

# Case report

*Prepared by  
the Dutch Timber Procurement Assessment  
Committee (TPAC)*

on the

Australian Forestry Standard (AFS)

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## 1. Introduction

This report has been prepared by TPAC, the Committee which assesses timber certification systems on behalf of the Procurement Policy of the Dutch government. The report focusses on two cases related to the Australian Forestry Standard (AFS) in Tasmania and Victoria State. The cases were brought to the attention of TPAC during its assessment of PEFC International in 2009. The stakeholder presenting the case was Friends of the Earth Netherlands (FoE NL). At that time TPAC did not have the time and the resources to research the case and committed itself to do so at a later stage.

The conclusions of the present research will contribute to the preparation of the periodical re-assessment of PEFC International which is planned for 2014.

### 1.1 Research approach

The claim of FoE NL is that "AFS - and thus PEFC International - does not meet the Dutch Procurement Criteria for Timber".<sup>1</sup> The substantiation for this claim is the alleged failure of Gunns Ltd and VicForests to meet several TPAS criteria. FoE NL however does not specify *why* the alleged failure of the two AFS certified organisations to meet the TPAS principles and criteria leads to the conclusion that AFS as a system does not meet the Dutch Procurement Criteria.

This can be because:

- a) the AFS standard is weak permitting that poor forest management practices could be certified. Or
- b) the AFS control mechanisms are weak permitting that poor forest management practices could be certified.

It should be noted that FoE NL also did not rule out the possibility that the alleged weak forest management practices of Gunns Ltd and VicForests could be classified as incidents.

TPAC has formulated two research questions:

- a) Are the relevant Dutch Procurement Criteria met by AFS?
- b) Did the certified forest managers comply with the AFS standard in the period the case describes? (If not, this could be an indication of weak control mechanisms).

For the preparation of the report, TPAC consulted scientific reports, NGO reports, AFS standards, certification body reports, company documentation and various other online sources.

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<sup>1</sup> TPAC stakeholder forum

## **2. Are the relevant Dutch Procurement Criteria met by AFS?**

The first part of the evaluation focusses on the question whether the TPAS criteria targeted by FoE NL are met by AFS. The TPAS principle and criteria listed by FoE NL are:

- C 1.4. Protection against illegal exploitation;
- C 2.2. Effective consultation of stakeholders;
- C 2.6. Protection of objects of cultural value;
- C 4.1. Protection of objects and areas of ecological value;
- C 4.2. Protection of species;
- C 4.3. No conversion of native forests;
- C 5.3. Preservation of ecological cycles;
- C 5.4. Use of reduced impact logging techniques;
- C 5.7. Limitation of chemical use;
- C 6.1. Preservation of production capacity;
- P 7. Contribution to local economy;
- C 8.4. Monitoring of the PPP effects.

The prevailing AFS standard at the time the cases took place was the Australian Forestry Standard version AS 4708-2007. TPAC has assessed whether the listed TPAS principle and criteria are met by this AFS standard. A detailed assessment can be found in the Annex of this report.

TPACs overall conclusion is that the TPAS principle and criteria listed are met by AFS version AS 4708-2007; all but two are fully addressed; criterion 4.1 and 5.7 are partially addressed.

Criterion 4.1 is partially addressed because the wording of AFS "shall implement practices to support the protection (...)" is less strong than the TPAS wording "are protected". Also AFS does not specify what percentage of the FMU should be protected. Criterion 5.7 is partially addressed because the AFS criteria do not preclude the use of class 1A and 1B pesticides. Also there is no requirement that chemicals can only be used if sustainable alternatives prove to be insufficient.

### **3. Evaluation of the Tasmania case**

#### **3.1 Case information**

FoE NL has presented a case pertaining to AFS-certification in Tasmania. The case involves the AFS-certified forest company Gunns Limited and the AFS-certified state department Forestry Tasmania. The case is largely based on a report "Old Growth for Export" written by the Wilderness Society, dated December 2008.

FoE NL states that on its private forest plantations, Gunns Ltd used the controversial pesticide '1080' to kill native animals that threaten the seedlings. '1080' (Sodium Fluoroacetate) is banned by the Tasmanian government from using on public lands because it is not target specific. FoE NL also states that Gunns Ltd has converted 2,720 ha of native forests to plantations in 2008, despite the company stating that it would refrain from conversion in 2007.

On public forest land, Gunns Ltd is - according to FoE NL - responsible for among other things logging old growth forest and threatened species habitat. Although FoE NL focusses its case on Gunns Ltd, the underlying report of the Wilderness Society makes clear that the public forest land is managed by Forestry Tasmania and that Gunns Ltd is merely the processor of the wood. The present report therefore also discusses Forestry Tasmania.

#### **Box 1 – Forests in Australia**

Over 95% of the Australian production and plantation forest is certified. 10.1 million ha are certified under AFS (native forests and plantations) and 0.9 mln ha are certified under FSC, almost all of which are plantations. FSC certification takes place against three interim standards while there is not yet an accredited Australian FSC standard.<sup>2</sup>

#### **3.2 Did Gunns Ltd and Forestry Tasmania comply with the AFS standard?**

The question in this case is: did Gunns Ltd and Forestry Tasmania comply with the AFS standard in the period the case describes? For some issues, this is not easy to establish. TPAC notes that neither the Wilderness Society, nor FoE NL has filed a complaint against Gunns Ltd or Forestry Tasmania. Would this have been the case, the responsible certification body - Det Norske Veritas for Gunns and NCS International for Forestry Tasmania - would have researched the complaints and given a verdict on whether or not the forest managers acted in compliance with the AFS standard. An additional caveat is that considerable time has elapsed since the alleged breaches occurred, rendering TPAC's investigation difficult.

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<sup>2</sup> Website FSC Australia

### 3.2.1 Conversion

FoE NL states that the annual report of the Forest Practices Authority (FPA) of Tasmania shows that Gunns Ltd has converted 2,720 ha of its natural private forest land into plantations in 2007-08. According to FoE NL this is especially condemnable because Gunns Ltd had stated before that it would refrain from conversion.

| <b>Applicant</b>      | <b>Forest conversion (ha)</b> |
|-----------------------|-------------------------------|
| Gunns Forest Products | 2,720                         |
| FEA                   | 2,060                         |
| SFM Forest Products   | 287                           |
| Norske Skog           | 27                            |
| Britton Bros          | 23                            |
| Other applicants      | 2,864                         |
| <b>Total</b>          | <b>7,981</b>                  |

The FPA in its 2007-08 report states that “a small number of forest communities have been subject to very high rates of conversion to plantations, with the area of some communities being reduced by over 30 per cent within some bioregions (...).<sup>4</sup> This FPA statement is in contrast with the 2008 Gunns audit report. The responsible certification body Det Norske Veritas (DNV) states: “Gunns continue to rigorously comply with their Permanent Native Forest Estates Policy which includes a strong commitment not to undertake conversion of native forest to plantations”.<sup>5</sup>

AFS criterion 4.3.2 requires the following:

*The forest manager shall not convert native vegetation to plantation forest cover or non-forest cover except in the limited circumstances, as follows:*

- a) Infrastructure development either required by legislation or regulation, or ancillary to the approved forest management plan or equivalent instrument under requirement 4.1.2, or*
- b) Small-scale clearing (less than 10%, up to a limit of 40 hectares on a single forest management unit) with appropriate offsets.*

As Gunns has only one forest management unit in Tasmania, it appears that the 2008 conversion by Gunns Ltd was not in line with the above AFS criterion and that the Certification Body DNV was incorrect in stating that Gunns Ltd rigorously complied with the commitment not to undertake conversion. DNV has been asked for a reaction but has not responded to date. In a reaction to our findings, AFS pointed out that it is possible that no non-compliance took place.

An alleviating circumstance is that Gunns Ltd has stopped using native forests altogether which also translates in conversion rates. In 2008-09 Gunns Ltd was responsible for the

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<sup>3</sup> FPA (2008)

<sup>5</sup> Det Norske Veritas (2008)

conversion of 151 ha, in the three subsequent years the FPA reported no conversion of native forests by Gunns.<sup>6</sup> At the end of 2011, Gunns had 46,800 ha of native forest land under its management.<sup>7</sup>

### 3.2.2 Old growth forests

One of the most important criticism expressed by FoE NL is that old growth forest has been logged in AFS certified forests area. Although FoE NL holds Gunns responsible for the old growth logging, it is actually Forestry Tasmania that manages the forests that are mentioned in the underlying report written by the Wilderness Society.

Old growth forest is included in the so-called AFS *Significant Biological Diversity Values*. These values receive special attention in the AFS standard, for example in terms inventory, protection and monitoring, logging in these areas is however not precluded. The Wilderness Society Report does not provide conclusive information that Forestry Tasmania has logged in old growth forests without complying with the AFS requirements on Biological Diversity Values. Although the report mentions two coupes of 27 and 40 ha which were subjected to clearfell cable logging, based on the given information, TPAC cannot conclude that AFS requirements were breached.

AFS does not require a minimum percentage of the FMU area to be strictly protected as was noted in the previous chapter. This lacuna is compensated by the significant forest area that is protected beyond the forest management unit. At the time the case took place, Tasmania had 1.2 million ha old growth forest of which nearly 80% - or 973,000 ha - was protected through reserves.<sup>8</sup> As a result of the recent Tasmanian Forests Agreement another 430,000 ha of forests have been added, most of which are likely old growth forests. The overall protection of old growth forests in Tasmania is thus very high.

On a different note, TPAC remarks that old growth has clearly an emotional value in society, but that full protection of all old growth forests from logging – which seems to be the objective of both FoE NL and the Wilderness Society - is not the task of a forest certification system. Forest certification is there to assure *sustainable management* of the forests, with the conviction that by managing the forests in line with sustainability criteria and giving it an economic value, its long-term preservation is better ensured than by refraining from all use.

### 3.2.3 Chemical use

FoE NL states that Gunns Ltd in managing its forest and plantation areas on private land uses the controversial pesticide '1080' to protect its growing seedlings. '1080' is non-target specific and is according to FoE NL is known to cause the death of especially mammal species such as the threatened Bettong. In response to community concern, the Tasmanian Government has banned the use of this pesticide on public land. AFS requires that the forest manager shall reduce reliance on chemicals with potential for

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<sup>6</sup> FPA (2009), FPA (2010), FPA (2011) and FPA (2012).

<sup>7</sup> Gunns (2012)

<sup>8</sup> Wilderness Society (2008)

environmental harm and favour alternative cost-effective methods and more benign chemicals that minimise adverse actual and potential impacts on the environment. The 2008 audit report for Gunns Ltd reads: "*Sighted vertebrate pest live trapping trails to reduce reliance of the use of 1080. Note, it is now uncommon for 1080 to be used in forests managed by Gunns Ltd.*" Based on this information TPAC has no ground to conclude that Gunns Ltd was not complying with the AFS requirements. But it was only in June 2010 that Gunns Ltd announced to stop using '1080' altogether, an announcement that was welcomed by the Wilderness Society: "This is a really significant step forward for Gunns as a company".<sup>9</sup>

### **3.2.4 Other issues**

FoE NL claims that logging has taken place in forests with identified and documented World Heritage Values, including Aboriginal Heritage Values and forest registered on the National Estate. However this claim is not supported by the report of the Wilderness Society. What is supported by the report is that logging has taken place in close proximity of Tasmanian Wilderness World Heritage Area (TWWHA), in three cases the TWWHA is bordering the logging coupe.<sup>10</sup> However, this in itself is not prohibited by AFS (neither by TPAS for that matter). FoE NL also claims that logging has taken place in threatened species habitat. TPAC however found that none of the species mentioned in the underlying report are listed as threatened in the IUCN Red list. Two other claims by FoE NL that logging has taken place in forests that are recognised as very valuable carbon stores and on extremely steep slopes are also not supported by verifiable evidence.

## **3.3 Responses of parties**

### **3.3.1 Gunns Ltd**

June 2010 Gunns Ltd announced to stop using the pesticide 1080. In that same year Gunns announced to stop using native forests altogether and shifted to forest plantations.<sup>11</sup> Being Tasmania's most important sawlog and pulpwood processor this announcement implied a major change for Tasmanian Forestry. The announcement was the catalyst to the Tasmanian Forests Intergovernmental Agreement signed in 2011: "*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*".<sup>12</sup>

The agreement between the federal and Tasmanian authorities guarantees that 430,000 ha of High Conservation Value forest areas, nominated by the Australian ENGO's are

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<sup>9</sup> ABC News (2010)

<sup>10</sup> Wilderness Society (2008)

<sup>11</sup> Proprint (2010)

<sup>12</sup> Tasmanian Forests Intergovernmental Agreement (2011)



placed in reserves. Also the Commonwealth provides €35 million to the Tasmanian Government to facilitate sustainable forest management.<sup>13</sup>

The last development is that Gunns Ltd has found itself in financial distress not being able to pay its creditors in September 2012. In October the company went into voluntary administration searching for an alternative to liquidation.

### **3.3.2 NGOs**

The ENGOs persistently criticised the practices of Gunns Ltd and Forestry Tasmania but did not file a complaint against either of these companies with the respective certification body. There were at least a few topics - conversion, old growth logging and the use of '1080' - that would have been worthwhile to investigate and to receive a verdict on whether or not the respective forest managers were complying with the AFS standard.

### **3.3.3 AFS and PEFC International**

AFS did not publically contribute in the debate regarding Gunns or Forestry Tasmania. According to AFS a pro-active role in the debate would conflict with the accreditation requirements which specify among other things that the organisation developing the standards must be able to demonstrate freedom from bias and conflict of interest.<sup>14</sup> PEFC International responded by offering the Wilderness Society its assistance in filing a complaint during a meeting in 2008. The Wilderness Society has not taken advantage of this offer. The organisation has not commented to TPAC about the reasons why they did not.

## **3.4 Observations and conclusions**

### **3.4.1 Observations**

TPAC observes that from a conservation perspective strong improvements have been taking place in Tasmanian Forestry over the last couple of years. About 430,000 ha of forests that have been nominated by ENGOs are now protected. In addition the federal and Tasmanian government have agreed to contribute to long-term conservation. TPAC also observes that several of the issues brought up by FoE NL – conversion, old growth logging – are no longer relevant for Gunns Ltd as the company has withdrawn from natural forests.

TPAC regrets that NGOs have not filed a formal complaint regarding the alleged breaches of the AFS standard. A formal complaint would have compelled the responsible certification body to give a verdict on whether or not the forest managers acted in compliance with the AFS standard.

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<sup>13</sup> Tasmanian Forests Intergovernmental Agreement (2011)

<sup>14</sup> AFS (2009)

### **3.4.2 Conclusions**

As no official complaints were filed in this case, TPAC had limited information to base itself on. Also the time that has passed since the alleged breaches have taken place was a constraining factor. Having said that, the Committee concludes the following:

- It appears to be that the area of 2,720 ha that was converted by Gunns Ltd. in 2007-08 was not in line with the AFS requirements and that the CB was incorrect when it stated in its audit report that Gunns rigorously complied with the commitment not to undertake conversion.
- There is no evidence that violation of the AFS conversion criterion is of a structural nature; recent figures of the Forest Practices Authority in Tasmania show that Gunns has not further converted any natural forests, reflecting the fact that Gunns has withdrawn from native forests altogether.
- There is no compelling evidence that Gunns Ltd or Forestry Tasmania have violated the AFS requirements on the other issues mentioned by FoE NL such as use of chemicals, logging in old growth forests and logging in threatened species habitat.

## **4. Evaluation of the Victoria Case**

### **4.1 Case information**

FoE NL presented a case involving the AFS certified state-owned company VicForests which was established in 2003. FoE NL claimed – based on information from Australian NGOs - that VicForests among other things logs endangered species habitat, depletes carbon stores, ignores the wishes of stakeholders and does not operate at an economic profit. FoE NL also stated that VicForests had been ordered to stop logging in Brown Mountain in East Gippsland by the Victorian Supreme Court pending a court case initiated by the NGO Environment East Gippsland (EEG).

### **4.2 Did VicForests comply with the AFS standard?**

The question is: did VicForests comply with the AFS standard in the period the case describes? For each of the issues brought forward by FoE NL, this question will be discussed below.

#### **4.2.1 Illegal operation and protection of species**

FoE NL stated that VicForests might be operating illegally as a court case was brought against it. Indeed in 2010, the Australian NGO Environment East Gippsland (EEG) initiated a civil proceeding against VicForests seeking to prevent the logging of four coupes of old growth forest located on Brown Mountain. EEG claimed in particular that the logging would breach VicForests' obligations to provide habitat reserves for endangered species and to protect in accordance with the precautionary principle. During the court hearings EEG produced surveys which indicated the presence of several endangered species in the coupes 15, 19, 26 and 27. VicForests on the other hand – based on its own surveys - denied that the species were present in the coupes. It also stated that it had sustainable management practices and controls and that any further requirements for habitat preservation would have to be stipulated by the Department of Sustainability and Environment (DSE). On 11 August 2010, the Supreme Court of Victoria ruled in favour of EEG and concluded logging in the Brown Mountain coupes was restrained until among other things a Long-footed Potoroo habitat area was created and surveys of three other endangered species were carried out.<sup>15</sup> The Supreme Court stated in its verdict that if VicForests was to proceed with the planned logging without performing the surveys etc., the logging would be unlawful. VicForests in turn stopped all logging in the area. TPAC therefore has no reason to conclude that illegal activities did take place.

The Court ruling also pertains to the AFS requirement on the protection of species. AFS requires that the forest manager actively identifies and assesses endangered and protected species (criterion 4.3.1). The question is how is it possible that surveys that had been found compliant with the AFS criteria by the CB were later dismissed by the Supreme Court? Did the CB made a correct assessment in 2009? The answer is: probably yes.

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<sup>15</sup> Supreme Court of Victoria (2010)

The Supreme Court ruling centred on the precautionary principle. The Court stated that if there is a threat of serious or irreversible environmental damage and there is scientific uncertainty as to that damage, a precautionary measure may be taken to avert the anticipated threat of environmental damage.<sup>16</sup> As EEG came with new surveys indicating the presence of protected species and VicForests was unable to prove that the environmental threat was negligible, a precautionary measure was taken by the Supreme Court.<sup>17</sup> Because of new information - the EEG fauna surveys - the precautionary principle was triggered and the court concluded that the old VicForests surveys were insufficient to meet legal requirements. In 2009, when the Certification Body (CB) assessed VicForests, these EEG fauna surveys were not yet available. TPAC therefore concludes that VicForests and later the CB could reasonably have come to the conclusion that VicForests biodiversity surveys were compliant with the AFS criteria. At any rate, following the Court ruling VicForests improved its policies and procedures for Pre-Harvest Fauna Surveys as was concluded by the certification body SAI Global.<sup>18</sup>

#### **4.2.2 Consultation of stakeholders**

FoE NL stated that Vicforests ignored the wishes of stakeholders when it decided to log a large section of an Old growth walking track route on Brown Mountain. This walking track was established in the 1990s and traversed coupes 15, 19 and 20. In 2007 a Timber Release Plan (TRP) was put up for consultation including the three coupes. EEG objected to the logging in the three coupes. Despite the objection the TRP was approved and logging in coupe 20 commenced in October 2008. The coupe was named 'the Walk' by VicForests officers. There was onsite protest and submissions to the state government. In January 2009 the other two coupes were scheduled for logging.<sup>19</sup>

In its audit report of January 2009, SAI Global also noted that protests were held due to logging on Brown Mountain. The auditor then concluded that VicForests had met onsite with concerned parties and NGOs to discuss the reserve system of DSE. The auditor also concluded that actions and communication had been appropriate. The auditor did not identify 'areas of concern' related to this matter.<sup>20</sup>

Whether or not VicForests sufficiently took into account the interests of stakeholders when it decided to log the coupes of 'the Walk' is not easy to establish. The Timber Release Plan had gone through the regular consultation process. The auditor concluded that VicForests actions and communication had been appropriate. However, it appears to TPAC that logging one coupe and the intention to log two more which together would affect 3/4 of a hiking trail does not qualify as good neighbourship which is required by AFS criterion 4.2.3.. This is especially the case because the hiking trail is a tourist attraction for the region<sup>21</sup> and the management regime includes clearcuts from 12 to 40

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<sup>16</sup> Supreme Court of Victoria (2010)

<sup>17</sup> Gibbs (2010)

<sup>18</sup> SAI Global (2011)

<sup>19</sup> Supreme Court of Victoria (2010)

<sup>20</sup> SAI Global (2009)

<sup>21</sup> Victorian National Parks Association

hectares.<sup>22</sup> It should be noted that logging in the two coupes 15 and 19 did not take place as a result of the Supreme Court verdict.

**4.2.3 Old growth**

Like the Tasmania case, one of the main issues expressed by FoE NL is that old growth forests have been logged by VicForests. Old growth forest is included in the so-called AFS *Significant Biological Diversity Values*. These values receive special attention in the AFS standard for example in terms inventory, protection and monitoring, logging in these areas is however not precluded, which is also not the case for TPAS. Based on the information provided, TPAC cannot conclude that VicForests has logged old growth forests without complying with the AFS requirements.

TPAC notes that 56% of the Victorian forests is protected in parks and reserves (see Box 2). Of the 670,000 ha of Old Growth Forests in Victoria<sup>23</sup> 460,000 ha, or 68%<sup>24</sup> are protected+ the overall protection of forests in Victoria is thus high.

**Box 2 – Forests in Victoria**

The state of Victoria has 7.87 million ha of forests, 56% of which is protected within parks and reserves. About 670,000 ha of public forests are considered old growth, 68% of which is protected in reserves. In 2011-2012 VicForests harvested 100 ha of old growth forest in 31 different coupes.<sup>25</sup>

**Forest tenure of the native forests in Victoria**

| <b>Tenure</b>  | <b>Area<br/>(x 1,000 ha)</b> | <b>Percentage<br/>(%)</b> |
|--|------------------------------|---------------------------|
| Parks and Reserves   | 4,410                        | 56                        |
| State forest not available or suitable for VicForests to harvest | 1,810                        | 23                        |
| State forest available for VicForests to harvest                 | 470                          | 6                         |
| Other public native forest                                       | 240                          | 3                         |
| Private forest   | 940                          | 12                        |
| <b>Total</b>   | <b>7,870</b>                 | <b>100</b>                |

Source: VicForests 2012

<sup>22</sup> Personal communication Nathan Trushell  
<sup>23</sup> DSE (2008)  
<sup>24</sup> DAFF (2010)  
<sup>25</sup> VicForests (2012)

#### **4.2.4 Production capacity, regeneration and post fire logging**

FoE NL stated that VicForests are not maintaining the production capacity of the forests as it conducts 'unprecedented' post-fire logging and because it is not regenerating properly. According to FoE NL the Environmental Protection Authority (EPA) has highlighted this latter fact. Indeed the EPA of Victoria recommended in 2007 to "*revise regeneration procedures to ensure reconciliation of the regenerated species with pre-harvest species composition and spatial distribution across the coupe*". However this recommendation was made to DSE and not to VicForests.<sup>26</sup> More recent information from the EPA of Victoria was not found. TPAC concludes that the information provided by FoE NL is not sufficient to support its claim that VicForests is not maintaining production capacity.

#### **4.2.5 Carbon**

FoE NL states that Australian forests are the most carbon dense on earth and that VicForests depletes these carbon stores by clearfelling and burning the forests. VicForests indicates that the amount of carbon stored in the forest under its management decreases over time and is expected to continue decreasing until 2024, after which it is expected to rise to above current levels. The reason for the decline is the harvesting of the 1939 regrowth forest.<sup>27</sup> A scientific study of Professor Brendan Mackey of the Australian National University indeed finds that Victorian forests can lock up as much as 1900 tonnes of carbon per hectare compared to 200 to 500 tonnes for the average tropical forests, but the VicForest report mentioned above points at frequent fires in Australia which reduce the average life of a tree and the carbon stored per ha. FoE NL however does not provide evidence that the forest management of VicForests does not comply with the relevant AFS requirement 4.7.1 which demands that the forest manager "*shall acknowledge the forests' capacity to act as a net carbon sink and demonstrate a commitment to minimising greenhouse gas emissions*".

#### **4.2.6 Not operating at an economic profit**

FoE NL stated that VicForests is not operating at an economic profit; it receives subsidies from the government and it has not returned a royalty traditionally paid by forest users for the use of public forests. If it would have returned this royalty, FoE NL claims that VicForests would have made a loss of tens of millions of dollars in 2008. There is no AFS requirement that requires the forest manager to operate at an economic profit. Economic sustainability is addressed in TPAS principles 6 and 7 requiring maintenance of forest production and sustained contribution to the local economy. These appear to be met by VicForest.

### **4.3 Responses of Parties**

Unlike Gunns, VicForests has not withdrawn from logging natural forests, and - in spite of the strong resistance from NGOs - it does not seem likely that the company will do so in

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<sup>26</sup> Environment Protection Agency Victoria (2008)

<sup>27</sup> VicForests (2012a)

the near future. The NGO's in turn have filed as much as 58 complaints with VicForests.<sup>28</sup> In addition, they initiated four legal proceedings. Besides the 2010 Supreme Court case, the NGOs sued VicForests for unsustainable logging near Toolangi in the Central Highlands and in East Gippsland. The first case was won by VicForests in March 2012<sup>29</sup>, the second was settled in November 2012 when VicForests agreed to protect nine rainforest areas.<sup>30</sup> In addition the NGOs sued the Victoria State Department for Sustainability and Environment (DSE) for not adhering to its own rules.

MyEnvironment also issued complaints to the certification body SAI Global and AFS. And when the outcomes of these complaints were not satisfactory, complaints were issued to respectively the accreditation body JAS-ANZ<sup>31</sup> and PEFC International<sup>32</sup>. Both JAS-ANZ and PEFC International investigated and instructed SAI and AFS respectively to strengthen their complaints procedure.

As EEG and MyEnvironment are opposed to logging native forests altogether, the chances are slim that the NGOs and VicForests will come to an understanding or a consensus regarding logging in Victoria.

#### **4.4 Conclusions**

Regarding the case on VicForests, TPAC concludes that:

- Although a Supreme Court ruled that VicForests surveys were insufficient to meet legal requirements, this conclusion was based on new information (the EEG fauna surveys). VicForests and later the CB could therefore reasonably have come to the conclusion that VicForests biodiversity surveys were compliant with the AFS criteria.
- The logging of one coupe and the intention to log two other coups which together would affect 3/4 of a hiking trail on Brown Mountain appears not qualify as good neighbourship as required by AFS. This is especially the case because the hiking trail is a tourist attraction for the region and the management regime includes clearcuts from 12 to 40 hectares.
- Although the logging in the two coupes was stopped as a result of a Court ruling, this does not automatically imply that VicForests is complying with the AFS requirement of good neighbourship. TPAC notes that as much as 58 complaints were filed by NGOs. On the other hand, TPAC acknowledges that as EEG and MyEnvironment are opposed to logging native forests altogether it is very difficult to reach a compromise.
- There is no compelling evidence that VicForests has violated the AFS requirements on the other issues mentioned by FoE NL, such as logging in old growth forests and regeneration.

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<sup>28</sup> Personal communication Nathan Trushell

<sup>29</sup> VicForests (2012b), the NGOs will appeal the judgement.

<sup>30</sup> MyEnvironment (2012b)

<sup>31</sup> MyEnvironment (2011a)

<sup>32</sup> MyEnvironment (2011b)

## 5. Conclusions AFS

TPAC did not assess the complete AFS standard or system. Its research only focussed on the criteria targeted by FoE NL and the case information provided. TPAC formulated two research questions for the report:

- a) Are the relevant Dutch Procurement Criteria met by AFS?
- b) Did the certified forest managers comply with the AFS standard in the period the case describes?

Regarding the first research question, FoE NL targeted eleven TPAS criteria and one principle. TPAC concludes that the majority of the criteria targeted are fully addressed by the prevailing AFS standard version AS 4708-2007; only two TPAS criteria are partially addressed by AFS:

- Criterion 4.1 on the "Protection of objects and areas of ecological value"
- Criterion 5.7 on the "Limitation of chemical use"

Regarding the second research question TPAC notes that the NGOs did not file official complaints on numerous issues, making it difficult for TPAC to investigate the claims. TPAC strongly recommends NGO's to use the official complaints procedures in the future as this enables claims to be properly investigated by the respective institutions. Having said that, the Committee concludes on the majority of the issues brought forward by FoE NL, there is no ground to conclude that AFS criteria were breached. Yet on two issues it appears that certified organisations have not acted in line with the AFS requirements:

- The conversion of 2,720 ha of forests in 2007-08 by Gunns Ltd.
- The (intention of) logging three coupes affecting 3/4 of a hiking trail on Brown Mountain by VicForests.

TPAC calls on the parties concerned, that is, the certified companies, the certification bodies, AFS and PEFC International, to self-investigate the nature of the two issues mentioned above. TPAC in turn will revisit the issues during its periodical reassessment of PEFC International which is planned for 2014.



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## Annex – Assessment AFS against TPAS criteria

| Claim FoE NL   | Relevant TPAS criteria (according to FoE NL)   | Relevant AFS criteria   |          |          | Comments TPAC   |
|--|--|---|----------|----------|---|
| <p>"A recent injunction applied to VicForests' operations by the Supreme Court of Victoria demonstrates that there is validity in trying VicForests for illegal operations."</p> | <p>C 1.4. The forest management unit is sufficiently protected against all forms of illegal exploitation, illegal establishment of settlements, illegal land use, illegally initiated fires, and other illegal activities.</p> | <p>4.1.1 The forest manager shall define a forest management policy that includes a commitment to—<br/>(...)<br/>• compliance with relevant legislation and other requirements to which the forest manager subscribes;<br/>(...)</p> <p>4.1.2 The forest manager shall develop a forest management plan, or equivalent instruments, that—<br/>• identifies applicable legal requirements and other external requirements to which the forest manager subscribes;<br/>(...)</p> <p>4.1.4 The forest manager shall monitor and evaluate forest management activities and their outcomes to ensure that forest management performance requirements are met and that deficiencies are corrected (where identified) to support continual improvement in forest management.</p> <p>The forest manager shall ensure procedures are in place for the following:<br/>• checking management plans and practices for compliance with legislation, codes of practice, regional and local prescriptions, guidelines and other relevant controls;<br/>(...)</p> | <p>=</p> | <p>=</p> | <p>TPAS criterion 1.4 pertains to protection of the FMU against illegal activities from outside. The requirement that the forest manager should refrain from any illegal activity is covered by TPAS criterion 1.3. <i>"Legal and regulatory obligations that apply to the forest management unit, including international agreements, are fulfilled."</i></p> <p>The AFS criteria fully address TPAS criterion 1.3</p> |
| <p>"VicForests continues to ignore the wishes of stakeholders who have been fighting for decades to protect Victoria's high</p>  | <p>C 2.2. Effective communication with and consultation and participation of stakeholders take place regarding the management of the forests.</p>  | <p>4.2.1 The forest manager shall identify and establish contact with relevant stakeholders, including groups and individuals who have environmental, economic, social or indigenous interests that are directly affected by or with an interest on the management of the defined forest area.</p>  | <p>=</p> | <p>=</p> | <p>The AFS criteria fully address TPAS criterion 2.2</p>  |

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| <p>conservation values forests, creating division and conflict in regional communities.”</p>   |   | <p>4.2.2 The forest manager shall facilitate and encourage meaningful participation of stakeholders (see requirement 4.2.1) in the development of the forest management plans or equivalent instruments at (see requirement 4.1.2) (...).</p> <p>4.2.3 The forest manager shall foster appropriate relationships in order to be a good neighbour. Good neighbour considerations shall include:</p> <ul style="list-style-type: none"> <li>- considering the impact of forest operations on neighbours;</li> <li>- notifying neighbours that may be directly affected and responsible authorities, where appropriate, before commencing forest operations;</li> <li>- taking appropriate actions to minimise any adverse impacts; and</li> <li>...</li> </ul>   |          |          |   |
| <p>“Gunns Ltd. logs forest with identified and documented World Heritage Values, including Aboriginal heritage values and forest registered on the National Estate.”</p> | <p>C 2.6. Objects of cultural and traditional economic value are identified and inventoried in consultation with the stakeholders, and are respected.</p> | <p>4.8.1 The forest manager shall recognise the rights and responsibilities of Australia’s Indigenous peoples based on their prior ownership of the forests, seas, coasts and waters. (...)</p> <p>4.8.2 The forest manager shall protect important natural heritage and cultural, religious, spiritual and social heritage values.</p> <p>Protection of Indigenous heritage values shall be undertaken in consultation with relevant Indigenous peoples to avoid damage to important values during forest operations.</p> <p>Forest managers shall safeguard non-Indigenous heritage values through identification of known values.</p> <p>The assessment of the importance of non-Indigenous heritage values shall be based on relevant studies and forest planning instruments and shall be undertaken in a regional context.</p> <p>The identified important non-Indigenous heritage values shall be considered in the preparation of forest management plans or equivalent instruments and appropriate actions implemented in consultation with the appropriate bodies.</p> | <p>=</p> | <p>=</p> | <p>The AFS criteria fully address TPAS criterion 2.6</p>      |
| <p>“Gunns Ltd. [and VicForests] log old</p>  | <p>C 4.1. Objects of high ecological value and</p>  | <p>4.3.1 The forest manager shall actively identify and assess the significance of biological diversity values and structural elements</p>   | <p>≈</p> | <p>≈</p> | <p>The AFS criteria partially address TPAS criterion 4.1;</p> |

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| <p>growth forest”</p>   | <p>representative areas of forest types that occur within the forest management unit are identified, inventoried and protected.</p> <p><i>Guidance: 5% is considered to be a relevant proportion.</i></p>                    | <p>(such as standing and fallen dead wood and hollow bearing trees) to support the maintenance and protection of identified Significant Biological Diversity Values. (...)</p> <p>4.3.3. The forest manager shall implement practices to support the protection and maintenance of Significant Biological Diversity Values likely to be affected by forest operations. (...)</p> <p><u>Definitions</u></p> <p>Significant Biological Diversity Values include:</p> <ul style="list-style-type: none"> <li>• threatened (including vulnerable, rare and endangered) forest types or ecosystems and old-growth forest that is depleted within a forest type or ecosystem as identified, under the nationally agreed forest reserve criteria;</li> <li>• forest types or ecosystems and old-growth forest that are under-represented in the regional conservation reserve system, as implemented through Regional Forest Agreements;</li> <li>• known and likely occurrences of threatened (including vulnerable, rare, or endangered) species and communities and relevant habitat;</li> <li>• habitat of migratory species listed under the Commonwealth’s Environment Protection and Biodiversity Conservation Act 1999;</li> <li>• Ramsar wetlands; and</li> <li>• natural heritage places with regionally or nationally significant concentrations of biological diversity values (e.g., refugia and centres of endemism).</li> </ul> |          |          | <p>the wording “shall implement practices to support the protection (...)” is less strong than “are protected”. Also AFS does not specify what percentage of the FMU should be protected.</p> |
| <p>“Gunns Ltd. [and VicForests] log forest identified as threatened species habitat.”</p> | <p>C 4.2. Protected and endangered plant and animal species are not exploited for commercial purposes. Where necessary, measures have been taken for their protection and, where relevant, increase of their population.</p> | <p>4.3.3 The forest manager shall implement practices to support the protection and maintenance of Significant Biological Diversity Values likely to be affected by forest operations. (...)</p> <p>Where management practices are being developed for new identifications and listings of threatened (including vulnerable, rare or endangered) species and ecological communities, the forest manager shall minimise adverse impacts by ensuring the planning and implementation of forest operations follows recognised interim guidelines and takes account of known information and relevant specialist advice.</p>  | <p>=</p> | <p>=</p> | <p>The AFS criteria fully address TPAS criterion 4.2.</p>   |

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| <p>"Gunns is continuing to clear and convert native forests to plantations, despite statements to the contrary. The 2007-08 Annual report of the Forest Practices Authority highlighted the fact that in the year 2007-08, Gunns Ltd. had applied for and received approval for the clearance and conversion of 2720 hectares of native forest for the establishment of new plantations."</p> | <p>C 4.3. Conversion of forests in the FMU to other types of land use, including timber plantations, shall not occur unless in justified exceptional circumstances.</p> <p><i>Guidance: Exceptional circumstances are for example natural disasters. In addition, conversion can take place if the area to be converted is insignificant, if it enables clear long term conservation benefits, or if it is based on undisputed governmental decisions.</i></p> <p><i>Guidance: The forest manager of a plantation should aspire to make clear how the plantation helps in relieving pressure from natural forests; for instance when the plantation is established on degraded land instead of by conversion of natural forest.</i></p> | <p>4.3.2 The forest manager shall not convert native vegetation to plantation forest cover or non-forest cover except in the limited circumstances, as follows:</p> <ol style="list-style-type: none"> <li>a. Infrastructure development either required by legislation or regulation, or ancillary to the approved forest management plan or equivalent instrument under requirement 4.1.2, or</li> <li>b. Small-scale clearing (less than 10%, up to a limit of 40 hectares on a single forest management unit) with appropriate offsets.</li> </ol> <p>In any of these circumstances, the forest manager shall ensure that the following:</p> <ol style="list-style-type: none"> <li>1. Planning (identification and assessment) and practices (operations and monitoring) support the protection and maintenance of Significant Biological Diversity Values and that, as a minimum, conversion occurs only where it does not involve occurrences of— <ul style="list-style-type: none"> <li>• threatened (including vulnerable, rare or endangered) or regionally significant ecosystems or ecological communities;</li> <li>• old-growth forest; and</li> <li>• important habitat of threatened (including vulnerable, rare or endangered) or regionally significant species</li> </ul> </li> <li>2. No native vegetation community, ecological community or ecosystem becomes depleted, or qualifies as threatened (endangered, vulnerable or rare) in accordance with Commonwealth, State and Territory legislation, regulation or species recovery plans.</li> </ol> <p>NOTE 1: The AFS Technical Reference Committee considered the strong concerns about native vegetation conversion in the context of public policy, practical forest management and regional economic and social development. Native vegetation conversion is no longer considered best practice and should cease. The AFS Technical Reference Committee recognises the importance of development opportunities for Indigenous peoples, and the role that plantation development could play. Subject to the development of formal AFS supplementary guidance, consistent with the general principles of requirements 4.3.2 and 4.8.1, plantation development on native</p> | <p>≈</p> | <p>=</p> |  |
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|  |  | <p>vegetation land may be permissible, within the context of such guidance.</p> <p>NOTE 2: It is not intended to allow sequential small scale conversion of native vegetation, which, when combined, would result in broad scale conversion of native vegetation within the defined forest area.</p> <p>NOTE 3: It is not intended to limit plantation establishment undertaken on non-native vegetation sites. Plantation establishment is permitted on significantly altered or degraded land that: (i) supports degraded native vegetation, and (ii) has no Significant Biological Diversity Values.</p>  |          |          |  |
| <p>“Gunns Ltd. logs forest recognised as very valuable carbon stores.”</p> <p>“The carbon stores are depleted by VicForests’ operations. For example carbon that has been stored in old growth forests for over 500 years is released and the forest is then logged on a very short rotation, so the carbon stocks are not maintained. The ANU work shows that logged forests store 40-60% less carbon than old growth forests.”</p> | <p>C 5.3. Important ecological cycles, including carbon and nutrient cycles, which occur in the forest management unit, are at least maintained.</p> | <p><u>Introduction</u></p> <p>(...) there are three principles to sustainable forest management that are embraced by the AFS: (1) Ecological sustainability This entails maintaining the ecological processes within forest ecosystems—the formation of soil, energy flows, and carbon, nutrient and water cycles— (...)</p> <p>4.7.1 The forest manager shall acknowledge the forests’ capacity to act as a net carbon sink and demonstrate a commitment to minimising greenhouse gas emissions.</p> <p><i>(regeneration)</i></p> <p>4.4.4 The forest manager shall ensure that regeneration of native forests and establishment of plantations is effective and timely. Species composition and the density of the regeneration of native forests and the stocking rate of plantations shall be assessed and remedial action taken where necessary to ensure effective regeneration and establishment.</p> <p><i>(recovery after unplanned fires)</i></p> <p>4.4.6 The forest manager shall implement effective measures to reduce the extent and impact of unplanned fires.</p> <p>4.5.2 The forest manager shall implement practices to support the maintenance of forest ecosystem health and vitality and ensure that damage stays within tolerable levels. Management shall include</p> | <p>=</p> | <p>=</p> |  |

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|   |  | <p>procedures for forest health surveillance and control or eradication of damage agents.</p> <p>4.6.4 The forest manager shall manage forest operations to protect and maintain the physical, chemical and biological properties of soil and improve those properties where appropriate and reasonably practicable.</p> <p>The forest manager shall— (...)</p> <ul style="list-style-type: none"> <li>• minimise any nutrient loss.</li> </ul>   |   |   |  |
| <p>“Gunns Ltd. logs extremely steep slopes.”</p>  | <p>C 5.4. Avoidable damage to the ecosystem is prevented by application of the most suitable and available methods and techniques for logging and road construction under the prevailing conditions.</p>   | <p>4.6.1 The forest manager shall identify and assess the inherent soil and water values that can be adversely affected by forest operations in order to maintain the productive and protective functions of the forest.</p> <p>4.6.4 The forest manager shall manage forest operations to protect and maintain the physical, chemical and biological properties of soil and improve those properties where appropriate and reasonably practicable. The forest manager shall—</p> <ul style="list-style-type: none"> <li>• minimise the extent of land within forest harvesting areas occupied by zones of major soil disturbance;</li> <li>• ensure that rutting does not exceed that specified in relevant codes and equivalent instruments or operational guidelines;</li> <li>• promptly rehabilitate extraction tracks, temporary roads and product storage areas; and</li> <li>• minimise any nutrient loss.</li> </ul> | = | = | <p>FoE NL mentioned TPAS criterion 5.4 in connection with logging on steep slopes. However, TPAS criterion 5.1. is more relevant; “<i>The soil quality of the forest management unit is maintained and, where necessary, improved, whereby special attention is given to shores, riverbanks, erosion-prone parts and slopes.</i>” Please note that the TPAS criteria do not prohibit logging on slopes provided that the quality of the soil is maintained. The AFS criteria sufficiently address the maintenance of soil quality.</p> |
| <p>“Gunns Ltd. (...) continues to use the controversial poison 1080. (...) Poison 1080 is non-target specific.”</p> | <p>C 5.7. The use of chemicals is only permitted if maximum use of ecological processes and sustainable alternatives proves insufficient. The use of class 1A and 1B pesticides, as drafted by the World Health Organisation, and of chlorinated hydrocarbons is</p> | <p>4.5.5 The forest manager shall reduce reliance on chemicals (including pesticides and fertilisers) with potential for environmental harm and favour alternative cost-effective methods (including safe biological agents) and more benign chemicals that minimise adverse actual and potential impacts on the environment.</p> <p>4.6.5 The forest manager shall manage forest operations to prevent or constrain water pollution and soil contamination, with the objective that—</p>   | ≈ | ≈ | <p>The AFS criteria do not preclude the use of class 1A and 1B pesticides etc. Also there is no requirement that chemicals can only be used if sustainable alternatives prove to be insufficient. On the other hand AFS does demand that reliance on chemicals with</p>  |



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|   | not permitted.  | <ul style="list-style-type: none"> <li>chemicals from planned applications are not transported into waterways; and</li> <li>disposal of waste fuels, lubricants and chemicals is carried out in the prescribed manner.</li> </ul>  |   |   | <p><u>potential</u> for environmental harm is reduced.</p> <p>All in all TPAS criterion 5.7 is partially addressed.</p>   |
| <p>"VicForests is currently undertaking unprecedented post-fire logging (...). Many previously logged areas of forests are not regenerating properly, and VicForests is many years behind in even assessing regeneration success."</p>  | <p>C 6.1. The production capacity of each forest type of the forest management unit as a whole is maintained.</p> | <p>4.4.1 The forest manager shall identify existing productive uses of the defined forest area to support the maintenance of the land's long-term productive capacity and ensure it is not compromised by wood production.</p> <p>4.4.2 The forest manager shall plan forest operations to ensure the productive capacity of the land, (see requirement 4.4.1) is not compromised. (...)</p> <p>4.4.3 The forest manager shall evaluate and use silvicultural systems that have been demonstrated to be appropriate for the forest type, the specific stand and site conditions, forest management objectives and market/product requirements.</p> <p>4.4.4 The forest manager shall ensure that regeneration of native forests and establishment of plantations is effective and timely. (...)</p> <p>4.4.6 The forest manager shall implement effective measures to reduce the extent and impact of unplanned fires.</p> | = | = |   |
| <p>"A large section of the proposed Brown Mountain walking track route [which would provide economic and social benefit to East Gippsland] was destroyed (...). VicForests has admitted that it has not explored or undertaken any analysis to determine other non-timber</p> | <p>P 7. Forest management shall contribute to the local economy and employment.</p>                               | <p><i>See TPAS criterion 2.2</i></p>   |   |   | <p>TPAS principle 7 is not relevant in this context as it pertains to <u>direct</u> contributions of the forest management to the local economy such as direct employment for local population.</p> <p>The relevant TPAS criterion in this context is 2.2 which is addressed above.</p> |

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| values.”   |   |   |   |   |  |
| “regeneration surveys are failing to take place and are inadequately monitored.” | C 8.4. The implementation of the forest management plan and the ecological, social, and economic effects of forest management on the FMU and its surroundings are monitored periodically on the basis of adequate data. | <p>4.1.4 The forest manager shall monitor and evaluate forest management activities and their outcomes to ensure that forest management performance requirements are met and that deficiencies are corrected (where identified) to support continual improvement in forest management.</p> <p>The forest manager shall ensure procedures are in place for the following: (...)</p> <ul style="list-style-type: none"> <li>• monitoring and auditing of <i>forest operations</i> for conformance with planned arrangements and to ensure that the forest management performance requirements are met;</li> <li>• routine monitoring and evaluation of the <i>outcomes</i> of forest management using a sufficiently powerful approach that allows timely remedial actions to be applied when forest management performance requirements are not met; and</li> <li>• periodically auditing the <i>forest management system</i> to determine whether or not it conforms to the planned arrangements and has been properly implemented and maintained.</li> </ul> | ≈ | = | Although AFS does not specifically mention the monitoring of ecological, social, and economic effects. However, the systematic monitoring of 1) operations 2) outcomes and 3) FM system should ensure that in practice all three effects are sufficiently addressed. |