flow. Nevertheless, even taken at its highest, when the existing contract expired they would be barred from entering into a new agreement.

2. Activities Predominantly in Tasmania?

We can confirm that Kasun were in NSW in Dampier State Forest from 2 June 2010 in Cpt 3130/3131.⁶ Whether Kasun were in NSW earlier than that would be a matter for better resourced investigation.

Kasun declared they had a debt owed to them of \$160 000.⁷ We have been able to determine that there was a debt owed to Kasun of \$137 509 by Forest Enterprises Australia Ltd,⁸ (attached and marked 'Appendix D'), a plantation company in voluntary administration. This would signal that Kasun was logging plantation. Again more resources would be needed to investigate this. Thus if they were in NSW from December they would only be able to claim 10 months. It is difficult to see how Kasun qualified for the maximum amount of \$750 000 plus GST (\$825 000 in total).

⁶ Forestry Corporation NSW, Monthly Plan of Operations, July 2010.

⁷ Narooma News, 'Logging Protest at Narooma Forest Sees Contractor Respond' Local News General, Narooma News, 4 May 2011 (online) <<http://www.naroomanewsonline.com.au/news/local/news/general/logging-protest-at-narooma-forest-sees-contractor-respond>>.

⁸ Bri Ferrier, *First Meeting of Creditors of Forest Enterprises Australia Limited*, Albert Hall Convention Centre, Launceston, Tasmania, Minutes of Tuesday 27 April 2010, <briferrier.com.au/.../FEA__First_Meeting_of_Creditors_Minutes.pdf>.

3. Registered Business Address

The application form was created by the government on 23 November 2010. It required the applicants to provide the registered address of the business. Kasun's registered address remained in Tasmania however they were living in Narooma, and later moved to Moruya. This address was not changed until February 2011, after receiving the grant.

*ASIC Details*⁹

Kasun Logging Pty Ltd. 21 Priory Rd, St Helens TAS 7216

KASUN LOGGING PTY LTD

ACN 009 579 284

K&M Barker Family Trust ('Appendix C')

Further there is some question over the Forestry Corporation NSW (FCNSW) 'tender' process. It has been alleged that FCNSW had difficulty getting logging contractors and thus did not tender but actively went looking for logging contractors. FCNSW Regional Manager in Batemans Bay Daniel Tuan was working in Tasmania and spent 10 years with Forestry Tasmania where he was planning manager in the Huon Valley south of Hobart before moving to NSW.¹⁰

It is worth noting that it has been alleged that the FCNSW paid for the accommodation, relocation and transportation of Kasun. This would include five machines, two utes and perhaps a 4wd.

It is also worthy of further note that another Tasmanian contractor Wilson Logging was in NSW however again more resources would be needed to investigate that company.

It could also be argued that as the money was provided by the Commonwealth that there is an issue of additionality, in other words national funding should apply nationally.

⁹ ASIC Business Register Search, conducted 29 April 2010.

¹⁰ Forestry Corporation, 'Daniel Tuan Heads Up Forests NSW in Southern Region' Media Release, 4 March 2011.

Background Information

Lastly for your information FCNSW are currently running at a \$14-16M loss every year in the native forest sector, \$232M loss before tax, perhaps due to the very low royalty rate of \$6.90 a tonne in the Southern sub region and \$11-13 in Eden.¹¹

There are no more than 70 workers on ground. All but one company have mechanical harvesters.

These whole logs are felled mainly to fulfil the wood supply agreement with South East Fibre Exports woodchip mill in Eden which is wholly owned by Japanese company Nippon Paper Group.

In Southern sub region FCNSW directly pay companies, in Eden FCNSW give the money to SEFE, and SEFE pay the companies.

¹¹ Auditor-Generals Reports, Auditor-Generals Report, Vol 1,2009, (online) <http://www.audit.nsw.gov.au/publications/reports/financial/2009/vol1/pdfs/31_0173_forestry_commission_of_new_south_wales.pdf>; see also Auditor-General's Report to Parliament, Vol 1 2001, (online) <<http://www.audit.nsw.gov.au/publications/reports/financial/2001/vol1/173Forestry.PDF>>; Auditor-General's Report to Parliament, Vol 5, 2002, (online) <http://www.audit.nsw.gov.au/publications/reports/financial/2002/vol5/173_ForestryCommission.pdf>.

Appendix A

GMS-1130	DAFF	Forest Industry	Tasmanian Forest Contractors Exit Assistance Program	Kasun Logging Pty Ltd as Trustee for K & M Barker Family Trust	To assist eligible businesses to exit the Tasmanian native forest harvest and haulage contracting sector.	\$825,000	24.01.11	60 months	Launceston, TAS 7250
GMS-1097	DAFF	Forest Industry	Tasmanian Forest Contractors Exit Assistance Program	Wilson Logging Pty Ltd (Grantee)	To assist eligible businesses to exit the Tasmanian native forest harvest and haulage contracting sector.	\$820,050	24.01.11	60 months	Triabunna, TAS 7190

Appendix B

Southern Region-South Coast Sub Region IFOA Monthly Report

Status	Event ID	SF Region	IFOA Region	State Forest	Cpt Number	Operation Type (Harvesting(H), Roding (R), Silviculture (S))	Plan Approval Date	Estimated Intensity (High(H), Med(M), Low(L))	Operation currently in Progress	Date Operation Proposed	Date Operation Commenced	Date Operation Suspended	Date Operation Completed
C	13883	SC	SC	South Brooman	56	H,R	02-Feb-09	M	Yes	Nov-09	09-Nov-09		
C	14160	SC	SC	South Brooman	63	H,R	20-Nov-09	M	Yes	Nov-09	26-Nov-09		
C	14224	SC	SC	Boyne	102	H,R	10-Mar-10	M	Yes	Apr-10	30-Apr-10		
C	13653	SC	SC	Mogo	160	H,R	26-Jun-08	M	Yes	Aug-08	08-Jul-08		
C	13922	SC	SC	Yadboro	418	H,R	07-Aug-09	M	Yes	Jan-10	11-Jan-10		
C	13476	SC	SC	Currowan	501	H,R	16-Apr-09	M	Yes	Jul-10	25-Jan-10		
C	12938	SC	SC	Currowan	502	H,R	21-Sep-06	M	Yes	Apr-10	12-Apr-10		
C	13468	SC	SC	Wandera	584	H,R	02-May-08	M	Yes	Nov-09	22-Feb-10		
C	13163	SC	SC	Curambene	1042	H,R,S	30-Apr-07	L	Yes	Jul-10	15-Dec-09		
C	12561	SC	SC	Badja	2044	H,R	17-May-06	M	Yes	Jun-08	22-May-06		
C	12039	SC	SC	Bodalla	3013	H,R,S	29-Jun-05	M	Yes	Apr-09	07-Mar-09		
C	11768	SC	SC	Bodalla	3014	H,R,S	01-Apr-08	M	Yes	Jun-10	07-Jun-10		
C	14299	SC	SC	Dampier	3111	H,R	03-Jun-10	M	Yes	Jun-10	02-Jun-10		
C	13724	SC	SC	Dampier	3127	H,R	12-Jan-09	M	Yes	Nov-09	15-Jan-10		
C	14147	SC	SC	Dampier	3130	H,R	26-Feb-10	M	Yes	Jun-10	02-Jun-10		
C	14148	SC	SC	Dampier	3131	H,R	26-Feb-10	M	Yes	Jun-10	02-Jun-10		
F	13391	SC	SC	Mogo	193	H,R	22-Feb-10	M	no	Oct-10			





Appendix C

Extracted from ASIC's database at AEST 12:34:30 on 28/04/2011

Name KASUN LOGGING PTY LTD

ACN 009 579 284

ABN 89 009 579 284

Type Australian Proprietary Company, Limited By Shares

Registration Date 02/03/1989

Next Review Date 02/03/2012

Status Registered

Locality of Registered Office Launceston TAS 7250

Jurisdiction Australian Securities & Investments Commission

Previous State TAS

Previous Number 31635

Former Name(s) KAFUN LOGGING PTY LTD
CIMABUE PTY. LTD.

These are the documents that ASIC has most recently received from or in relation to this organisation. Page numbers are shown if processing is complete and the document is available for purchase.

Date	Number	Pages	Description
25/02/2011	7E3500622	3	484 Change to Company Details
15/12/2010	7E3366800	2	492 Request For Correction
15/12/2010	7E3366772	2	492 Request For Correction

A1 Change of address

Principal place of business address

Address
6-18 BROWN CLOSE
MORUYA HEADS NSW 2537
Australia

Effective Date 15-02-2011

Company officeholder's residential address

Officeholder details

Given names KELLY JOHN

Family name BARKER

Birth Details

Date of Birth 17-04-1972

City/town of Birth LAUNCESTON

State (if born in Australia) TAS

Address
6-18 BROWN CLOSE
MORUYA HEADS NSW 2537
Australia

Effective Date 15-02-2011

Officeholder details

Given names MICHELLE TERECE

Family name BARKER

Birth Details

Date of Birth 29-10-1971

City/town of Birth ST HELENS

State (if born in Australia) TAS

Address
6-18 BROWN CLOSE
MORUYA HEADS NSW 2537
Australia

Effective Date 15-02-2011

Member's address

If there are more than 20 members in a share class, only address change for the top 20 need be notified.

Member's address

Member details

Given names KELLY JOHN

Family name BARKER

Address
6-18 BROWN CLOSE
MORUYA HEADS NSW 2537
Australia

Effective Date 15-02-2011

Member details

Appendix D - FEA Minutes

2657	CPT Engineering Pty Ltd	44,470
2658	Kasun Logging Pty Ltd	137,509
2659	Mechanised Logging Pty Ltd	73,198

Appendix E

‘Logging Company Speaks Out About Dangerous and Costly Protest’

The following is a response from Michelle Barker of logging contractor Kasun Logging

“As for the report of the company receiving an exit package from the Tasmanian Native Forests, this is true but it has nothing to do with the job that is here in NSW.

The machinery working for FNSW was originally based in Tasmania contracted to Forest Enterprises Australia to harvest its plantation timber, unfortunately FEA went into administration on April 7, 2010 and the job ceased immediately, as there was no other work in Tassie and \$2 million dollars of gear to repay it was clearly obvious that worked needed to be sourced interstate to survive.

Fortunately in early May after holding talks with FNSW a contract was secured and the machines, work vehicles, tools and employee's relocated to NSW, this relocation was somewhere in the vicinity of \$70,000.00, keep in mind the company was not paid by FEA for the harvesting undertaken in March and April 2010, around \$160,000.00 and this money will never be recouped, we have been advised that we may get around 2 cents in the dollar, but I would not hold my breath.

The company honored [sic] all of its debts caused by the collapse of FEA by selling private assets, investment properties purchased for superannuation, these assets were sold at a reduced costs to pay any debts caused by FEA and pay to relocate the machines, utes, tools, men etc.

The exit package the company received was for its native harvesting contract with Gunns Limited, the package was announced last November, the company had their accountant complete and submit the application with all of the evidence they required such as, proof of current contract and volumes, proof of debt on harvesting machinery, proof from the accountant that the debts were solely incurred from the Gunns contract and had no connection with the FEA Contract, we anticipated there would be problems down the track, so all precautions and measures were taken to verify all the details so in the event of backlash from Greens Groups, the claim we made in black and white were in accordance with the criteria and had all the required evidence to back it up.

The first payment was received in Feb 2011, this was used to clear up arrears on machinery loans and a massive overdraft that was required to keep the job operating, unfortunately there was no option to stop, stop and you lose everything, with a contract not worth peanuts and specialized harvesting equipment that can't be sold all you can do is keep going in the hope that the downturn may change, but the damage from greens groups was done and unfortunately our fate and many others was sealed.

Now back to the payout figures, the second and final payment should be paid around the end of June 2011, once we have submitted our application with verified proof that we have ceased our Gunns job in Tasmania (done on the 17th Dec 2010), paid our employee's their entitlements (done on the 30th Dec 2010) and proof that the machines are not operating in the Tasmanian Industry, which obviously they are not, this has all been collected and documented by our accountant who will verify the documentation and submit the application.”