

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

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "CDC-16" now produced and shown to **Craig David Crosbie** at
the time of swearing his affidavit on 11 May 2011.

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

Filed on behalf of the Plaintiffs
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(Leon Zwier)

**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 25 NOVEMBER 2010**

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Filed on behalf of the Plaintiffs

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On 25 November 2010 I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, Victoria 3000, Chartered Accountant, **SAY ON OATH** that:

1 I am the Second Plaintiff in this proceeding. Ian Carson and I are the voluntary administrators of:

- (a) the First Plaintiff (**WFL**);
- (b) Willmott Finance Pty Ltd (ACN 081 274 811);
- (c) Willmott Forest Products Pty Ltd (ACN 103 019 094);
- (d) Willmott Forests Investment Management Pty Ltd (ACN 098 718 837);
- (e) Willmott Forests Nominees Pty Ltd (ACN 085 588 772);
- (f) Willmott Energy Pty Ltd (ACN 130 251 759);
- (g) Willmott Subscriber Pty Ltd (ACN 134 963 027);
- (h) Bioenergy Australia Pty Ltd (ACN 096 335 901);
- (i) Bioforest Limited (ACN 096 335 876);
- (j) Willmott Notes Pty Ltd (ACN 134 963 036)

(together, **Willmott Group of Companies**)

2 Now produced and shown to me and marked "**CDC-1**" is a copy of the historical company extracts for each of the companies in Willmott Group of Companies.

3 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.




General Background

Administrators' Experience

- 4 I have been a partner of the firm PPB since 2002. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Institute of Chartered Accountants, the Australian Institute of Company Directors and the Insolvency Practitioners Association of Australia. I also hold a Bachelor of Business. I have worked in corporate insolvency for over 21 years, during which time I have been involved in a number of large and complex external administrations including the administration of the Bill Express group of companies, the Global Campus Management group of companies and the Media World group.

The Willmott Group of Companies and the Willmott Schemes

- 5 WFL acts as the responsible entity and manager of 8 registered (**Willmott Registered Schemes**) and 29 unregistered (**Willmott Unregistered Schemes**) managed investment schemes. The Willmott Group of Companies' core activities include establishing, managing, harvesting, processing and supplying timber products from plantation grown resources on behalf of shareholders, unit holders and scheme members. The Willmott Group of Companies has three primary regional plantation operations:

- (a) softwood pine operations in Bombala and Murray Valley regions in New South Wales and throughout the major softwood growing regions of Victoria;
- (b) she-oak and silky oak operations in Northern New South Wales and Southern Queensland; and
- (c) African mahogany operations in the Douglas-Daly region of the Northern Territory.

- 6 The Willmott Registered and Willmott Unregistered Schemes are operated on land which is either freehold land (approximately 62,000 hectares) owned by WFL or leasehold/ third party land (over 15,000 hectares) leased or managed by WFL from third parties. Approximately 27,600 hectares of WFL's freehold land is unencumbered (**Bombala Land**).

- 7 The leased land is owned by Hancock Victorian Plantations Pty Ltd (**HVP**) or Forestry Commission of New South Wales (**Forests NSW**).

- 8 The leasing arrangements with HVP form part of an arrangement comprising four relevant types of agreements for each Willmott Scheme:
- (a) a relationship agreement which sets out the general agreement between WFL and HVP for the establishment and management of pine plantations;
 - (b) a lease which governs the lease of specific parcels of land;
 - (c) a forest property agreement pursuant to which ownership of the "forest property" (ie the trees) vests in Willmott Forests Investment Management Pty Ltd (**WFIM**) as agent for the investors in the Willmott Schemes (**Growers**) and HVP acknowledges that it has no interest in the forest property; and
 - (d) a forestry management agreement pursuant to which WFL grants the rights to manage the forests to Grand Ridge Plantations Pty Ltd and HVP and provides them with a licence to access and use the land for this purpose.
- 9 Under the leasing arrangements with Forests NSW, WFL leases land from Forests NSW and Forests NSW provides forestry management services in respect of that land. Forests NSW also enters into a forestry rights agreement with WFIM, pursuant to which WFIM owns all the Trees and Timber from the plantation.
- 10 There are a large number of individual leases and forest property agreements that form part of these arrangements which the administrators are currently reviewing.
- 11 Now produced and shown to me and marked "**CDC-2**" is a copy of the directors' Report as to Affairs dated 6 September 2010 (**RATA**). As detailed in the RATA, the directors of WFL consider that WFL has approximately \$51.7m worth of land assets, \$64.1m owed by sundry debtors, \$7.3m cash at bank, \$1.6m worth of stock, \$2.4m in plant and equipment and \$95m in other assets.

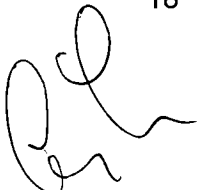
The Appointment of the Administrators and Receivers

- 12 On 6 September 2010, Mark Korda, Bryan Webster and Mark Mentha of KordaMentha (**Receivers**) were appointed as joint and several receivers and managers of all of the charged property of the Willmott Group of Companies (**Charged Property**). The Charged Property expressly excludes the Bombala Land and scheme property or trust property associated with the Willmott Registered and the Willmott Unregistered Schemes. A valuation conducted on 30 June 2010 values the Bombala Land at \$52.1m. We have yet to verify this valuation. With the




exception of these assets, the Receivers currently control all the assets identified in the RATA.

- 13 On 6 September 2010, Avitus Thomas Fernandez (**First Administrator**) was appointed as voluntary administrator of the Willmott Group of Companies pursuant to section 436A of the *Corporations Act 2001* (Cth) (**the Act**).
- 14 On 24 September 2010, the Receivers' appointment as receivers and managers of the property listed in Schedule 1 to this Affidavit (**Excluded Property (Registered Schemes)**) was terminated pursuant to deeds entitled "Partial Termination of Receivers" between the Receivers and the secured creditors of the Willmott Group executed on 24 September 2010. The Excluded Property (Registered Schemes) includes WFL's rights, title and interest in respect of its role as the responsible entity of the Registered Schemes.
- 15 On 24 September 2010, as a result of the termination of the Receivers' appointment described in paragraph 14, the First Administrator also assumed control of the Excluded Property (Registered Schemes), including WFL's rights and obligations as responsible entity of the Registered Schemes.
- 16 On 12 October 2010, the Receivers' appointment as receivers and managers of the property listed in Schedule 2 to this Affidavit (**Excluded Property (Unregistered Schemes)**) was terminated pursuant to deeds entitled "Deeds of Partial Termination" between the secured creditors of the Willmott Group and the Receivers executed on 12 October 2010. The Excluded Property (Unregistered Schemes) included WFL's rights and obligations as manager of 22 of the 29 Unregistered Schemes (**Excluded Unregistered Schemes**). Seven of the Unregistered Schemes remain in the Receivers' control.
- 17 On 12 October 2010, as a result of the partial termination of the Receivers' appointment described in paragraph 16, the First Administrator assumed control of the Excluded Property (Unregistered Schemes), including the First Plaintiff's rights and obligations as manager of the Excluded Unregistered Schemes. I refer to the Registered Willmott Schemes and the Excluded Unregistered Schemes together as "**Willmott Schemes**".
- 18 On 26 October 2010, by order of the Federal Court of Australia, the First Administrator was removed as voluntary administrator and Mr Carson and I were appointed as joint and several voluntary administrators of each of the Willmott Group




of Companies (**Administrators**). Now produced and shown to me and marked "CDC-3" is a copy of the Order of the Honourable Justice Finkelstein dated 26 October 2010 (**Orders**).

The Schemes

19 The Administration of the Willmott Group is very complex. This is, in part, due to the existence of the Willmott Schemes. The documents constituting the Willmott Schemes are voluminous. Now produced and shown to me and marked "CDC-4" is a computer disc containing the constituent documents for the Willmott Schemes and an index of the documents on that computer disc.

20 Unlike other managed investment schemes, the Growers in the Willmott Schemes paid all of their relevant fees "upfront" and are not obliged to make further contributions to the Willmott Schemes. In other words, Growers have no current obligations to make any further payments to WFL. However, WFL has ongoing obligations to Growers.

Registered Schemes

21 The Registered Schemes differ from scheme to scheme in that there are different types of constituent documents, different species of trees and the rights of the Growers in each scheme differ.

22 Some of the Registered Schemes were continuous offer schemes, extending over multiple years, with a new prospectus or product disclosure statement issued in each year. In effect, there are multiple projects within the one Registered Scheme.

23 Other Registered Schemes extended only for a specific year, with only one product disclosure statement being issued. While most of the Registered Schemes take the form of contract-based schemes between the Growers and the Responsible Entity, one Project is in the form of a unit trust. While WFL is the responsible entity for most of the registered schemes, BioForest Limited is the Responsible Entity of two of the Registered Schemes.

24 The contract-based schemes in general terms involve Growers entering into a lease (which may have been executed pursuant to a land sourcing agreement) of land on which they are entitled to plant and grow trees. The Growers also enter into a development and maintenance agreement in relation to the trees. In some schemes, there is also a forestry rights agreement. Some Growers also entered into loan

agreements to fund their investments and the term of the loan can vary both between Registered Schemes and within the same Registered Scheme, with loans between 3 and 12 years across the Registered Schemes. The unit trust scheme involves Growers acquiring units in a unit trust which owns the trees.

25 In summary:

- (a) the Willmott Forests 1989 - 1991 Project (ARSN 092 516 651) was offered over three years, with a prospectus being issued in 1989, 1990 and 1991 and an information memorandum in 1990. The project related to pine plantations. WFL is the responsible entity;
- (b) the Willmott Forests 1995-1999 Project (ARSN 089 598 612) was offered over five years, with a prospectus being issued in 1995, 1996, 1997, 1998 and 1999. The project related to pine plantations. WFL is the responsible entity;
- (c) the Willmott Forests Project (ARSN 089 379 975) was offered over eight years, with a prospectus issued in 1999, 2001, 2002, and 2003, two prospectuses in 2000, a product disclosure statement in 2004, 2006 and 2007. The project related to pine plantations. WFL is the responsible entity;
- (d) the Bioforest Dual Income Project 2006 (ARSN 119 153 623) was offered in 2006 pursuant to a product disclosure statement. The project related to silky oak plantations. Bioforest Limited is the responsible entity;
- (e) the Bioforest Sustainable Timber and Biofuel Project 2007 (ARSN 119 153 623) was offered in 2006 pursuant to a product disclosure statement. The project related to silky oak and she-oak plantations. Bioforest Limited is the responsible entity;
- (f) the Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589) was offered in 2008 pursuant to a product disclosure statement. The project related to pine, silky oak and she-oak plantations. WFL is the responsible entity;
- (g) the Willmott Forests Premium Forestry Blend - 2010 Project (ARSN 131 549 589) was offered in 2010 pursuant to a product disclosure statement. The project related to pine, African mahogany and silky oak plantations. WFL is the responsible entity;




- (h) the Willmott Forests Premium Timberland Fund No 1 was established as a unit trust in 2009 and units in the Fund were offered to Growers pursuant to a product disclosure statement. The project related to African mahogany plantations and also to the ownership of land used by other Willmott Schemes. WFL is the responsible entity.

Unregistered Schemes

- 26 The Unregistered Schemes are not identical and involve different Willmott companies. It is not clear whether some or all of the arrangements have been assigned or novated to WFL. The number of investors in each scheme ranges between 1 and 73. At this stage, the administrators have not located full documentation in relation to some of the Unregistered Schemes. Investigations are continuing in this regard.
- 27 The constituent documents for some of the Unregistered Schemes are very basic and include short form leases and service agreements. Other Unregistered Schemes are described as partnerships and the constituent documents for those Unregistered Schemes include a partnership deed, a deed of trust, a lease, a plantation and development agreement and an establishment and maintenance agreement. The constituent documents for some of the later Unregistered Schemes include formal investment deeds, leases and forestry management agreements.
- 28 Growers in many of the Unregistered Schemes have entered into loan agreements to fund their investments.
- 29 The Unregistered Schemes with the basic documentation are:
- (a) the 1983 "No Project" Scheme, which has 73 investors;
 - (b) the 1984 "No Project" Scheme, which has 24 investors;
 - (c) the 1985 "No Project" Scheme, which has 22 investors;
 - (d) the 1986 "No Project" Scheme, which has 43 investors;
 - (e) the 1987 "No Project" Scheme, which has 31 investors;
 - (f) the 1989 "No Project" Scheme, which has 4 investors;
 - (g) the 1991 "No Project" Scheme, which has 3 investors;




- (h) the 1995 "No Project" Scheme, which has 1 investors; and
- (i) the 2001 "No Project" Scheme, which has 2 investors.

30 The "partnership" Unregistered Schemes are:

- (a) the 1993 McKenzie and Partners - Forestry Partnership No. 1, which has 16 investors;
- (b) the 1994 Grimsey & Associates - Forestry Partnership No. 1, which has 19 investors;
- (c) the 1994 Grimsey & Associates - Forestry Partnership No. 2, which has 17 investors;
- (d) the 1994 Grimsey & Associates - Forestry Partnership No. 3, which has 18 investors; and
- (e) the 1994 McKenzie and Partners - Forestry Partnership No. 2, which has 12 investors.

31 The Unregistered Schemes which have formal investment deeds are:

- (a) the Willmott Forests - Professional Investor 2001 Scheme, which has 5 investors;
- (b) the Willmott Forests - Professional Investor 2002 Scheme, which has 4 investors;
- (c) the Willmott Forests - Professional Investor 2003 Scheme, which has 29 investors;
- (d) the Willmott Forests - Professional Investor 2004 Scheme, which has 74 investors; and
- (e) the Willmott Forests - Professional Investor 2006 Scheme, which has 14 investors.

32 The other Unregistered Schemes are:



- (a) the Sharp - Reed Plantation Project - 1998, the constituent documents of which include a lease agreement, preparation and plantation agreement and maintenance agreement. The project has 2 investors; and
- (b) the 2006 Bioforest Wholesale Project No 2 Scheme which has a constitution similar to that used in a registered managed investment scheme. This scheme was only offered to professional and sophisticated investors and has 10 investors. It involved silky oak and she-oak plantations. Growers who invested in at least 10 Woodlots were also given the right to subscribe for shares in Bioenergy Australia Ltd.

WFL Insolvent

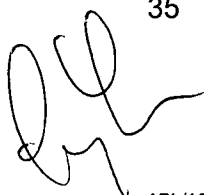
33 The analysis of the Willmott Group and the Willmott Schemes is ongoing. However, on the basis of the preliminary investigations to date, the Administrators have determined that WFL is insolvent and does not have funds available to it to:

- (a) meet its debts;
- (b) comply with its statutory obligations as owner or manager of the plantations; and
- (c) fulfil its obligations to Growers and third parties under the constituent documents of the Willmott Schemes.

34 In order to discharge our responsibilities to all stakeholders, we consider it is necessary to retain certain employees of the Willmott Group. In particular we have decided to retain three plantation employees who work on the Bombala Land to assist the Administrators to comply with the Willmott Group's statutory maintenance obligations as described in paragraph 53 below. These employees are:

- (a) Operations Manager and OHS/Quality Manager (Forestry): who is responsible for day-to-day operations and management on the plantations situated on the Bombala Land; and
- (b) two general forestry workers: who are responsible for the maintenance of the plantations situated on the Bombala Land.

35 The Willmott Group of Companies has traditionally engaged contractors during the fire season to complete maintenance works. In addition to those employees currently

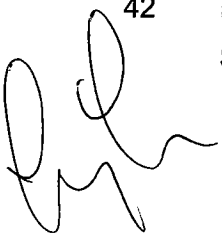



retained, we currently intend to engage a number of additional contractors over the fire season to assist with statutory fire maintenance.

- 36 We have also retained two staff members at WFL's head office, namely a Grower liaison employee and an IT Manager, to assist with Grower-related queries and the Administrators' investigations. In addition, the Administrators have access to the staff who are retained by the Receivers to assist the Administrators to, among other things, conduct the viability analysis referred to in paragraph 38 below (The Receivers may call upon the Administrators to compensate them for any access to employees under their control).
- 37 The Administrators do not have funds available to pay for these employees and contractors. As set out in paragraph 63 below, the Administrators intend to borrow funds to meet these costs and other costs and expenses.

Solvency and Viability of Willmott Schemes

- 38 The Administrators, together with WFL's forestry personnel, are conducting an assessment of the solvency and viability of each of the Willmott Schemes, which is ongoing (**Solvency Analysis** and **Viability Analysis**). We anticipate that the Solvency and Viability Analysis will take approximately six weeks to complete.
- 39 From our initial investigations, it appears that all of the Willmott Schemes are insolvent because there is insufficient cash to meet their day-to-day expenditure and there is no obligation by the Growers to make additional payments.
- 40 The day-to-day management expenditure of the Willmott Schemes includes fire prevention, road maintenance, insurance, weed and pest control, plantation maintenance, motor vehicle running costs, lease obligations, maintenance of accreditations, preparation of plantation condition and maintenance programs and information technology and telecommunication expenses.
- 41 Failure by WFL to attend to these tasks has diminished, and will continue to diminish, the value of the Willmott Schemes' trees. However, the Administrators do not have the funds available to them to meet these payments.
- 42 In the course of our Viability Analysis, we intend to categorise each of the Willmott Schemes into one of three categories:




- (a) those schemes which are clearly viable in the long term and which the Administrators consider ought to be maintained by way of additional voluntary Grower contributions (**Long Term Viable Insolvent Schemes**);
- (b) those schemes which may be viable in the long term but only if further investment is made in the short term by way of additional voluntary Grower contributions (**Potentially Viable Insolvent Schemes**); and
- (c) those schemes which are clearly unviable in the long term, which the Administrators do not consider any merit in maintaining (**Long Term Non-Viable Insolvent Schemes**).

43 The analysis is complex, as many of the Willmott Schemes are interdependent, being on shared land. In addition, the Willmott Group's historical budgets and the management of the Willmott Schemes has been on a regional basis and not a scheme-by-scheme basis.

44 Once the Viability Analysis is complete, the Administrators intend to write to the Growers in each of the Willmott Schemes identified as Long Term Viable Insolvent Schemes and Potentially Viable Insolvent Schemes to inform them of the analysis and, where appropriate, to invite them, on a voluntary basis, to make financial contributions based on our analysis. If the vast majority of Growers do not contribute the necessary funds to provide liquidity for those schemes, the Administrators will have no choice but to immediately seek a new responsible entity, sell the scheme assets or wind up the schemes. The letter to Growers will advise Growers of these outcomes.

45 The Administrators intend to seek further directions in relation to this process. Ultimately, Growers must provide additional funding for the Willmott Schemes to continue, even though they may not be obliged to do so.

Overview of Administration

46 In addition to the financial analysis of the Willmott Group of Companies and the Willmott Schemes described in paragraphs 33 to 43 above, the Administrators have engaged in:

- (a) negotiations with the Willmott Group's insurance broker to offer growers the opportunity to maintain insurance on the plantations;

- (b) liaison with the Willmott Action Group and the Willmott Growers Group, who each represent investors in the Willmott Schemes;
- (c) discussions with WFL's Grower relationship manager in relation to various Grower-related issues;
- (d) briefings from the Former Administrator;
- (e) discussions with forestry employees regarding maintenance requirements;
- (f) correspondence with the primary lessors of the leased land employed by the Willmott Schemes;
- (g) implementing and commencing a campaign seeking expressions of interest in the recapitalisation of, or the appointment of a new responsible entity for, the Willmott Schemes;
- (h) discussions with stakeholders including the Receivers and the secured creditors; and
- (i) adhering to the Administrators' statutory requirements.

Expressions of Interest Campaign

47 Because various scheme assets are wasting, we have sought to expedite an expressions of interest campaign. On 12 November 2010 we published an advertisement in *the Australian* in which we sought expressions of interest in assuming the obligations of responsible entity and/or 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. On 16 and 18 November 2010, we published further advertisements in the *Australian Financial Review* (**Expressions of Interest Campaign**). Now produced and shown to me and marked "CDC-5" are copies of the advertisements published on 12, 16 and 18 November 2010 (**Advertisements**).

48 Aaron Finlayson, a Senior Manager at PPB, has had responsibility for coordinating the Expressions of Interest Campaign. Mr Finlayson has informed me of the matters to which I depose below.

49 As the Advertisements provide, we have called for responses by no later than 30 November 2010. Indicative non-binding offers or proposals are due by 16 December 2010. We anticipate that a second stage of due diligence will take place during

December 2010 and January 2011. As at 23 November 2010, 12 interested parties had contacted PPB and executed confidentiality agreements.

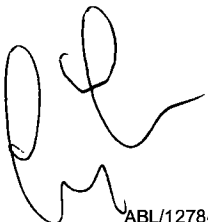
- 50 It is intended that the interested parties will be granted access from 1 December 2010 to an online data room, which contains information regarding the Willmott Schemes.
- 51 Indicative non-binding offers or proposals are due by 16 December 2010. A shortlist of interested parties will be invited to participate in a second round of due diligence from 22 December 2010, with binding offers to be submitted by 2 February 2011. If applicable, final documentation is expected to be finalised and executed by 28 February 2011.

Scheme Maintenance and Statutory Maintenance

- 52 The timber plantations require ongoing maintenance to:
- (a) comply with the Willmott Group of Companies' statutory maintenance obligations;
 - (b) protect the Willmott Group of Companies' public liability exposure in relation to fire prevention;
 - (c) satisfy the terms and conditions of any insurance policies such that the policies remain enforceable; and
 - (d) maintain the current condition of the plantations (as I have described more particularly in paragraph 40 above).

Extent of Statutory Maintenance and Public Liability

- 53 I am informed by Jane Sheridan of Arnold Bloch Leibler, the Administrators' solicitors (**ABL**) that WFL (and any other land owning companies within the Willmott Group of Companies) is subject to legislation requiring certain statutory maintenance, such as the clearing of fire tracks. For example, some of the plantations forming several of the Willmott Schemes are registered with the New South Wales Department of Land and Water Conservation as "authorised plantations" pursuant to the *Plantations and Reafforestation (Code) Regulation 2001 (NSW)* and the *Plantations and Reafforestation Act 1999 (NSW)*. WFL, as owner or lessee of the land on which an authorised plantation is conducted, or as manager of an authorised plantation, must comply with prescribed statutory works on those plantations.



ABL/1278451v3



- 54 The Administrators, together with ABL, are continuing to review scheme documents and the relevant legislation in Queensland, Victoria and the Northern Territory to determine the full extent of WFL's statutory liability.

Extent of Maintenance Required by Insurer

- 55 I directed Michael Carmody, of PPB, to make inquiries regarding the plantation maintenance required by the Willmott Group's insurer, Agricola Crop Insurance (**Agricola**). Mr Carmody told me that, on 19 November 2010, Agricola, through their agent Paul Kaiser of Kings Insurance Brokers Pty Ltd (**Kings Insurance**) advised him that Agricola would offer insurance through WFL to the investors in the Willmott Schemes, if WFL continued to conduct fire maintenance in accordance with historical budgets prepared by Stephen Addicott, who is WFL's Forest Business Manager. Mr Carmody also told me that we have received the particulars of the costs historically incurred by WFL in accordance with these budgets, but have yet to determine the scope of any agreed historical fire maintenance plan.

- 56 By email dated 23 November 2010 from Paul Kaiser, of Kings Insurance to Michael Carmody, Agricola advised that it would offer insurance to the investors in the Willmott Schemes on the basis of the current state of fire preparedness on the plantations. Now produced and shown to me and marked "**CDC-6**" is a copy of Kings Insurance email correspondence dated 23 November 2010. We have yet to resolve the exact nature of the maintenance required by the insurer.

Extent of General Maintenance Required to Maintain Current Condition of Plantations

- 57 The extent of general maintenance required in relation to each of the Willmott Schemes varies according to the age, species and location of the relevant plantation. The requirement for maintenance also depends upon the individual characteristics of the plantation in terms of health, access, silvicultural history and thinning/harvesting history.

Cost of Maintenance

- 58 I am advised by staff of WFL that the total estimated cost of a care and maintenance program forecast to June 2011 is in the order of \$8m. The care and maintenance program is based on an estimated minimum level of maintenance required to fulfil insurance policy conditions and maintain the current condition of the Plantations. The Administrators are working to verify and allocate the costs on a scheme-by-scheme basis.

59 As stated above, the Willmott Group is without funds to pay for any maintenance of the plantations.

Administrators' Overdraft

60 The Administrators intend to apply to a major trading bank for a credit facility (**Credit Facility**). The Administrators intend to approach:

- (a) Commonwealth Bank of Australia (**CBA**);
- (b) Australia and New Zealand Banking Group; and
- (c) National Australia Bank.

61 The Administrators propose that the Credit Facility be secured by first ranking mortgage against the Bombala Land.

62 The Administrator will select its preferred financier on the basis of the most competitive offer, having regard to both interest rates and the speed with which the financier can make funds available for the conduct of the Administration.

63 The Administrators intend to use the borrowed funds to pay:

- (a) statutory maintenance described in paragraph 53 above;
- (b) wages of those employees required by the Administrators and employee-related expenditure, including the cost of leasing, utilities, amenities, telecommunications and transport together with the Administrators' share of general operating costs; and
- (c) the Administrators' fees and disbursements, including professional consultants, experts and legal fees.

64 The Administrators do not currently intend to use the Credit Facility to pay for general scheme maintenance as described in paragraphs 55 and 57 above. If the Administrators determine that it is appropriate to use the Credit Facility to pay for ongoing scheme maintenance, we intend to approach the Court for appropriate directions. Ordinary creditors of WFL may object to us using the funds of WFL to meet payments required for the general maintenance of the Willmott Schemes.

65 I consider it is in the best interests of the investors in the Willmott Schemes and the creditors of the Willmott Group to borrow money so that we can:

- (a) comply with the Willmott Group's statutory obligations described in paragraph 53 above;
- (b) pay employees' wages and employee-related costs described in paragraph 34 above;
- (c) conduct the necessary Viability Analysis and Solvency Analysis described in paragraph 38 above; and
- (d) conduct the Expressions of Interest Campaign described in paragraph 47 above.

66 Our decision not to apply the Credit Facility to pay for ongoing scheme maintenance costs prior to the completion of the Viability and Solvency Analyses may have an adverse effect on Growers' interests, in that, without ongoing maintenance, the plantations may be detrimentally affected. The Viability Analysis and the decisions referred to in paragraphs 43 and 64 above are of utmost priority to the Administrators.

Approval of Administrators' Fees

67 Paragraph 2 of Orders (exhibit "**CDC-3**") provides that pursuant to section 447A of the Act, Part 5.3A of the Act be varied in relation to each of the Willmott Group of Companies such that our remuneration as the Administrators is, subject to a contrary order, to be determined by the Court.

68 During argument before Justice Finkelstein counsel appearing for the Administrators discussed the format of the Administrators' application for approval of their remuneration. Now produced and shown to me and marked "**CDC-7**" is a copy of the transcript of proceeding VID836/2010 on 26 October 2010.

69 Now produced and shown to me and marked "**CDC-8**" is a copy of the Administrators' first remuneration report which forms the basis of our application pursuant to section 449E of the Act for approval of our remuneration (**Remuneration Report**).

70 It is apparent from the Proposed Remuneration Report that we have categorised our fees and disbursements as either scheme-related or non-scheme related. In this first period, none of the Administrators' scheme-related work has related to any particular




scheme. Once we commence work on particular schemes, fees and disbursements that relate to any particular Willmott Scheme will be identified accordingly.


- 71 On 5 November 2010 Paul James from Clayton Utz (CBA's solicitors) told Leon Zwier of ABL, that his client is concerned to ensure that unsecured assets of the Willmott Group of Companies should not be used to fund scheme-related costs for the sole benefit of the Growers. We have taken steps to identify expenditure on the Willmott Scheme plantations. However, we consider that our fees incurred in relation to WFL's role as responsible entity and manager of the Willmott Schemes are properly incurred and payable in the course of the administration of that company.
- 72 If the Court is satisfied with the format of the Remuneration Report, we intend to provide a similar report to the creditors committee, and to the Registrar of the Federal Court on a periodic basis to seek approval of our remuneration by the Registrar.

Convening Period

- 73 The first meeting of creditors was held by the First Administrator on 28 September 2010. At the first creditors' meeting, the creditors appointed a committee of creditors in the administration of the Willmott Group of Companies. The committee of creditors for WFL consists of:

- (a) Jim Simpson;
- (b) Marie Birmingham;
- (c) Stephen Ryan on behalf of Hancock Victorian Plantations Pty Ltd;
- (d) Colin Worthy;
- (e) Phillip Allen;
- (f) Ian McKenzie;
- (g) Paul Challis;
- (h) Ian Copp and/or Matthew Berger on behalf of the CBA; and
- (i) Paul James and/or Polat Siva of St George Bank.

- 74 The committee of creditors for each of the remaining companies in the Willmott Group of Companies consists of:




- (a) Ian Copp and Matthew Berger on behalf of the CBA;
- (b) Paul James and/or Polat Siva of St George Bank;
- (c) Colin Worthy; and
- (d) David Armstrong.

75 On 26 October 2010, Justice Finkelstein ordered that the convening period for the Willmott Group of Companies be extended to 13 December 2010. A copy of the Court's order is exhibit "**CDC-3**" to this affidavit.

76 The creditors of each company within the Willmott Group of Companies may, at the second meeting of creditors, resolve pursuant to section 439C of the Act that:

- (a) the company execute a deed of company arrangement;
- (b) the administration should end; or
- (c) the company should be wound up.

77 Pursuant to s439A(4) of the Act, the notice of the second meeting of creditors must be accompanied by a report by the Administrators about the Willmott Group of Companies' business, property, affairs and financial circumstances, and about the result of investigations undertaken by us, and a statement setting out our recommendations (**Report to Creditors**).

78 We consider that it is not possible to provide the Report to Creditors or to make the required recommendations before 13 December 2010. We consider that the period within which the meeting of the creditors of the Willmott Group of Companies must be convened be extended to and including 15 March 2010 to enable us to complete our review of the Willmott Scheme Documents, our Solvency Analysis and our Viability Analysis and to continue with the Expressions of Interest Campaign.

Service of Affidavit and Remuneration Report

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

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

- (c) the Willmott Action Group by their solicitors Lilley Dawson;
- (d) the Commonwealth Bank of Australia by their solicitors Clayton Utz; and
- (e) Mark Korda, Bryan Webster and Mark Mentha of KordaMentha by their solicitors Allens Arthur Robinson.

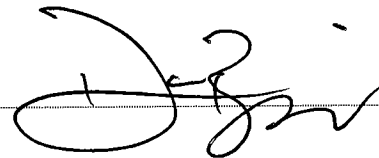
80 I have also instructed ABL to load a copy of this affidavit, together with the originating process dated 25 November 2010, on ABL's website www.ab.com.au. A copy of those documents will also be uploaded onto our website www.ppb.com.au.

81 I have also instructed ABL to serve a copy of the Remuneration Report, and any future remuneration reports on the creditors committee for each of the companies in the Willmott Group of Companies.

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

Schedule 1 - Excluded Property (Registered Schemes)

1 **Excluded Property (Registered Schemes)** means:

- (a) all rights, title and interest in, and all rights and obligations of the First Plaintiff arising under, each and every agreement, deed or document:
 - (i) appointing the First Plaintiff as responsible entity and / or manager of the managed investment schemes set out in the table below (**Excluded Schemes**), including but not limited to the registered constitutions, forestry management agreements, land sourcing and forestry management agreements and land sourcing and management agreements for the Excluded Schemes;
 - (ii) entered into by the First Plaintiff in its capacity as responsible entity of any of the Excluded Schemes;
 - (iii) entered into by the First Plaintiff with the members of any of the Excluded Schemes, including but not limited to lease agreements, pre-lease agreements, sub-lease agreements, land tenure agreements, licenses, sub-licenses and profit-à-prendre; and
- (b) all rights and obligations of the First Plaintiff as responsible entity of the Excluded Schemes otherwise arising at law,

but excluding:

- (c) the benefit of any rights the First Plaintiff has as at the date of this Deed to be indemnified out of the property of any of the Excluded Schemes including any lien for the benefit of the First Plaintiff arising at law to secure such indemnity.

2 For the avoidance of doubt, the Excluded Property described in paragraph 1 above does not include, among other things, the First Plaintiff's rights, title and interest in:

- (a) any freehold land owned by the First Plaintiff;
- (b) any lease agreements, sub-lease agreements, licences and sub-licenses with third party land owners in its capacity as lessee, sub-lessee, licensee or sub-licensee;

- (c) any debts owed to the First Plaintiff, including any debts owed by Growers in the Excluded Schemes;
- (d) Willmott Timbers Pty Ltd and the joint venture agreement with Dongwha Australia Holdings Pty Ltd;
- (e) any of the books of the First Plaintiff (as defined in section 9 of the *Corporations Act 2001* (Cth)); or
- (f) any employment agreements and arrangements with employees or contractors of the First Plaintiff.
- (g) On 26 October 2010, the First Administrator was removed as voluntary administrator and the Second and Third Plaintiffs were appointed as joint and several administrator of each of the Companies by order of the Federal Court of Australia.

EXCLUDED SCHEMES

| Scheme Name | ARSN | Projects included in Scheme |
|------------------------------------|-------------|---|
| Willmott Forest 1989-1991 Project | 092 516 651 | First Prospectus 1989 |
| | | Second Prospectus 1990 |
| | | Second Prospectus 1990 (1991) (Interest Only Offer) |
| | | Third Prospectus 1991 |
| Willmott Forests Project 1995-1999 | 089 598 612 | 1995 Prospectus (1995) |
| | | 1995 Prospectus (1996) |
| | | 1996 Prospectus |
| | | 1997 Prospectus |
| | | 1998 Prospectus |
| | | 1999 Prospectus |
| Willmott Forests Project | 089 379 975 | 2000 Prospectus – 20/10/1999 |
| | | 2000 Prospectus No.1 |
| | | 2000 Prospectus No.2 |
| | | 2001 Prospectus |
| | | 2002 Prospectus |
| | | 2002 Replacement Prospectus |
| | | 2003 Prospectus |
| | | 2003 Replacement Prospectus (2003) |
| | | 2003 Replacement Prospectus (2004) |
| | | 2004 Product Disclosure Statement |
| | | 2004 Product Disclosure Statement (2005) |

| Scheme Name | ARSN | Projects included in Scheme |
|--|-------------|--|
| | | 2006 Product Disclosure Statement |
| | | 2007 Premium Forestry Blend (2007) |
| | | 2007 Premium Forestry Blend (2008) |
| | | 2007 Product Disclosure Statement (2007) |
| | | 2007 Product Disclosure Statement (2008) |
| Bioforest Dual Income Project 2006 | 119 153 623 | N/A |
| Bioforest Sustainable Timber and Biofuel Project 2007 | 124 133 535 | N/A |
| Willmott Forests Premium Forestry Blend Project | 131 549 589 | N/A |
| Willmott Forests Premium Forestry Blend Project – 2010 Project | 142 722 585 | N/A |
| Willmott Forests Premium Timberland Fund No.1 | 136 768 520 | N/A |

Schedule 2 - Excluded Property (Unregistered Schemes)

1 **Excluded Property (Unregistered Schemes)** means:

- (a) all rights, title and interest in, and all rights and obligations of the First Plaintiff arising under, each and every agreement, deed or document:
 - (i) appointing the First Plaintiff as manager and/or trustee of the managed investment schemes set out in the table below (**Excluded Unregistered Schemes**), including but not limited to the constitutions, investment deeds, deeds of trust, deeds of covenant, forestry management agreements, land sourcing and management agreements, contracts for works and services, maintenance agreements, and establishment and maintenance agreements for the Excluded Unregistered Schemes;
 - (ii) entered into by the First Plaintiff in its capacity as manager and/or trustee of any of the Excluded Unregistered Schemes;
 - (iii) entered into by the First Plaintiff with the members of any of the Excluded Unregistered Schemes, including but not limited to lease agreements, pre-lease agreements, sub-lease agreements, licenses, sub-licenses, and profit-à-prendre and license agreements; and
- (b) all rights and obligations of the First Plaintiff as manager and/or trustee of the Excluded Unregistered Schemes otherwise arising at law,

but excluding:

- (c) the benefit of any rights the First Plaintiff has as at the date of this Deed to be indemnified out of the property of any of the Excluded Unregistered Schemes including any lien for the benefit of the First Plaintiff arising at law to secure such indemnity.

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)

2 For the avoidance of doubt, the Excluded Property described in paragraph 1 above does not include, among other things, the First Plaintiff's rights, title and interest in:

- (a) any freehold land owned by the First Plaintiff;
- (b) any lease agreements, sub-lease agreements, licences and sub-licenses with third party land owners in its capacity as lessee, sub-lessee, licensee or sub-licensee;
- (c) any debts owed to the First Plaintiff, including any debts owed by Growers in the Excluded Unregistered Schemes;
- (d) Willmott Timbers Pty Ltd and the joint venture agreement with Dongwha Australia Holdings Pty Ltd;
- (e) any of the books of the First Plaintiff (as defined in section 9 of the *Corporations Act 2001* (Cth)); or
- (f) any employment agreements and arrangements with employees or contractors of the First Plaintiff.

EXCLUDED UNREGISTERED SCHEMES

| Name of Unregistered Scheme |
|---|
| 1983 "No Project" |
| 1984 "No Project" |
| 1985 "No Project" |
| 1986 "No Project" |
| 1987 "No Project" |
| 1989 "No Project" |
| 1990 "No Project" – Interest Only Offer |
| 1991 "No Project" |
| 1993 McKenzie & Partners – Forestry Partnership No.1 |
| 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No.1 |
| 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No.2 |
| 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No.3 |
| 1994 McKenzie & Partners – Forestry Partnership No 2 |
| 1995 "No Project" (Custom) |
| Sharp / Reed Plantation Project - 1998 Information Memorandum |
| Willmott Forests – Professional Investor – 2001 Project - 2001 Information Memorandum |
| 2001 "No Project" |
| Willmott Forests – Professional Investor – 2002 Project - 2002 Information Memorandum |

| |
|---|
| Willmott Forests – Professional Investor – 2003 Project (2003 Information Memorandum (2003) and 2003 Information Memorandum (2004)) |
| Willmott Forests – Professional Investor – 2004 Project (2004 Information Memorandum and 2004 Information Memorandum (2005)) |
| 2005 Bioforest Wholesale Project No. 2 - 2005 Wholesale Forestry Memorandum (Bioforest) |
| Willmott Forests – Professional Investor – 2006 Project - 2006 Information Memorandum |

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

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

**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, Bridget Ellen Slocum, certify to the Court that the affidavit of Craig David Crosbie sworn on 25 November 2010 and filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 25 November 2010



BRIDGET ELLEN SLOCUM
Solicitor for the plaintiffs

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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| Document number | Details | Paragraph |
|-----------------|--|-----------|
| 1 | Affidavit of Craig David Crosbie in support of application for orders and directions sworn on 4 February 2011 | |
| 2 | CDC-9 being a copy of Poyry's final viability analysis of the Willmott Schemes dated 19 January 2011 | 6 |
| 3 | CDC-10 being a copy of letters dated 7 December 2010 from the Administrators to each of the CBA, ANZ and NAB regarding the proposed Credit Facility, together with one copy of annexures | 8 |
| 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


ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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333 Collins Street
Melbourne 3000

DX 38455 Melbourne
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Ref: 01-1565015
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| | | |
|---|--|----|
| 5 | CDC-12 being a copy of the letter from the CBA to the Administrators dated 24 January 2011 | 11 |
| 6 | CDC-13 copies of two notices from the NSW Rural Fire Service dated 7 December 2010 and 17 December 2010 | 15 |
| 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 |

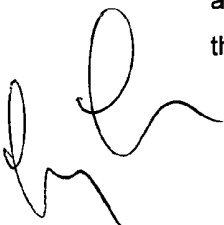
On **4 February 2011**, I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, in the State of Victoria, 3000, Chartered Accountant, **SAY ON OATH** that:

- 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.

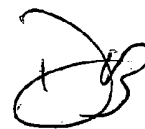
Update on Administration

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.



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- 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



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(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.

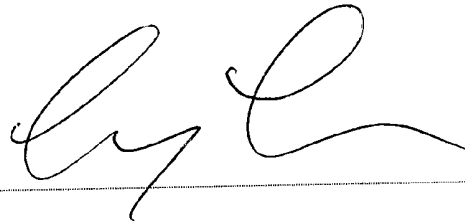
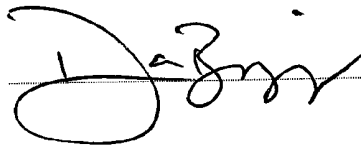
Service of Affidavit

- 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

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

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

**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, 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