

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID 1019 of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (ADMINISTRATORS APPOINTED)
ACN 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(ADMINISTRATORS APPOINTED)
ACN 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1 AND IN
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT
SCHEMES LISTED IN SCHEDULE 2
First Plaintiff

CRAIG DAVID CROSBIE
Second Plaintiff


IAN MENZIES CARSON
Third Plaintiff

AFFIDAVIT OF CRAIG DAVID CROSBIE
DATED 4 FEBRUARY 2011


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4	CDC-11 being a copy of the valuation of the Bombala Land from M ³ Property, commissioned on 23 December 2010	10

Filed on behalf of the Plaintiffs


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5	CDC-12 being a copy of the letter from the CBA to the Administrators dated 24 January 2011	11
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7	CDC-14 being copies of the notice from the Willmott Growers Group Inc (Vic) dated 23 December 2010 and correspondence dated 10 January 2011	20
8	CDC-15 being a copy of the letter from the Receivers to Mark Bland dated 2 February 2011	20

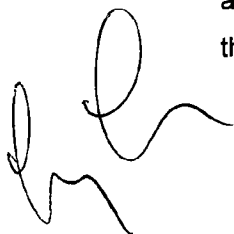
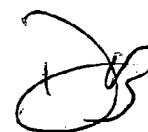
On **4 February 2011**, I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, in the State of Victoria, 3000, Chartered Accountant, **SAY ON OATH** that:

- 1 I am the Second Plaintiff in this proceeding and, with Ian Carson, the administrator of the Willmott Group of Companies.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true. I am authorised by Mr Carson to make this affidavit on his behalf. Reference in this affidavit to "we", "us", "our" or "ourselves" is a reference to Mr Carson and me.
- 3 This affidavit supplements my affidavit sworn on 25 November 2010 (**First Affidavit**), provides a general update of relevant events and has been sworn in support of our application dated 4 February 2011 for a very short extension to the Convening Period and the subsequent electronic distribution of our report to creditors when we convene the second meeting of creditors. In my First Affidavit, I defined a number of terms and I adopt those definitions in this affidavit.

Update on Administration

First Administrators' Costs

- 4 Since our appointment on 26 October 2010 our solicitors, ABL, have sought to obtain details of the former administrator's costs and disbursements. The former administrator (Mr Fernandez) holds the titles to the Bombala Land as security for the payment of his fees and disbursements.

- 5 I am informed by Bridget Slocum of ABL that Mr Fernandez has provided an estimate of \$600,000. We have not yet received any particulars of those costs and disbursements.

Solvency and Viability of Willmott Schemes

- 6 On 7 December 2010, the Administrators engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to conduct the detailed Viability Analysis which I referred to in paragraphs 38-45 of my First Affidavit. On 19 January 2011, we received Poyry's final viability analysis of the Willmott Schemes (**Poyry Report**). The Poyry Report concludes that, depending on the discount rate applied (11%, 13% or 15%), a number of the Willmott Schemes are not financially viable but, more importantly, that for the Willmott Schemes to be viable, further funding of \$123m will be required. Now produced and shown to me and marked "**CDC-9**" is a copy of the Poyry Report.
- 7 On 19 January 2011, we circulated the Poyry Report to the Committee of Creditors of WFL and included the Poyry Report in the data room for the Expression of Interest Campaign.

Administrators' Overdraft

- 8 As I noted in my First Affidavit (paragraphs 60 - 66) we have endeavoured to borrow funds with which to conduct the administration of the Willmott Group of Companies. Now produced and shown to me and marked "**CDC-10**" are copies of letters addressed to each of the CBA, Australia and New Zealand Banking Group (**ANZ**) and the National Australia Bank (**NAB**) regarding the proposed Credit Facility, together with one copy of the annexures to those letters.
- 9 We also made inquiries with Bankwest to seek their willingness to offer us a credit facility. Neither Bankwest, NAB nor ANZ wished to participate in negotiations for a credit facility.
- 10 On 16 December 2010, we received an initial letter of offer from the CBA (**First Credit Offer**) which proposed that WFL and Mr Carson and myself in our personal capacities borrow funds with the Bombala Land as security for the debt. The First Credit Offer was conditional upon an acceptable valuation being provided. On 23 December 2010, we obtained a valuation of the Bombala Land for the purpose of the administration generally from M³ Property (**Administrators' Valuation**). Now




produced and shown to me and marked "CDC-11" is a copy of the Administrators' Valuation. As set out in the Administrators' Valuation, the Bombala Land (as presently encumbered by the Willmott Schemes and with an allowance for rehabilitation) is valued at between \$2.1m - \$3.2m. This is substantially lower than previous estimates of the value of the Bombala Land (refer to paragraph 12 of my First Affidavit).

- 11 On 24 January 2011 we received a new offer from the CBA to lend money to WFL, Mr Carson and myself in our personal capacity. Rather than providing the Bombala Land as security, we will rely upon our statutory right of indemnity from the assets of the Willmott Group to repay the borrowed funds (**New Credit Offer**). Now produced and shown to me and marked "CDC-12" is a copy of the New Credit Offer. We intend to execute the New Credit Offer and to draw down funds to pay for the costs of the administration.
- 12 Given the low valuation of the land, the paucity of other offers and Mr Fernandez's lien over the Bombala land, the CBA's New Credit Offer is the most reasonable source of funding available to us.
- 13 We currently intend to use the borrowed funds to pay for the costs incurred in conducting the Expressions of Interest Campaign, the Viability Analysis, our statutory investigations and the conduct of the Administration generally (but we will not use any borrowed funds to conduct any maintenance of the trees belonging to the Willmott Schemes). We estimate that the costs of the administration (including the former administrators' costs) to 22 February 2011 will be \$4.41m (before tax). We will continue to monitor the extent of the expenditure we incur, as we will only spend borrowed funds if we are satisfied that we can repay them from the sale of the assets of the Willmott Group of Companies.
- 14 Our budgeted expenditure will be categorised in four ways:
- (a) costs which are wholly apportioned as grower or scheme-related expenditure (primarily Expressions of Interest Campaign and Viability Analysis);
 - (b) costs which are apportioned equally between grower-related and creditor-related expenditure (primarily office overhead expenditure);
 - (c) costs of which 46% has been apportioned as grower or scheme-related expenditure and 54% has been apportioned as creditor-related expenditure




(primarily general administration costs). This proportion reflects the proportionate breakdown from our time records for the period 26 October 2010 to 15 November 2010; and

- (d) costs wholly apportioned to creditors (primarily costs associated with direct creditor-related expenditure including the distribution of the section 439A report, public liability insurance and interest expenses associated with obtaining funding.
- 15 In my First Affidavit (paragraphs 53 and 54) I described our review of WFL's statutory obligations to conduct maintenance on the land used for the Willmott Schemes. We have since received two notices from the NSW Rural Fire Service, one dated 7 December 2010 in relation to the Riverina Highlands Zone and one dated 17 December 2010 in relation to the Corowa/Berrigan Zone. Now produced and shown to me and marked "CDC-13" are copies of the two notices from the NSW Rural Fire Service. In addition, on or around, 13 January 2011, the mayor of the Bombala Region, Mr Bob Stewart contacted us. Barry Wight of our office spoke to Mr Stewart and has informed me that Mr Stewart asked us to complete fire maintenance on the Bombala Land. We informed the NSW Rural Fire Service and Mr Stewart that, due to the lack of funding, we are unable to conduct any of the maintenance required.
- 16 We have told the Committees of Creditors (which includes Grower representatives) that we do not propose to use any of the borrowed funds to fund any scheme maintenance.

Expressions of Interest Campaign

- 17 I refer to paragraphs 47 - 51 of my First Affidavit which describes the Expressions of Interest Campaign. Since my First Affidavit, we were approached by 21 interested parties who signed a confidentiality agreement, following the advertisements published in *the Australian* on 12, 16 and 18 November 2010 requesting expressions of interest (exhibit "CDC-5" to my First Affidavit). On 1 December 2010, we opened an online data room which 13 of those interested parties accessed. Eight indicative, non-binding, proposals were made on 16 December 2010. Binding proposals were due on 2 February 2011.

- 18 On 2 February 2011, we received four conditional, indicative, non-binding proposals and one binding offer. The indicative proposals were conditional on matters

including finance, further due diligence periods (in one proposal up to 10 weeks) and further information from the Willmott Group. None of the four bidders are willing to fund the costs of managing the schemes during the period of any delay for the satisfaction of the conditions. We do not have sufficient funds to continue to manage the schemes for the relevant period.

- 19 We received one binding offer from HVP (which is one of the lessors referred to in paragraph 7 of my First Affidavit) which deals with those schemes (or part thereof) that are situated on land leased from HVP (**HVP Land**). It does not deal with those schemes that are not situated on HVP Land at all and it does not provide for a new responsible entity for the schemes that are situated on the HVP Land. The proposal would be complex to implement and would take some time to complete. We met with representatives of HVP on 3 February 2011 to discuss the offer, and we expect to receive an indicative alternative proposal from HVP today, and a binding, alternative offer from HVP next week.
- 20 Now produced and shown to me marked "**CDC-14**" is a true copy of a notice we received from Paul Challis of the Willmott Growers Group Inc (Vic) (**WGG**) dated 23 December 2010, and two letters dated 10 January 2011 and 31 January 2011. This notice was not related to the Expressions of Interest Campaign. On 2 February 2011, we received a copy of a letter from the Receivers to Mark Bland, of Clarendon Lawyers, the solicitors for the Willmott Growers Group, stating that the Receivers do not consider that the meeting was properly called in accordance with the statutory and common law requirements. Now produced and shown to me marked "**CDC-15**" is a true copy of the letter from the Receivers' solicitors, Allens Arthur Robinson, to Mark Bland dated 2 February 2011. To our knowledge the WGG has not issued a valid notice.

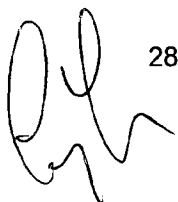
Sale Process

- 21 We are now faced with a situation in which we have no available funding and no proposal for a new responsible entity or manager for any of the Willmott Schemes. We have notified the Committees of Creditors that there are no unconditional offers capable of acceptance and that we do not consider that it is appropriate to attempt to collect funds from growers where no party is willing to accept the role of responsible entity or manager of the Willmott Schemes and there is no guarantee that the Willmott Schemes can continue.

- 22 We have also notified the Committees of Creditors that the next step is to seek to realise the schemes with a view to maintaining a benefit for growers.
- 23 In relation to the land leased from HVP and Forestry NSW, we intend to negotiate with the external lessors to surrender the leases for value, having regard to the market value for trees and the pre-paid rent. In relation to land owned by WFL, we intend to sell the trees and the land. In order to do so, we will need to obtain or confirm our power of sale. The power of sale will differ according to each scheme, with the greatest distinction being between the registered and unregistered schemes. In relation to the registered schemes, we intend to use our statutory powers to amend the relevant constitutions to provide for a power of sale (with the consent of the Court).
- 24 Dealing with the unregistered schemes may involve a two-step process. We will attempt to amend the relevant constituent documents by consent, if possible. Failing agreement of the scheme members, we propose to seek the Court's direction to obtain a power of sale, whether by disclaimer or otherwise.
- 25 We will not exercise our power to sell or enter into a sale contract without first seeking the Court's direction, and unless the proceeds of sale attributable to the trees can be set aside to be distributed to scheme members on a basis determined by either an allocation by the purchaser approved by the Court, by agreement, or by way of Court Proceedings.
- 26 Subject to an expert valuer's confirmation, we intend to maximise value for all creditors by working with the Receivers and Managers to conduct a sale campaign of all of the land on which the Willmott Schemes are situated.
- 27 We want to have the benefit of the continued statutory moratorium in place during the administration during our negotiations with HVP and Forestry NSW. If the Willmott Group of Companies are placed into liquidation, HVP or Forestry NSW might take steps to terminate the leases. Until we knew of the outcome of the Expressions of Interest Campaign, and as HVP was participating in the Expressions of Interest Campaign, we were unable to commence these negotiations earlier.

Extension of Convening Period

- 28 The Convening Period for the Willmott Group of Companies currently ends on 15 February 2011.



29 There are several matters that we need to address before we call the second meeting of creditors, including:

- (a) negotiations with HVP and Forestry NSW;
- (b) negotiations with members of unregistered schemes; and
- (c) obtaining a valuation to confirm that a joint sale process with the Receivers and Managers is more likely to provide a greater return for creditors.

30 It is not possible to address these matters within the current timeframe, however, we anticipate we can do so by mid-March 2011. We consider that the short extension requested will not delay the winding up of the Willmott Group of Companies or cause any significant additional costs. All of the work which we intend to do in the additional four-week period would be conducted upon a winding up in any event. In addition, we wish to have the benefit of the statutory moratorium during our negotiations with HVP and Forestry NSW.

31 On 1 February 2011, ABL advised the CBA and the St George Bank (**Secured Creditors**) that we proposed to make this application to extend the Convening Period. The Secured Creditors have expressed concerns regarding this application as they consider it will delay the winding up of the Willmott Group of Companies and subsequent recovery of funds and cause further costs to be borne by creditors. The Secured Creditors have asked us to raise their concerns with the Court but will not actively oppose this application.

32 On 3 February 2011, at a informal joint meeting of the committees of creditors of the Willmott Group of Companies, we advised the following parties of our intended application. Each of these parties indicated that they supported our application:

- (a) Ian McKenzie;
- (b) Colin Worthy;
- (c) Paul Challis (Willmott Growers' Group);
- (d) Jim Simpson;
- (e) Marie Birmingham (Willmott Action Group); and
- (f) Stephen Ryan (HVP).

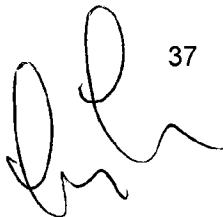


- 33 Only one of the Secured Creditors was represented at the joint informal committees of creditors meeting. It was the only party who was represented at the meeting that did not support the application.

Notice of s439A Report to Creditors

- 34 Pursuant to s439A(4) of the Act, the notice of the second meeting of creditors (**Notice**) must be accompanied by a report by us regarding the Willmott Group of Companies' business, property, affairs and financial circumstances, and the result of our investigations, and a statement setting out our recommendations (**Report to Creditors**).
- 35 There are 6,329 growers in the various Willmott Schemes and 173 additional creditors of the Willmott Group of Companies. We have a record of most of the creditors' email addresses, as those email addresses were provided with the proofs of debt. We also have a record of a substantial number of the Growers' email addresses which were provided by the Growers to WFL for the purposes of communications regarding the relevant Willmott Schemes.
- 36 We anticipate that the Report to Creditors will be voluminous. Taken together, we estimate that the cost of providing a hard copy of the Report to Creditors together with the Notice will be approximately \$90,000. We propose that, as an alternative:
- (a) the Report to Creditors be posted on the "PPB Advisory website" (www.ppbadvisory.com) and on the website of our solicitors (www.abl.com.au);
 - (b) the Notice be emailed to growers and creditors or in the absence of an email via letter; and
 - (c) the Notice:
 - (i) direct growers and creditors to the PPB Advisory Website to view or download a copy of the Report to Creditors; and
 - (ii) advise growers and creditors that a hard copy of the Notice can be provided upon request.

- 37 The estimated cost of our proposal for electronic distribution of the Notice and Report to Creditors is in the range of \$5,000 - \$10,000 depending on the number of individuals without email addresses.




Clarification of Identity of Responsible Entity

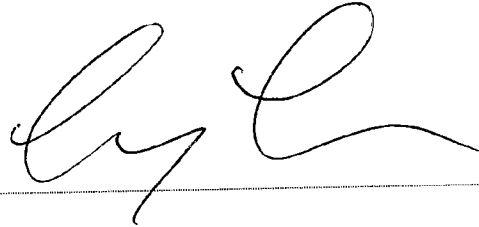
38 In paragraph 23 of my First Affidavit, and in paragraph 3 of Mr Zwier's affidavit, Mr Zwier and I deposed to the fact that BioForests Limited (ACN 096 335 876) and not WFL was the responsible entity of two of the eight registered Willmott Schemes. Since then, ABL has advised me that WFL commenced as the responsible entity of the Bioforest Sustainable Timber and Biofuel Project 2001 (ARSN 124 133 535) on 4 December 2008 and the responsible entity of the Bioforest Dual Income Project 2006 (ARSN 119 153 623) on 8 September 2008.

Service of Affidavit

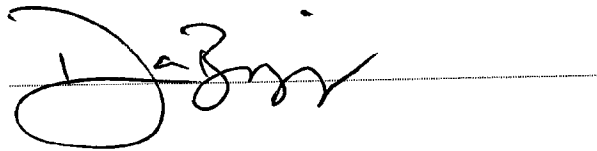
39 I have instructed our solicitors, ABL, to serve a copy of this affidavit on the following parties:

- (a) the Committee of Creditors;
- (b) the Australian Securities and Investments Commission;
- (c) the Willmott Growers Group by their solicitors Clarendons Lawyers;
- (d) the Willmott Action Group by their solicitors Lilley Dawson;
- (e) the Commonwealth Bank of Australia by their solicitors Clayton Utz; and
- (f) Mark Korda, Bryan Webster and Mark Mentha of KordaMentha by their solicitors Allens Arthur Robinson.

SWORN at Melbourne in the State of Victoria)
)



Before me:



DANIEL JOSEPH BRIGGS
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, Bridget Ellen Slocum, certify to the Court that the affidavit of Craig David Crosbie sworn on 4 February 2011 and filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 4 February 2011



BRIDGET ELLEN SLOCUM
Solicitor for the plaintiffs