

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS 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 11 MAY 2011

TABLE OF CONTENTS

Document number	Details	Paragraph
1	Affidavit of Craig David Crosbie in support of application for orders and directions sworn on 11 May 2011	
2	"CDC-16" being the affidavits of Craig David Crosbie (less exhibits) dated 26 November 2010 and 4 February 2011 filed in Federal Court of Australia proceeding VID 1019 of 2010	5
3	"CDC-16A" being the section 439A Report to Creditors	6
4	"CDC-17" being bundle of correspondence between the liquidators, the WGG and the Receivers (and each party's solicitors) regarding the WGG Proposal	9

Filed on behalf of the Plaintiffs

 **ARNOLD BLOCH LEIBLER**
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier lzwier@abl.com.au)



5	"CDC-18" being the PCL DOCA Offer	10
6	"CDC-19" being KordaMentha's letter to PCL dated 22 March 2011	11
7	"CDC-20" being powerpoint presentation of the Second Creditors' Meeting	12
8	"CDC-21" being minutes of the Second Creditors' Meeting	12
9	"CDC-22" being CBA loan facility executed 21 March 2011	15
10	"CDC-23" being diagram showing the location of the Freehold and Leasehold Land	20
11	"CDC-24" being diagrams of Freehold and Leasehold Land by hectare and number of lots	22
12	"CDC-25" being aerial map of Bendoc 2 Plantation	23
13	"CDC-26" being graphs showing the number of plantations used for each Registered Scheme and Unregistered Scheme	24
14	"CDC-27" being four aerial maps showing the location of plantations used in the Willmott Forests 1995-1999 Scheme and of other Freehold Land owned by WFL in the general vicinity	25
15	"CDC-28" being allocation plan for part of the Stormat Plantation	30
16	"CDC-29" being aerial map of the Cabanandra Plantation	31
17	"CDC-30" being aerial map of the Jacky Bulbin Station and Wake Plantations	32
18	"CDC-31" being correspondence between Butler, McIntyre & Butler, solicitors for a Grower, and the liquidators regarding right to enter and harvest Grower's Trees	43
19	"Confidential exhibit CDC-32" being Preliminary HVP Offer	68
20	"Confidential exhibit CDC-33" being HVP Offer	70
21	"CDC-34" being proposed Amendment Deed to amend each of the constitutions and investment	82

	deeds to be executed by WFL	
--	-----------------------------	--

On **11 May 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. Ian Carson and I are the Liquidators of the Willmott Group of Companies (**Willmott Group**).
- 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 I have previously sworn two affidavits in Federal Court of Australia proceeding VID 1019 of 2010, dated 26 November 2010 (**First Affidavit**) and 4 February 2011 (**Second Affidavit**). I have defined a number of terms in the First Affidavit and the Second Affidavit and I adopt those definitions in this affidavit.
- 4 This affidavit is made in support of an application for orders and directions:
 - (a) Pursuant to section 511 of the *Corporations Act 2001* (Cth) (**Act**), that we are justified and reasonable in causing the First Plaintiff (**WFL**) to exercise its power pursuant to section 601GC of the Act to amend the constitutions of the Willmott Registered Schemes to empower WFL to terminate, relinquish or surrender the leases, sub-leases, forestry management agreements and other project documents between WFL and Growers (collectively, **Project Documents**) and any rights of the Growers arising from or in connection with the Project Documents (**Grower Rights**) on the basis that WFL considers that the amendments will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination, relinquishment or surrender of the Project Documents or Grower Rights;
 - (b) Pursuant to section 511 of the Act that we are justified and reasonable in causing WFL to exercise its power to amend the investment deeds or constitutions of the Willmott Unregistered Schemes which have an investment deed or constitution (**Willmott Professional Investor Schemes**) to empower WFL to terminate, relinquish or surrender the Project Documents and any




Grower Rights on the basis that WFL considers that the amendments will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination, relinquishment or surrender of the Project Documents or Grower Rights;

- (c) In the alternative, for a direction that, pursuant to sections 568(1A) and 511 of the Act, we are justified in disclaiming the Project Documents of the Willmott Registered Schemes and Willmott Professional Investor Schemes as onerous on the basis that WFL considers that the disclaimer will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the disclaimer of the Project Documents or Grower Rights;
- (d) Pursuant to sections 568(1A) and 511 of the Act, for a direction that we are justified in disclaiming the Project Documents of the Willmott Schemes which do not have an investment deed or constitution (**Willmott Contractual and Partnership Schemes**) as onerous on the basis that WFL considers that the disclaimer will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the disclaimer of the Project Documents or Grower Rights;
- (e) Pursuant to section 511 of the Act, and subject to the Court providing the directions sought at paragraphs (a) and (b) above to amend the constitutions and investment deeds to provide for an unfettered right to terminate the Project Documents, for a direction that we are justified in exercising this right to terminate the Project Documents affecting the HVP Leases on the basis that it is not adverse to Growers and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination, relinquishment or surrender of the Project Documents or Grower Rights; and
- (f) Pursuant to sections 477(2B), 556(1)(a) and 511 of the Act, for a direction that the Liquidators are justified in entering into the loan facility provided by the CBA on the terms set out in exhibit CDC-12 of my Second Affidavit and that repayment of the loan is a proper expense incurred in the liquidation of WFL to be paid in priority to all other unsecured debts and claims of WFL.




Update on Administration/Liquidation

- 5 I refer to paragraphs 47 - 51 of my First Affidavit and paragraphs 17 - 20 of my Second Affidavit relating to the Expressions of Interest Campaign. In summary, the purpose of the campaign was to seek expressions of interest to assume the obligations of responsible entity and manager for all or any of the Willmott Schemes, a restructure of the Willmott Group's affairs or its business, or a recapitalisation of the Willmott Group. As set out in my Second Affidavit, the offers we received were either incapable of acceptance or did not otherwise represent best value for Growers and creditors. Now produced and shown to me and marked "CDC-16" are true copies of my First Affidavit and my Second Affidavit (less exhibits).

**Section 439A Report to Creditors*

- 6 On 14 March 2011, the section 439A(4) Report to Creditors was issued in accordance with the Court's Order of 8 February 2011 (**Report to Creditors**) by notifying Growers and creditors by email or post and uploading the Report to Creditors on the PPB Advisory website and on the ABL website. Now produced and shown to me and marked "CDC-16A" is a true copy of the Report to Creditors.
- 7 In the Report to Creditors, we recommended that it was in the best interests of the creditors that WFL be wound up so that the assets could be realised, including any preferential payments or uncommercial transactions, and distributed in accordance with the Act. We also noted that the liquidation of the Willmott Group would not automatically lead to the liquidation of the Willmott Schemes and therefore would not prejudice Growers.

WGG Proposal

- 8 Prior to the Second Creditors' Meeting, the Willmott Growers Group (**WGG**) expressed interest in taking over as responsible entity and manager of a number of the Willmott Schemes (the **WGG Proposal**). Paul Challis, of the WGG, told me that the WGG's focus was the 1995 - 1999 Willmott Forests Project but that it would consider extending any offer to other Willmott Schemes. I have been provided with a letter from the WGG's solicitors, Clarendon Lawyers, to ABL dated 6 May 2011 which advises that the WGG also proposes to take steps to take over the management of the following unregistered schemes:

- (a) Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994);

- (b) McKenzie & Partners - Forestry Partnership No.1 (1993); and
- (c) Sharp/Reed Plantation Project -1998 Information Memorandum.

9 On 18 March 2011, Mr Challis told me that he anticipated issuing a Notice of Meeting on 21 March 2011 and an Information Memorandum shortly afterward to formalise the WGG Proposal. However, to date we have not received a Notice of Meeting or Information Memorandum. Now produced and shown to me and marked "CDC-17" are copies of a bundle of correspondence between us, the WGG and the Receivers, and each of our solicitors regarding the WGG Proposal.

PCL DOCA Offer

10 One of the non-binding offers received on 4 February 2011 in the Expressions of Interest Campaign came from Plantation Capital Limited (**PCL**). The offer was non-conforming in that it largely involved an asset purchase transaction rather than taking over scheme obligations as responsible entity and manager. On 21 March 2011, PCL put forward a proposal for WFL to enter into a Deed of Company Arrangement and PCL take over as responsible entity and manager for all of the Willmott Schemes (**PCL DOCA Offer**). Now produced and shown to me and marked "CDC-18" is a true copy of that letter.

11 We did not consider the PCL DOCA Offer to be a viable option in part because the conditions precedent to it required the Secured Creditors to be bound. We have been provided with a copy of a letter from the Receivers and Managers to PCL dated 22 March 2011, which indicates that the Secured Creditors do not support the PCL DOCA Offer. Now produced and shown to me and marked "CDC-19" is a true copy of KordaMentha's letter to PCL.

Second Creditors Meeting

12 The Second Creditors' Meeting (held concurrently for all the companies in the Willmott Group) took place at 2pm on Tuesday 22 March. Now produced and shown to me and marked "CDC-20" and "CDC-21" respectively are copies of the powerpoint presentation and the official minutes of that meeting. We recommended that WFL and the rest of the Willmott Group, be placed in liquidation and that we be appointed as liquidators.

13 The resolution to wind up WFL and appoint us as liquidators of WFL was initially proposed and carried on the voices. Marie Bermingham, a representative of the

WAG, demanded that a poll be conducted. The poll resulted in a deadlock between the majority in number and majority in value. As chairman, I exercised my casting vote in favour of the resolution to wind WFL up.

- 14 Ms Bermingham indicated at the Second Creditors' Meeting that she would challenge my exercise of the casting vote. However, Ms Bermingham has not done so.

CBA Credit Facility

- 15 I refer to paragraphs 11 to 12 and CDC-12 of my Second Affidavit regarding a loan facility offered by the CBA. Now produced and shown to me and marked "CDC-22" is a true copy of the terms of the loan facility which I executed on 21 March 2011. The purpose of the loan is to fund the costs of the administration and liquidation of WFL.
- 16 The loan facility was offered by the CBA to us in our personal capacity as administrators of WFL. Following WFL being placed into liquidation, I have been advised by the CBA that it considers the loan facility is no longer enforceable. However, the CBA has stated that it would be willing to offer the Liquidators a loan facility on substantially the same terms as those set out in CDC-22 to this Affidavit subject to us obtaining a direction from the Court that repayment of the loan would be considered an expense of the liquidation and paid in priority to all other unsecured debts and claims in accordance with section 556(1)(a) of the Act. The term of the agreement is expected to be longer than 3 months.

Liquidation of the Willmott Group

- 17 As liquidators of the Willmott Group and responsible entity and manager of the Willmott Schemes, we are now seeking to realise the assets of the Willmott Group to achieve the best value for all stakeholders including Growers and creditors.

Overview of WFL Assets

- 18 WFL's primary assets comprise:
- (a) the Bombala Land, comprising 27,861 hectares of freehold land located around the township of Bombala in New South Wales, with approximately 70% of pine planted as at 6 September 2010. The remaining unplanted areas are either conservation land or are otherwise not suitable for planting (**the Bombala Land**). The Bombala Land is not under the control of the Receivers, however, the First Administrator's solicitors, Hunt & Hunt, currently

hold the certificates of title for the Bombala Land pursuant to a lien for his fees;

- (b) 22,312 hectares of freehold land located in the Murray Valley region in New South Wales (**the Murray Valley Land**). Approximately half of the Murray Valley Land (11,989 hectares) is planted with pine in relation to various Willmott Schemes. The Murray Valley Land is currently under the control of the Receivers;
- (c) 8,709 hectares of freehold land located on the North Coast of New South Wales (**the North Coast Land**). Plantations occupy approximately 64% of this land (5,602 hectares) which consist of both She Oak (2,908 hectares) and Silky Oak (2,694 hectares). The North Coast Land is currently under the control of the Receivers; and
- (d) 5,340 hectares of freehold land located in the Douglas Daly region in the Northern Territory (**the Northern Territory Land**). The Northern Territory Land is held for mahogany plantations and has a net plantable area of approximately 3,000 hectares. As at 6 September 2010, approximately 395 hectares of mahogany had been planted, of which 159 hectares had been allocated to the Willmott Forests Premium Timberland Fund No. 1 Scheme. The Northern Territory Land is currently under the control of the Receivers (together, the **Freehold Land**).

19 WFL is also the lessee of:

- (a) 13,338 hectares of land situated in Victoria which is leased or sub-licensed from HVP (**HVP Leases**). Whilst most of the rent/licence fees are prepaid (a further payment of rent/licence fees as a percentage of the net harvest proceeds is payable upon harvest of the Trees), the leases and sub-licences are conditional on the ongoing maintenance and management of plantations and a breach of those management agreements is also a breach of the HVP Leases. The relationship between HVP and WFL is governed by:
 - (i) relationship agreements which set out the general agreement between WFL and HVP for the establishment and management of pine plantations;

- (ii) leases and sub-licences which govern the leasing and licensing of specific parcels of land to WFL, which under the relationship agreements are provided for use in specific projects;
 - (iii) forest property agreements pursuant to which ownership of the "forest property" (i.e. the trees) vests in WFIM as agent for the Grower Investors and HVP acknowledges it has no interest in the forest property; and
 - (iv) forestry management agreements pursuant to which WFL grants the rights to manage the forests to HVP and provides them with a license to access and use the land for this purpose; and
- (b) 2,140 hectares of land which is leased from the Forestry Commission of New South Wales (**FNSW**) (**the FNSW Leases**). Under the leasing arrangements with FNSW, WFL leases the land and FNSW provides forestry management services in respect of that land. FNSW also enters into a forestry rights agreement with WFIM, pursuant to which FNSW acknowledges that WFIM owns all the trees and timber from the plantation. There are a large number of individual leases and forest property agreements that form part of these arrangements.

(together, the **Leasehold Land**).

20 At present, the vast majority of the Freehold Land and Leasehold Land is, in effect, "encumbered" by the Willmott Schemes which provide the Growers with, among other things, legal title to the Trees situated on that land. Now produced and shown to me and marked "**CDC-23**" is a diagrammatic representation from the product disclosure statement for the Willmott Forests Premium Forestry Blend 2010 Project showing the location of the Freehold Land and Leasehold Land.

21 I am told by Jane Sheridan of ABL that, as the Leasehold Land is used for the purposes of one or more Schemes, it is arguable that the HVP and FNSW Leases constitute scheme property rather than assets of WFL in its personal capacity. The Receivers have indicated that they consider that the HVP Leases are assets of WFL in its personal capacity. This question may need to be determined in the allocation of the proceeds of any sale of the interests in the Leasehold Land as between the Secured Creditors and the Growers or if a compromise is reached, the compromise approved.

- 22 The land on which the Willmott Schemes are conducted consists of approximately 510 plantations, of which approximately 160 are on Freehold Land and 350 are on Leasehold Land. Now produced and shown to me and marked "CDC-24" are diagrams depicting the location of the Freehold Land and Leasehold Land by hectare and by number of lots. The diagram is not to scale nor accurate but included as a visual aid.
- 23 Of the 160 plantations on Freehold Land, approximately 30 are used for more than one Willmott Scheme, with one plantation, the Bendoc 2 Plantation, being used in 6 Willmott Schemes. Now produced and shown to me and marked "CDC-25" is an aerial map showing the Bendoc 2 Plantation and the areas on that plantation used for each scheme.
- 24 Of the 30 Willmott Schemes that we are in control of, 12 are conducted on more than one plantation, with the Willmott Forests Project being conducted on approximately 380 plantations. Now produced and shown to me and marked "CDC-26" are graphs showing the number of plantations used for each Registered Scheme and Unregistered Scheme.
- 25 Where a scheme is conducted on more than one plantation, those plantations are not necessarily adjacent and may be spread over many kilometres. Now produced and shown to me and marked "CDC-27" are four aerial maps showing the location of plantations used in the Willmott Forests 1995-1999 Scheme and of other Freehold Land owned by WFL in the general vicinity.

Willmott Schemes

- 26 As set out in paragraphs 19 to 32 of my First Affidavit, we act as the responsible entity and manager of 8 Registered and 22 Unregistered Willmott Schemes (the Receivers and Managers are in control of a further 7 unregistered schemes). The Unregistered Schemes that we are in control of are broken down into the following categories:
- (a) 11 Contractual Schemes constituted between 1983 and 1995 (the **Contractual Schemes**);
 - (b) 5 Partnership Schemes constituted between 1993 and 1994 (the **Partnership Schemes**); and
 - (c) 6 Professional Investor Schemes constituted between 2001 and 2006 (the **Professional Investor Schemes**).

- 27 Although each of the Willmott Schemes is governed by a suite of different documents, the constituent documents of all of the schemes other than the Willmott Forests Premium Timberland Fund No 1 include at least a lease or licence in relation to certain plantation land (**Grower Leases**) and Forestry Management Agreement (sometimes called a Contract for Works and Services, Establishment and Maintenance Agreement or Land Sourcing and Management Agreement) (**Forestry Management Agreement**). In addition the constituent documents of many schemes includes a forestry right agreement (**Forestry Right Agreement**).
- 28 The Willmott Forests Premium Timberland Fund No 1 is a unit trust, with Growers holding units, rather than receiving a lease over land.

Terms of Grower Leases

- 29 The Grower Leases have the following characteristics:
- (a) Grower Leases generally run for 25 years;
 - (b) rent for the whole term of the Grower Lease is generally prepaid or paid in arrears from the proceeds of the harvest of the Trees. Accordingly, in most cases WFL will not receive any further rent payments during the term of the Grower Lease;
 - (c) the land may only be used for the establishment and maintenance of Trees in accordance with the scheme being managed by WFL;
 - (d) the Grower is entitled to quiet possession without interruption from WFL or a related party so long as it does what it must under the Grower Lease;
 - (e) under the Grower Leases entered into for the Unregistered Schemes and for the Registered Schemes entered into after 2006, Growers are entitled to enter upon their land to establish, maintain and harvest the Trees;
 - (f) A number of the Grower Leases acknowledge the creation of a forestry right (in accordance with 87A of the *Conveyancing Act 1919 (NSW)* and the *Forestry Rights Act 1996 (Vic)*) for the benefit of the Growers which vests legal title in the Trees to the Growers;
 - (g) Growers are prohibited from doing anything, or permitting anything to be done, on the land which may in any way invalidate or violate the conditions of

any insurance policies relating to the land, or in the majority of cases, which may in any way increase or cause to be increased the premiums payable in respect thereof;

- (h) If any amount remains outstanding under the Forestry Management Agreement, in addition to the remedies available under that agreement, WFL is also entitled to terminate the Grower's Lease.

Allocation of Lots

- 30 Land owned or leased by WFL and used in the Schemes has been divided into individual lots of, for example, one hectare. This creates a "checkerboard effect", with some lots surrounded on all sides by other lots, and others on the edge of a plantation. In some instances there are firebreaks, access roads or creeks on the plantation so the lots are shaped to fit. The number of lots on any plantation depends on the size of the plantation. Growers are allocated their lots at random. Now produced and shown to me and marked "**CDC-28**" are true copies of an allocation plan for part of the Stormat Plantation showing the division into individual lots and an aerial map of that plantation. The relevant land is coloured in blue on the aerial map and the aerial map also shows the division of the land into lots.
- 31 As some plantations are used in more than one Scheme, a Grower's lot may be adjacent to the lots of Growers in other Schemes as well as other Growers in the same Scheme. Now produced and shown to me and marked "**CDC-29**" is a true copy of an aerial map of the Cabanandra Plantation showing the allocation of land on the plantation between the Schemes and how the land used in the 1995 "No Project" Scheme is contained within land used on that plantation for the Willmott Forests 1995-1999 Project. It also shows how land on that plantation has been allocated to Growers within the Willmott Forests 1995-1999 Project on the basis of the prospectus pursuant to which they invested.
- 32 The intermingling of land between Schemes is not restricted to the land in the Bombala region. Now produced and shown to me and marked "**CDC-30**" are true copies of an aerial map of the Jacky Bulbin Station Plantation showing the intermingling of Scheme land on a plantation in the North Coast Region and an aerial map of the Wake Plantation showing the intermingling of land in the Murray Valley Region.

- 33 For many Growers, their only access to their lot would be by crossing the lots of other Growers. Properties were planted as a single plantation, rather than in individual lots. The lots are not delineated on the ground by access roads or other dividers or buffer zones. Global Positioning System (**GPS**) is required to accurately identify a Grower's individual lot, however satellite coverage for the GPS often cannot be obtained due to the location of plantations in remote areas and under thick plantation canopies. The alternative would be to employ surveyors to peg out individual woodlots but this would be prohibitively expensive and may still not be accurate.

Harvesting

- 34 While the majority of Grower Leases purport to give individual Growers the rights to maintain and harvest their own lots, I am informed by Stephen Addicott, the WFL Forest Business Manager that this is not possible for the following reasons:
- (a) For the reasons set out in paragraph 33 above, a Grower's lot cannot be readily identified;
 - (b) A Grower whose lot is surrounded on all sides by other Growers' lots could not access his or her lot to commence harvesting without obtaining access across the surrounding lots for the necessary vehicles and equipment. The clear felling of an individual Grower's lot is likely to result in damage to trees on adjacent lots as trees fall. In reality, the harvest will need to commence from the side nearest the relevant main vehicular access and progress across the plantation as trees are clear felled and access can be given;
 - (c) Additional difficulties will arise where properties have been used for more than one Scheme and the trees planted at different times. The timing of harvest will need to take into account the different ages of the Trees;
 - (d) It is not feasible to thin or harvest Trees on such a small scale. It costs approximately \$10,000 to \$15,000 for the appropriate harvesting equipment to transport the timber products after thinning or harvesting. Based on the price achievable for timber products, 10,000 tonnes would need to be harvested to make each single operation profitable. This would require a minimum thinning area of 100 hectares or a minimum clearfall area of 40 hectares. Each Grower leases an average of 7 hectares;

- (e) It is extremely unlikely that Growers would be able to market and sell their Trees on an individual basis. WFL's produce supply contracts were usually on a region by region basis (ie based on the entire Bombala Land or Murray Valley Region Land) and generally involved a continuous supply of products over many years. These contracts would be considered medium-size in the timber industry. Whilst in some cases, it may be possible to market and sell at a plantation level and for a single one-off supply, the minimum supply would be around 10,000 tonnes (being approximately 100 hectares for thinning and 40 hectares for clearfall);
- (f) Existing access roads or firebreaks would need to be maintained or upgraded to enable the necessary vehicles to traverse the roads and firebreaks in safety. Additional gravel roads also need to be constructed in accordance with various codes of practice when the Trees are being thinned or harvested. It costs approximately \$25,000/km to build these roads. Harvesting roads generally service around 50 hectares. Due to the high cost of road construction, it is not practical to build roads to service areas less than 40-50 hectares.

35 In our view, the right to harvest is a theoretical right which cannot be exercised.

36 Although we consider that the ability of individual Growers to enter upon the land to maintain and harvest their Trees has always been impossible, the Grower Leases were still capable of performance prior to WFL's insolvency if all Growers appointed WFL to maintain and harvest the Trees on their behalf and WFL could determine the timing of harvest to enable the necessary progressive harvesting.

Restriction on impacting insurance

37 An additional problem arises due to the restriction in the majority of the Grower Leases which prohibits the Grower from doing anything, or permitting anything to be done, on the land which may in any way invalidate or violate the conditions of any insurance policies relating to the land or, in most cases, which may in any way increase or cause to be increased the premiums payable in respect thereof.

38 WFL currently holds public liability insurance through QBE Insurance (Australia) Limited which covers the activities of WFL in growing and tending the timber on the land forming the WFL Assets. We paid a \$24,865.50 premium for the period 30

September 2010 to 30 September 2011 for this insurance cover. Commercial harvesting is excluded from the coverage provided by the policy.

- 39 I have been advised by Paul Kaiser of King Insurance Brokers Pty Ltd, the insurance broker who arranged the existing policy, that even if harvesting of timber was undertaken by or on behalf of individual Growers, the insurance premium would be void as it was not the intent of the policy to cover such activity. The insurance broker does not believe QBE Insurance (Australia) Limited would be willing to provide cover for individual Growers to maintain and harvest their own Trees even for an increased premium due to the increased risk and lack of control associated with individual parties entering upon the land.
- 40 Growers would therefore be precluded from harvesting their trees even if their lot could be identified and access granted. If Growers were to nonetheless harvest the Trees they would be in breach of their Grower Lease. As the breach would be incapable of remedy, WFL would be entitled to terminate the Grower Lease.

Grower Leases Frustrated or Onerous

- 41 For these reasons, we consider that the Grower Leases are incapable of being performed in accordance with their terms. They have, in effect, been frustrated by the failure of WFL. The legal structure did not adequately consider how rights could be enforced in an insolvency.
- 42 Whilst the ability of individual Growers to enter upon the land to maintain and harvest their Trees has always been impossible, it was the intervening act of WFL's insolvency which cut off the only alternative method of performance and thereby frustrated the Grower Leases.
- 43 In addition, we consider the Grower Leases are onerous and/or unprofitable for the following reasons:
- (a) The Grower Leases generally run for 25 years with all rent either prepaid or payable in arrears at the end of the term. Accordingly, WFL will in most cases not receive any further payments from Growers before harvest but continues to bear the obligations of maintaining the plantations until that time;
 - (b) Continuing to run the Willmott Schemes and retain the Grower Leases would delay the winding up of the Willmott Group for up to 25 years;

- (c) The Poyry Report (referred to in paragraph 6 of my Second Affidavit) estimates that WFL would need to contribute a net present value of \$123 million or \$336.7 million in absolute terms to continue running the Willmott Schemes for the remaining life of the schemes. This does not include any costs associated with the Willmott Forests Premium Forestry Blend Project 2010 which had not been planted when WFL was placed into administration;
- (d) WFL is insolvent and is not in a position to provide this funding and continue running the Willmott Schemes. We have to date incurred approximately \$3.5 million in administration and liquidation costs (which does not take into account any plantation maintenance costs), of which approximately \$1.55 million or 45% is attributable to scheme activities. We may not recover sufficient funds in a number of schemes to cover the costs incurred from the estimated value of the underlying trees. This deficiency will deteriorate further as we incur additional scheme costs;
- (e) In addition to the above costs we have been verbally advised by KordaMentha that the Receivers and Managers have incurred approximately \$2.0 million of costs relating to scheme related activities. We have not yet received any documentation verifying these costs;
- (f) The Poyry Report also concluded that, even if this funding was available, between 28% and 88% of the Willmott Schemes would still not be viable depending on the discount factor applied;
- (g) The value of the Trees and, in turn, the viability of the Willmott Schemes will continue to decrease, as WFL does not have sufficient funds to undertake the requisite maintenance activities. Trees are at risk of wasting (particularly newly planted Trees) and the fire risk continues to increase until this maintenance work can be undertaken. There have already been two minor fires in the Bombala plantations since our appointment;
- (h) Under the majority of the Grower Leases, Growers have the right to enter upon the land and harvest the Trees. Even if this were capable of performance, we consider that, if this right was exercised, it would increase WFL's liability and would be onerous to monitor. We have serious occupational health and safety and occupier's liability concerns with Growers exercising this right. We have been served with a notice from one Grower

seeking to enforce this right. Now produced and shown to me and marked "CDC-31" is a true copy of correspondence between Butler, McIntyre & Butler, solicitors for that Grower, and us.

- 44 We consider that the Grower Leases are onerous or unprofitable and that we are therefore entitled to disclaim them in accordance with section 568 of the Act.

Forestry Rights Agreement

- 45 In relation to a number of the Willmott Schemes, the owner of plantations on which the scheme was conducted granted a Forestry Right over that plantation to Willmott Forests Investment Management Pty Ltd on behalf of the Growers (**WFIM**). The "Forestry Right" is defined as an interest in the Land under which WFIM is entitled, among other things, to enter the Land and establish, maintain and harvest one or more crop or crops of trees. The Forestry Right Agreement terminates at the same time as the lease of that plantation terminates.

Forestry Management Agreements

- 46 The Forestry Management Agreements provide for the establishment, maintenance and harvesting of Growers' leasehold property by WFL. WFL is generally paid an initial upfront amount by the Growers to cover the cost of preparing the land and planting the Trees. WFL will receive payment for all other maintenance costs incurred over the term of the project and for the harvesting and marketing costs as a percentage of the final proceeds of sale.
- 47 As set out in paragraphs 52 to 59 in my First Affidavit, I had been advised by staff of WFL that the total estimated cost of care and maintenance for all plantations for the period August 2010 to June 2011 was in the order of \$8 million. This cost may have increased due to the above average rainfall and, as a result, the increase in vegetation. We have not had sufficient funds to undertake the necessary maintenance which has, in turn, led to an increase risk of fire as well as potentially depreciating the tree value (in particular, newly planted trees which require more intensive maintenance are at risk of wasting).
- 48 In relation to the Freehold Land, which WFL maintains itself, we no longer have sufficient staff to undertake any maintenance. In respect to the Bombala region, we have only retained 1 plantation employee who is only able to perform a caretaker role. In addition to previous notices received from the Rural Fire Services as

outlined in paragraph 15 of my Second Affidavit, we have received an additional letter from the Rural Fire Services requesting WFL to complete fire maintenance. In addition, all leased vehicles and fire equipment have been returned and are no longer available for use by WFL.

49 The maintenance costs and fire risks will continue to increase and the value of the Trees continue to depreciate so long as the maintenance of the land and Trees is neglected.

50 For these reasons, as well as for the same reasons set out above in relation to the Grower Leases, we consider the Forestry Management Agreements are onerous and unprofitable and that we are therefore entitled to disclaim them in accordance with section 568 of the Act.

Consequences of disclaimer

51 If we were to disclaim the Grower Leases and Forestry Management Agreements, all schemes would effectively terminate as the contracts which provide the Growers with their fundamental rights in respect of the Schemes would have terminated and the schemes would no longer be able to achieve their purpose. WFL, as responsible entity of the Registered Schemes could then seek to wind up the Registered Schemes under section 601NC of the Act and maximise the return to all stakeholders. WFL also has a power under the constitutions and investment deeds of the Registered Schemes and Professional Investor Schemes to terminate those schemes on three months' notice where it has no further contractual obligations.

52 An alternative proposal to disclaiming the Grower Leases and Forestry Management Agreements would be to allow WFL to terminate, relinquish, surrender or disclaim those agreements at the time of, or in anticipation of, the sale of the underlying assets, on the condition that Growers were entitled to the net proceeds of sale, or consideration received on termination, relinquishment, surrender or disclaimer, which is referable to the Trees. The Growers' entitlement to receive a payment on harvest would effectively be replaced with an entitlement to receive a payment on sale or relinquishment.

53 The Contractual Schemes and Partnership Schemes do not have a constitution nor are we empowered to sell the WFL Assets related to those schemes. The power of sale would need to be achieved by disclaimer at the appropriate time. As the Registered Schemes and Professional Investor Schemes do have a constitution

(classified as an "investment deed" in most of the Professional Investor Schemes), it may be possible to achieve the power of sale by amending the constitution to provide expressly for the power of sale now and/or by disclaimer or surrender at the time of settlement of any sale.

Amendment of Registered Schemes and Professional Investor Schemes

- 54 Section 601GC(1)(b) of the Act permits the responsible entity to modify the constitution of a registered scheme if the responsible entity reasonably considers the change will not adversely affect members' rights. The Constitution governing the Professional Investor Schemes also provide WFL with a commensurate power of amendment.
- 55 Currently, the constitutions provide that, subject to the constitution and the Project Documents (the Grower Leases and Forestry Management Agreement), WFL has all the powers in respect of the project as though it were the absolute owner of the assets and acting in its personal capacity.
- 56 A number of the constitutions provide that WFL must ensure that a Grower's rights under a Grower Lease are not adversely affected other than as contemplated by that Grower Lease, as required by law or with the written consent of the Grower. In addition, WFL must ensure that a Grower Lease is not terminated other than in accordance with its terms or with written consent of the Grower. However, this would not prevent a disclaimer by us of onerous or unprofitable contracts pursuant to section 568 of the Act.
- 57 We propose that the constitutions and investment deeds be amended to include an express right to terminate the Project Documents and without the sanction of a special resolution. We consider that amendments can be made without Grower meetings being held to make those amendments as the amendments are not adverse to Growers' rights. We believe the course of action proposed is in the interests of Growers as it will save the costs and expense of holding meetings of Growers.
- 58 In determining whether the proposed amendment would adversely affect Growers' rights, we had regard to the Growers' rights as they exist now, that is in the context of an insolvency, and considered whether those rights would be changed following the proposed amendment. To the extent that the rights had changed, we undertook

a process of comparison and assessment in order to determine whether the amendment would have an adverse affect.

59 The Constitutions provide Growers with the following primary rights:

- to be allocated a lot on which trees would be grown and to enter into a lease of the relevant land which provides the right to establish, maintain and harvest the Trees pursuant to the Grower Leases (some of the later Registered Schemes do not provide for this right); and/or
- to receive payment from the harvesting and sale of their Trees by WFL pursuant to the Forestry Management Agreements; and
- the right to receive a distribution in the winding up of the Scheme.

60 For the reasons set out above, we consider the Grower Leases are not capable of performance and have been frustrated or are otherwise onerous or unprofitable and may be disclaimed by us and that the Forestry Management Agreements are also onerous or unprofitable and may be disclaimed by us. As these documents can be disclaimed, the Growers' rights have already been adversely affected without any amendment having been made. In these circumstances, the Growers' sole remaining right under the constitutions would be the right to participate in any distribution made in the winding up of the Schemes.

61 We are proposing that the constitutions be amended to provide an express right to the responsible entity or manager to terminate, relinquish or surrender the Project Documents. We are seeking this right on the condition that the Growers will be entitled to the net proceeds of sale or consideration received on the termination, relinquishment or surrender of the Project Documents which is referable to the Trees. We would seek the Court's direction before exercising this right and, where necessary, hold any amounts received on trust pending the determination of the amount referable to the Trees.

62 The Growers' rights following the proposed amendments are different from their current rights. However, as the liquidators intend to disclaim the Grower Leases and Forestry Management Agreements as onerous, currently the Growers' only right would be a claim as unsecured creditors. Under the proposed amendments, the risk of disclaimer other than for value is removed and replaced with an entitlement to receive value for the termination of their rights. We consider that this

position is more favourable for the Growers than the current position of uncertainty and risk. Therefore, we consider that the proposed amendments will not adversely affect Growers' rights.

Sale Process

- 63 We consider that the best possible price will be achieved by offering all the Freehold Land and the FNSW Leases (collectively the **Sale Assets**) for sale at the one time and providing interested parties with the option of bidding for part or all of the Sale Assets. We have spoken with the Receivers who have informed us that they agree with this proposition and we have therefore agreed to coordinate a joint sale process.
- 64 In order for the sale process to achieve the best outcome for the Growers and creditors, we also believe that potential bidders will need to be satisfied that they are buying the Sale Assets with clear title. If the potential bidders are not so satisfied, we expect that any bids for the Sale Assets will be made at a large discount to the price which could be achieved if the Sale Assets are offered with clear title.
- 65 We consider that the granting of a power of sale and/or the confirmation of the liquidators' right to disclaim the Project Documents will provide sufficient comfort to potential purchasers of the ability of the liquidators to give clear title on settlement of any sale. Potential purchasers should therefore be willing to participate in the sale process and incur the costs and take the time needed to submit a binding bid. This should maximise the price obtained both for the land and trees.
- 66 Any sale contract will be conditional on the liquidators obtaining approval from the court to the exercise of the power of sale or right to terminate, relinquish, surrender or disclaim. It is our intention to request potential purchasers to allocate the purchase price between the land and the Trees, so that this can be used as a basis for the allocation of the purchase price between Growers and creditors. We will seek an opinion from an independent expert as to the reasonableness of any offer. If necessary, at the time of seeking approval to the exercise of the power or right, a process will be established for determining the appropriate allocation of the purchase price.

- 67 We will also need to deal with the HVP Leases. We have already received an offer in relation to the HVP Leases which we consider represents the best value that could be achieved for the HVP Leases.

HVP Offer

- 68 As set out in paragraph 19 of my Second Affidavit, we received a binding offer from HVP in relation to the Expressions of Interest Campaign. Whilst we considered the offer was not acceptable, we continued to negotiate with HVP after the expiry of the campaign. On 16 February 2011, we received an alternative binding offer from HVP. Now produced and shown to me and marked "**confidential exhibit CDC-32**" is a true copy of the alternative binding offer received from HVP on 16 February 2011 (**Preliminary HVP Offer**). I consider that the Preliminary HVP Offer should remain confidential at least until after the completion of any sale of the WFL Assets. The Preliminary HVP Offer contains commercially sensitive information which should not be disclosed to any party who might take part in any future sale campaign regarding the HVP Leases, or the WFL Assets generally.

- 69 In the Preliminary HVP Offer, HVP offered to acquire the trees occupying the HVP Land together with termination or surrender of all leases, sub-leases, licenses, sub-licences and sub-sub-licences in respect of the land the subject of the HVP Leases for a confidential sum.

- 70 On 23 March 2011, HVP agreed to increase the sum payable to acquire the trees occupying the land covered by the HVP Leases (**HVP Offer**). The HVP Offer is set out in a letter from HVP to us and dated 23 March 2011 and is conditional upon negotiation of an acceptable sale and purchase agreement and on HVP receiving a full release from WFL and its related bodies corporate, the Growers, the administrators/liquidators, the Receivers and financiers of the Willmott Schemes. Now produced and shown to me and marked "**confidential exhibit CDC-33**" is a true copy of the HVP Offer. I consider that the HVP Offer should remain confidential at least until after the completion of any sale of the WFL Assets as it contains a confidentiality clause and commercially sensitive information which should not be disclosed to any party that might take part in any future sale campaign regarding the HVP Leases, or the WFL Assets generally. Subsequently, an Implementation Deed was entered into with HVP as set out in more detail below.

- 71 The land covered by the HVP Leases is "encumbered" by the following Willmott Schemes:

- (a) Willmott Forests - Professional Investor - 2004 Project (Unregistered Professional Investor Scheme);
- (b) Willmott Forests - Professional Investor - 2006 Project (Unregistered Professional Investor Scheme);
- (c) Willmott Forests Project (ARSN 089 379 975)(Registered); and
- (d) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589) (Registered).

72 The Grower Leases and Forestry Management Agreements relating to the HVP Leases are at risk due to the rights of HVP to terminate the HVP Leases arising from a default.

73 Under the HVP Leases, rent is paid by way of an upfront payment and a payment on harvest of the trees on the land. No rent is currently owing under the HVP Leases. However, WFL is also required under the HVP Leases to pay maintenance fees to HVP. As set out in paragraphs 60 to 66 of my First Affidavit, we have very limited funds available to manage the administration and liquidation of WFL. Invoices issued by HVP and its related company Grand Ridge Plantations Pty Ltd (GRP) in the period August 2010 to 28 February 2011 and remaining unpaid total more than \$2.9 million (including GST). HVP has issued Notices of Breach to WFL in relation to the unpaid management fees. Accordingly, WFL is in breach of its obligations to HVP and, as we are not in a position to rectify the breach, HVP has the immediate right to terminate the HVP Leases.

74 HVP also has the right to terminate the HVP Leases on the appointment of a receiver, manager, administrator or liquidator to WFL. HVP has agreed to a standstill agreement whilst the parties attempt to implement the HVP Offer. However, if the HVP Offer is frustrated on the basis that a condition precedent cannot be met, HVP will be entitled to immediately terminate the HVP Leases.

75 Should HVP exercise its rights to terminate the HVP Leases, among other things HVP may be entitled to harvest the Trees and use the proceeds of sale to recover any amounts it claims are owing under the HVP Leases.

76 Termination of the leases between WFL and HVP would have the consequential effect of terminating the Grower Leases and other Project Documents. The Growers may be able to avoid termination of the Grower Leases by claiming relief

against forfeiture. To do so, they would need to assume the obligations of WFL under the HVP Leases. For example:

- (a) The Growers would need to immediately pay to HVP the unpaid management fees of more than \$2.9 million;
- (b) The Growers would need to agree to continue to pay the management fees for the remaining life of the HVP Leases. We calculate future costs to be between approximately \$25.8 million and \$34.2 million depending on the discount factor applied;
- (c) The Growers would need to obtain and maintain appropriate insurance for the land covered by the HVP Leases. If each Grower attempted to obtain insurance individually for their own parcel of land, the cost of that insurance would likely be prohibitive.

77 In addition, the relevant Schemes would need to continue and therefore the Growers would need to find a party willing to act as the responsible entity or manager of these schemes. We had sought offers in the Expression of Interest Campaign to take on this role, but no reasonable offer was received.

78 In summary, if we did not proceed with the HVP Offer, HVP could terminate the HVP Leases and the Project Documents affecting the HVP Land would also terminate. For these reasons, we considered the HVP Offer represented the best value to Growers and Creditors in relation to the HVP Leases. Accordingly, on 23 March 2011, I accepted the HVP Offer in my capacity as liquidator of WFL.

79 On 19 April 2011, we executed an Implementation Deed with HVP to further document the steps required to be taken in order to effect the transaction with HVP. There are a number of conditions precedent under the Implementation Deed, including that we obtain the approval of the Court to amend the constitutions of the Schemes to obtain an express power to terminate, relinquish or surrender the Project Documents and Growers Rights and/or to disclaim the Project Documents. The Implementation Deed is subject to confidentiality provisions.

80 The Implementation Deed provides that the net amount received from HVP in relation to the termination, relinquishment, surrender or disclaimer of the Project Documents and Growers Rights is to be paid into a nominated account to be



allocated to the Growers in a manner approved by the Court prior to the payment having been made by HVP.

- 81 It is also a condition precedent to the Implementation Deed that we obtain the Court's approval to the exercise of the power to terminate, relinquish, surrender or disclaim the Project Documents and Grower Rights in relation to the HVP Land. We intend to seek that approval once the other conditions precedent have been met or we are confident that they will be met.

Directions Sought

- 82 For the reasons outlined above, we are seeking a direction from the Court that we are justified in causing WFL to amend the relevant constitutions and investment deeds, pursuant to s601GC, to provide for an express and unfettered right to terminate the Project Documents. Now produced and shown to me and marked "CDC-34" is the form of the proposed Amendment Deed to amend each of the constitutions and investment deeds to be executed by WFL. We will seek the Court's direction before exercising our right to terminate.

- 83 In the alternative, we are seeking a direction from the Court that we would be justified in disclaiming the Project Documents relating to the Registered Schemes and the Professional Investor Schemes. We would only exercise this right if required in the sale of the Sale Assets and on the condition that the proceeds of such sale be held on trust to be apportioned between the Secured Creditors and Growers as determined by the Court. We would also seek the Court's direction before exercising our right to disclaim.

- 84 For the Contractual Schemes and Partnership Schemes, we are seeking a direction from the Court that we would be justified in disclaiming the Project Documents as onerous. We would only exercise this right if required in the sale of the Sale Assets and on the condition that the proceeds of such sale be held on trust to be apportioned between the Secured Creditors and Growers as determined by the Court. We would also seek the Court's direction before exercising our right to disclaim.

- 85 Should the Court provide the direction sought in paragraph 82 to amend the constitutions and investment deeds to provide for an unfettered right to terminate the Project Documents, we would also seek the Court's direction that we would be justified in exercising this right to terminate the Project Documents affecting the

HVP Leases. This right would be exercised on the condition that the proceeds of the sale of the HVP Leases be held on trust to be apportioned between the Secured Creditors and Growers as determined by the Court. We would also seek the Court's direction before exercising our right to disclaim.

- 86 The Liquidators also seek a direction from the Court that, pursuant to section 477(2B) of the Act that they are justified in entering into the loan facility provided by the CBA on the terms set out in exhibit CDC-22 of this Affidavit and that repayment of the loan is a proper expense incurred in the liquidation of WFL to be paid in priority to all other unsecured debts and claims of WFL pursuant to section 556(1)(a) of the Act.

Service of Affidavit

- 87 We have previously provided a draft copy of this affidavit and discussed our intention to bring this application with the Receivers and Managers and their solicitors Allens Arthur Robinson, HVP and its solicitors Mallesons Stephen Jacques and the Committees of Inspection. We received comments from each of the parties and incorporated a number of those comments. I met with the Committees of Inspection on 2 May 2011 and 5 May 2011. At these meetings, a number of the committee members who are Growers or represent Grower groups told me that they were concerned that their rights would be affected by the Court granting the orders proposed in this application and affidavit and that they would be prejudiced in any future apportionment proceeding. I advised the Committees of Inspection that, at this stage, we were only seeking a power to terminate the schemes and not an exercise of that power. I confirmed to the committees that, once an offer(s) had been received which we thought should be accepted, we would apply to the Court to exercise that power in respect of the schemes relating to the land the subject of that offer(s). I also told the committees that I would raise their concern with the Court.

- 88 I have instructed our solicitors, ABL, to serve a copy of this affidavit on the following persons for their information:

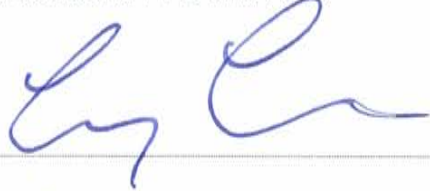
- (a) the Committees of Inspection;
- (b) the Australian Securities and Investments Commission;
- (c) the Willmott Growers Group by their solicitors Clarendons Lawyers;

- (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.



89 I will also cause a copy to be posted on the websites of PPB and ABL.

SWORN at Melbourne in the State of)
Victoria)



Before me:



MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

VID of 2011

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

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS 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 11 MAY 2011**

**SCHEDULE 1
REGISTERED MANAGED INVESTMENTS SCHEMES**

- (a) Willmott Forests 1989 - 1991 Project (ARSN 092 516 651)
- (b) Willmott Forests 1995 - 1999 Project (ARSN 089 598 612)
- (c) Willmott Forests Project (ARSN 089 379 975)
- (d) BioForest Dual Income Project 2006 (ARSN 119 153 623)
- (e) BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
- (f) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- (g) Willmott Forests Premium Forestry Blend Project - 2010 Project (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS 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 11 MAY 2011

SCHEDULE 2
UNREGISTERED MANAGED INVESTMENTS SCHEMES

Contractual Schemes

- (a) 1983 (No Project)
- (b) 1984 (No Project)
- (c) 1985 (No Project)
- (d) 1986 (No Project)
- (e) 1987 (No Project)
- (f) 1989 (No Project)
- (g) 1990 (No Project) Interest Only Offer
- (h) 1991 (No Project)
- (i) 1995 (No Project) (Custom)

- (j) Sharp/Reed Plantation Project -1998 Information Memorandum
- (k) 2001 (No Project)

Partnership Schemes

- (l) McKenzie & Partners - Forestry Partnership No.1 (1993)
- (m) Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (1994)
- (n) Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994)
- (o) Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (1994)
- (p) McKenzie & Partners - Forestry Partnership No. 2 (1994)

Professional Investor Schemes

- (q) Willmott Forests - Professional Investor - 2001 Project - 2001 Information Memorandum
- (r) Willmott Forests - Professional Investor - 2002 Project - 2002 Information Memorandum
- (s) Willmott Forests - Professional Investor - 2003 Project - 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004)
- (t) Willmott Forests - Professional Investor - 2004 Project - 2004 Information Memorandum and 2004 Information Memorandum (2005)
- (u) 2005 BioForest Wholesale Project No. 2 - 2005 Wholesale Forestry Memorandum (Bioforest)
- (v) Willmott Forests - Professional Investor - 2006 Project - 2006 Information Memorandum

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS 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 - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, **MEAGAN LOUISE GROSE**, certify to the Court that the affidavit of **CRAIG DAVID CROSBIE** sworn on 11 May 2011 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 11 May 2011



.....
MEAGAN LOUISE GROSE
Solicitor for the plaintiffs

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS 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 11 MAY 2011

ANNEXURE 1
HISTORICAL COMPANY EXTRACT FOR WILLMOTT FORESTS LIMITED (RECEIVERS
AND MANAGERS APPOINTED) (LIQUIDATORS APPOINTED)