

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL COURT

CORPORATIONS LIST  
S CI 2011

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

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED SCHEMES LISTED IN SCHEDULES 3 AND 4 AND ORS ACCORDING TO SCHEDULE 1**

Plaintiffs

**AFFIDAVIT OF CRAIG DAVID CROSBIE**

Date of document: 13 December 2011  
Filed on behalf of: The Plaintiffs

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I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, Victoria, Chartered Accountant, **MAKE OATH AND SAY** that:

- 1 I am the Second Plaintiff in this proceeding. Ian Carson and I are the Liquidators 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) (**WFIM**);
  - (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, the **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 no. VID 1019 of 2010, dated 26 November 2010 (**First Affidavit**) and 4 February 2011 (**Second Affidavit**), three affidavits in Federal Court of Australia proceeding no. VID 386 of 2011, dated 11 May 2011 (**Third Affidavit**), 22 June 2011 (**Fourth Affidavit**), 24 June 2011 (**Fifth Affidavit**) and an affidavit in Supreme Court of Victoria proceeding no. SCI 2011 6762 dated 13 December 2011 (**Sixth Affidavit**). Now produced and shown to me and marked "CDC-1" are copies of those affidavits (less exhibits).
- 4 I have exhibited a number of confidential exhibits to my affidavit, namely:
- (a) a schedule that identifies each of the parties who provided formal expressions of interest and signed confidentiality deeds;
  - (b) a schedule setting out some of the indicative non-binding offers received;
  - (c) a copy of the final binding offers received and revised final binding offers received from 5 bidders;
  - (d) a schedule setting out the final binding bids received;
  - (e) independent expert reports prepared by M3 Property Strategists and Poyry Management Consulting (Australia) Pty Ltd valuing the Sale Assets (as later defined);
  - (f) a memorandum relating to a tracing exercise undertaken in relation to payments relating to the Forests New South Wales leases;

- (g) the Sale Contracts; and
- (h) a schedule summarising the GFP offer on a scheme-by-scheme basis, scheme related costs incurred by the administrators/liquidators and the anticipated return to Growers.

5 Save to the extent that their contents are referred to in the body of my affidavit, I consider that it is necessary that each of the documents referred to above remain confidential to protect the privacy of the identified parties and to not prejudice any subsequent sale should the pending sale not complete. Further justification as to why the exhibit should remain confidential is set out further in relation to each affidavit.

### **Purpose of application**

6 This affidavit is made in support of an application for orders and directions in relation to the sale process for certain assets of used in the managed investment schemes listed in Schedule 2 and the unregistered schemes listed in Schedules 3 and 4 of this affidavit.

7 On the facts set out in this affidavit, we seek orders that, inter alia:

- (a) Pursuant to s 477(2B) of the Act, the Court approves entry into the Sale Contracts (as defined below).
- (b) A declaration pursuant to s 511 of the Act that we are justified in procuring the First Plaintiff to enter into and perform the Sale Contracts.
- (c) A direction pursuant to s 511 of the Act that we are justified and otherwise acting properly and reasonably in procuring the First Plaintiff, as responsible entity of the managed investment schemes listed in Schedule 2 to terminate or surrender each of the Project Documents (as later defined) and to surrender, relinquish or release the rights of the Growers in the Trees the subject of the Sale Contracts, on the basis that the net proceeds of sale under the Sale Contracts are distributed in accordance with the spreadsheets exhibited to this affidavit and marked Confidential CDC-22 and CDC-23.
- (d) A direction pursuant to s 511 of the Act that we are justified and otherwise acting properly and reasonably in procuring the First Plaintiff, as manager of the unregistered schemes listed in Schedule 3 (**Unregistered Willmott Schemes**), to terminate or surrender the Project Documents and to surrender, relinquish or release the rights of the Growers in the Trees the subject of the Sale Contracts, on the basis that the net proceeds of sale under the Sale Contracts are distributed




in accordance with the spreadsheet exhibited to this affidavit and marked Confidential CDC-22 and CDC-23.

- (e) Pursuant to paragraph 3 of the orders made by Justice Dodds-Streeton of the Federal Court of Australia on 29 June 2011, the Court consents to the disclaimer of the Project Documents of the Contractual and Partnership Schemes listed in Schedule 4 pursuant to s 568(1) of the Act by us.

## General Background

### *Liquidators' Experience*

- 8 I have been a partner of the firm PPB Advisory since 2002. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Institute of Chartered Accountants Australia, 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 22 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 and the Willmott Schemes*

- 9 WFL acts as the responsible entity and manager of 8 registered (**Willmott Registered Schemes**) and 22 unregistered (**Willmott Unregistered Schemes**) managed investment schemes (together, **the Willmott Schemes**). There are 6,329 Growers in the various Willmott Schemes. The Willmott Group's core activities included establishing, managing, harvesting, processing and supplying timber products from plantation grown resources on behalf of shareholders, unit holders and scheme members. The Willmott Group 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.




- 10 The Willmott 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.

### The Appointment of the Administrators and Receivers

- 11 I refer to the affidavit of Bryan Webster filed in Federal Court of Australia proceeding no. VID 386 of 2011 on 17 June 2011 (**Webster Affidavit**). Now produced and shown to me and marked "CDC-2" is a true copy of the Webster Affidavit (without exhibits).
- 12 In paragraphs 7 and 8 of the Webster Affidavit, Mr Webster deposes that, on 6 September 2010, he, Mark Korda 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**).
- 13 In paragraph 10 of the Webster Affidavit, Mr Webster deposes that pursuant to Deeds of Partial Termination executed in September and October 2010, the Receivers' appointment to WFL's rights, title and interest in, and rights and obligations arising under any agreement, deed or document appointing WFL as responsible entity and/or manager of the Willmott Schemes (other than in respect of the 'Taylor Singer' partnership schemes, and the 1981 "No Project" schemes). The effect of the Deeds of Partial termination was to exclude from the Receivers' appointment WFL's role as responsible entity and / or manager of certain of the managed investment schemes operated by WFL.
- 14 In paragraph 12 of the Webster Affidavit, Mr Webster deposes that the Charged Property expressly excludes:
- (a) the freehold land owned by WFL in and around the town of Bombala in New South Wales, comprising 27,861 hectares of land approximately 70% of which had been planted with pine as at 6 September 2010 (the **Bombala Land**);
  - (b) scheme property or trust property associated with the Willmott Schemes; and
  - (c) (following the partial termination of the Receivers' appointment) the responsible entity / manager function described in paragraph 13 above.
- 15 From paragraphs 11 and 12 of the Webster Affidavit I understand that, with the exception of the assets set out in paragraph 14 above, the Receivers currently control all other assets of the Willmott Group.




- 16 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**). The First Administrator took control of the unsecured assets, namely the Bombala Land and the Willmott Schemes, including WFL's rights and obligations as responsible entity of the schemes.
- 17 The Secured Creditors applied to the Federal Court for the First Administrator to be removed. On 26 October 2010, the Honourable Justice Finkelstein ordered that the First Administrator be removed as voluntary administrator pursuant to section 449B of the Act on the basis that he did not appreciate the extent of the administrator's task in respect of this administration, he and his staff did not have the capacity to carry out the tasks required to be performed and he did not have the appropriate amount or type of insurance cover. Ian Carson and I were appointed as joint and several voluntary administrators of the Willmott Group on this date.

#### **Liquidation and Power of Sale**

- 18 On 14 March 2011, we issued the s439A Report to Creditors to Growers and creditors recommending that the Willmott Group be wound up so that the assets could be realised. The Second Creditors meeting held on 22 March 2011 resolved to place the Willmott Group in liquidation and appoint Mr Carson and I as the liquidators.
- 19 In order to wind up the Willmott Group and the Willmott Schemes and seek to realise the assets of both, we would need to terminate, relinquish, surrender or disclaim the Growers' interests in the Willmott Schemes. This would allow us to sell WFL's interest in the land on an unencumbered basis and sell the trees. We intended to terminate, relinquish, surrender or disclaim the Growers' interests on the basis that the Growers would be entitled to the net proceeds of sale or any other value or consideration received for or referable to that termination, relinquishment, surrender or disclaimer.
- 20 On 11 May 2011, we sought directions from the Court that we would be justified in amending the constitutions of the Willmott Registered Schemes and investment deeds of the Willmott Professional Investor Schemes to empower WFL to terminate, relinquish or surrender the leases, sub-leases, forestry management agreement and other project documents between WFL and Growers (together, the **Project Documents**) on the basis that such amendments will not adversely affect Growers' rights. In relation to the Willmott Unregistered Schemes not governed by a constitution or investment deed, we sought a direction that we would be justified in disclaiming the Project Documents on the condition that we would apply to the Court before disclaiming the Project Documents

- 21 On 29 June 2011, Her Honourable Justice Dodds-Streeton made orders. Now produced and shown to me and marked "CDC-3" is a true copy of those orders.
- 22 In accordance with the orders granted and by deeds dated 12 July 2011, we caused WFL to amend the constitutions of the Willmott Registered Schemes and investment deeds of the Professional Investor Schemes to insert the power to terminate, relinquish or surrender the Project Documents. Now produced and shown to me and marked "CDC-4" is a true copy of those deeds.

### **Funding of administration/liquidation**

- 23 Following our appointment, we considered it necessary to retain some employees of the Willmott Group to retain some presence on the plantations who could also undertake some basic statutory-type maintenance on the plantations and to assist with Grower-related queries and our investigations until a resolution about the future operation of the business had been determined. A total of 5 employees were retained. The Willmott Group was without funds and unable to pay for these employees, to meet the costs of undertaking statutory maintenance or to pay for the costs of the administration. To date, the employees have been paid by the Receivers. However, we have agreed with the Receivers that we will reimburse them for the employee costs which relate to work undertaken on behalf of the Liquidators.
- 24 The main asset of the Willmott Group which was not covered by the Secured Creditors' charge was the Bombala Land. We therefore sought to obtain finance and provide the Bombala Land as security. However, we were unable to secure finance on this basis due to the First Administrator exercising a lien over the certificates of title of the Bombala Land to secure payment of his fees and a low valuation on the Bombala Land (based on it being encumbered by the Willmott Schemes, the land was valued at between \$2.1m - \$3.2m. A copy of that valuation is at CDC-11 of my Second Affidavit). Mr Carson and I therefore secured a loan of \$5 million 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.
- 25 As of 31 October 2011, we had incurred costs in relation to the Willmott Schemes in the sum of approximately \$3.7 million.
- 26 The lack of funding has added to the urgency of the administration/liquidation.



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## The Schemes

- 27 The administration and liquidation of the Willmott Group is very complex. This is, in part, due to the existence of the Willmott Schemes. Now produced and shown to me and marked "CDC-5" is a computer disc containing constituent documents for the Willmott Schemes and an index of the documents.
- 28 The Liquidators are in control of WFL's obligations as responsible entity and manager of 8 Registered Schemes and 22 Unregistered Schemes, as listed in schedules 1, 2 and 3.

### *Registered Schemes*

- 29 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.
- 30 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. I refer to the projects within these continuous offer schemes as "Projects". Other Registered Schemes extended only for a specific year, with only one product disclosure statement being issued.
- 31 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.
- 32 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;
  - (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 (**95-99 Scheme**). The project related to pine plantations;
  - (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 and a product disclosure statement in 2004, 2006 and 2007. The project related to pine plantations;



forestry management agreements. Further details relating to the terms of the constituent documents are set out in paragraphs 43 to 46 below.

37 The Contractual Schemes are:

- (a) the 1983 "No Project" Scheme. The project related to pine plantations and has 73 investors;
- (b) the 1984 "No Project" Scheme. The project related to pine plantations and has 24 investors;
- (c) the 1985 "No Project" Scheme. The project related to pine plantations and has 22 investors;
- (d) the 1986 "No Project" Scheme. The project related to pine plantations and has 43 investors;
- (e) the 1987 "No Project" Scheme. The project related to pine plantations and has 31 investors;
- (f) the 1989 "No Project" Scheme. The project related to pine plantations and has 4 investors;
- (g) the 1990 "No Project" Interest Only Offer. The project related to pine plantations and has 1 investor;
- (h) the 1991 "No Project" Scheme. The project related to pine plantations and has 3 investors;
- (i) the 1995 "No Project" Scheme. The project related to pine plantations and has 1 investor;
- (j) the Sharp - Reed Plantation Project - 1998. The project related to pine plantations and has 2 investors; and
- (k) the 2001 "No Project" Scheme. The project related to pine plantations and has 2 investors.

38 The Partnership Schemes are:

- (a) the 1993 McKenzie and Partners - Forestry Partnership No. 1. The project related to pine plantations and has 16 investors;

- (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;
- (e) the Bioforest Sustainable Timber and Biofuel Project 2007 (ARSN 124 133 535) was offered in 2006 pursuant to a product disclosure statement. The project related to silky oak and she-oak plantations;
- (f) the Willmott Forests Premium Forestry Blend Project (ARSN 142 722 589) was offered in 2008 pursuant to a product disclosure statement. The project related to pine, silky oak and she-oak plantations;
- (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; and
- (h) the Willmott Forests Premium Timberland Fund No 1 (ARSN 136 768 520) 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.

*Unregistered Schemes*

- 33 The Unregistered Schemes fall within three main categories: Contractual Schemes, Partnership Schemes and Professional Investor Schemes. The number of investors in each scheme ranges between 1 and 73.
- 34 The constituent documents for the Contractual Schemes are very basic and include short form leases and service agreements entered into between WFL and the individual investor. There are no overarching agreements.
- 35 The constituent documents for the Partnership Schemes include a partnership deed, a deed of trust, a lease, a plantation and development agreement and an establishment and maintenance agreement.
- 36 The Professional Investor Schemes are structured similarly to the Registered Schemes but were not required to be registered on the basis that offers to subscribe for interests in the schemes were only available to professional investors. The constituent documents for the Professional Investor Schemes include formal investment deeds, leases and




- (b) the 1994 Grimsey & Associates - Forestry Partnership No. 1. The project related to pine plantations and has 19 investors;
- (c) the 1994 Grimsey & Associates - Forestry Partnership No. 2. The project related to pine plantations and has 17 investors;
- (d) the 1994 Grimsey & Associates - Forestry Partnership No. 3. The project related to pine plantations and has 18 investors; and
- (e) the 1994 McKenzie and Partners - Forestry Partnership No. 2. The project related to pine plantations and has 12 investors.

39 The Professional Investor Schemes are:

- (a) the Willmott Forests - Professional Investor 2001 Scheme. The project related to pine plantations and has 5 investors;
- (b) the Willmott Forests - Professional Investor 2002 Scheme. The project related to pine plantations and has 4 investors;
- (c) the Willmott Forests - Professional Investor 2003 Scheme. The project related to pine plantations and has 29 investors;
- (d) the Willmott Forests - Professional Investor 2004 Scheme. The project related to pine plantations and has 74 investors;
- (e) the 2005 Bioforest Wholesale Project No 2 Scheme. The project related to silky oak and she-oak plantations and has 10 investors. Growers who invested in at least 10 Timberlots were also given the right to subscribe for shares in BioEnergy Australia Ltd; and
- (f) the Willmott Forests - Professional Investor 2006 Scheme. The project related to pine plantations and has 14 investors.

*Operation of the Schemes*

40 The Willmott Schemes are conducted on approximately 510 plantations, with 13 of the 30 Willmott Schemes conducted on more than one plantation. One scheme (the Willmott Forests Project) is conducted on 105 different plantations.

41 Generally speaking, a Grower would apply to invest or participate in a particular Project or Scheme. The disclosure documents, for example the product disclosure statement,




prospectus, constitution or information memorandum, would not identify the parcels of land that would be used for that Project or Scheme. This would occur later. Following acceptance of the application, WFL and the Grower would enter into a Forestry Management Agreement. For most schemes, the Grower would pay an up-front fee of between \$2,000-7,000 which was in most cases said to be a planting and establishment cost. No further funds would generally be payable under the Forestry Management Agreement by the Grower until the trees were harvested.

- 42 In all Projects, Growers were allocated a specific lot and owned the trees on that lot. This would generally occur around 9-12 months following approval of the application and entering into the Forestry Management Agreement. At this stage, WFL would give notice to the Grower of their allocation and enter into a lease or licence agreement with the Grower (**Grower Lease**). Growers would have no control over the allocation of their lot and had no power to reject the allocation. Rent payable to WFL under the Grower Lease differed between the schemes and was either payable in advance, annually (either in advance or arrears) or payable as a proportion of the proceeds of sale on harvest.
- 43 There are no overarching agreements governing the Contractual Schemes and these schemes are merely governed by a Grower Lease and Maintenance Agreement (called a Contract for Works and Services) between the relevant Willmott Group entity and each individual Grower. Under the Grower Lease, Growers are generally entitled to enter upon their land to establish, maintain and harvest their Trees. Growers may appoint the Willmott Group entity or any other third party to establish, maintain and harvest the trees on their behalf upon whatever terms as are agreed between the Grower and third party. The Maintenance Agreement provides for maintenance of the trees by the relevant Willmott Group entity.
- 44 The Partnership Schemes are, in addition to the Grower Lease and Maintenance Agreement, also governed by an overarching Deed of Covenant and/or Deed of Trust. The Grower Leases and Maintenance Agreements are in substantially the same terms as those governing the Contractual Schemes.
- 45 The Professional Investor Schemes are, in addition to the Grower Lease and Maintenance Agreement, also governed by a Product Disclosure Statement and Investment Deed. For the Professional Investor Schemes in 2001, 2002 and 2003, the Investment Deeds provide that the Growers are responsible for maintaining and harvesting their own Trees unless otherwise agreed with the Manager. The Investment Deeds for the Professional Investor Schemes in 2004, 2005 and 2006 provide for management by WFL and for the proceeds of sale from thinning and harvest to be pooled



and distributed by WFL in proportion to the number of hectares held by each Grower. The Grower Leases and Maintenance Agreements are in substantially the same terms as those governing the Contractual Schemes.

- 46 The Registered Managed Investment Schemes are, in addition to the Grower Lease and Maintenance Agreement, also governed by a Product Disclosure Statement and Constitution. For the Projects within the Registered Managed Investment Schemes prior to 2003, the Grower is responsible for harvesting their trees. For the Projects and Schemes of the Registered Managed Investment Schemes from 2003 onward, the Product Disclosure Statement and Constitution provide that the Manager is responsible for maintaining and harvesting the trees and proceeds of sale from thinning and harvesting are to be paid to Growers in proportion to the number of hectares held by them. The Grower Leases and Maintenance Agreements for the Projects and Schemes of the Registered Managed Investment Schemes from prior to 2006 are in generally the same terms as those governing the Contractual Schemes. The Maintenance Agreements for the Projects and Schemes of the Registered Managed Investment Schemes from 2006 confirm that WFL is responsible for managing the plantations and proceeds of sale are to be pooled and distributed by WFL to Growers based on the number of hectares held.
- 47 In relation to the schemes in which Growers had a right to maintain and harvest their trees, my understanding is that all Growers appointed the relevant Willmott Group entity to manage, maintain and harvest the lots on their behalf. Accordingly, in reality, the Willmott Group was responsible for establishing, maintaining and harvesting/thinning all of the trees within the Willmott Schemes on behalf of the Growers.

#### **Solvency and Viability of Willmott Schemes**

- 48 Shortly after our appointment, we engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to conduct a detailed Viability Analysis of the Willmott Schemes. On 19 January 2011, we received Poyry's final viability analysis of the Willmott Schemes (**Poyry Report**). The Poyry Report is at CDC-9 of my Second Affidavit.
- 49 The Poyry Report concluded 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 \$336.7 million in absolute terms (\$123 million net present value) will be required.
- 50 As stated above, Growers in most schemes are not liable to make any further payments prior to their trees being harvested. There are no other funds available to meet this cost.

- 51 The day-to-day management expenditure of the Willmott Schemes includes wages, 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. I understand from Stephen Addicott, Plantation Resource Manager at WFL, and believe that failure to attend to these tasks has diminished, and will continue to diminish, the value of the trees.
- 52 Based on our investigations of the operations of the Willmott Group, the viability of the business model was questionable. New scheme sales were required each year to fund operations, including the obligations in respect of past schemes. However, new scheme sales had deteriorated significantly following turmoil in the industry (for example, the collapses of Timbercorp and Great Southern) and questions over the tax deductibility of contributions by Growers. During this time, the Willmott Group sought to raise funds by increasing its bank debt and issuing new equity. However, this did not solve the viability of the Willmott Schemes.

*Expressions of Interest Campaign*

- 53 On 12 November 2010 we commenced a campaign seeking 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.
- 54 We were approached by 21 interested parties and received 4 conditional, indicative, non-binding proposals and one binding offer.
- 55 The binding offer was received from HVP. It related only to the Willmott Schemes situated upon the land leased by WFL from HVP. The proposal involved collapsing the relevant schemes to create one new scheme. We considered this would have been complex and have taken a considerable time to implement. The proposal did not provide for replacement of the responsible entity and therefore would have involved WFL's continued involvement or identification of a third party willing to take on those responsibilities. Following further discussion with HVP, HVP withdrew its offer and made a counter-proposal for the HVP Leases to be surrendered for value and HVP to purchase the trees situated upon the land. That offer is the subject of a separate application by the liquidators and supported by my Sixth Affidavit.

- 56 One other proposal was to purchase the assets of the Willmott Group and the bidder was not interested in taking over as responsible entity. All other proposals received involved

amending the Willmott Schemes to allow the new responsible entity to charge additional fees to the Growers. Two of the three proposals would charge the additional fees by converting the schemes from non-contributory to contributory, so that Growers would be required to fund the continued operation of the schemes through up-front and ongoing fees. The other proposal involved taking a further percentage of the proceeds of sale at harvest. The bidders were not interested in taking over all of the schemes. Some bidders identified which schemes they were and were not interested in (it appears that the bidders were only interested in some or all of the pine plantations) whilst other bidders advised that selection of the schemes was subject to further review. The proposals generally did not provide any consideration for the Secured Creditor's claim although the proposals sought to bind the Secured Creditor. They were also generally conditional upon further due diligence and exclusivity periods although no party was willing to continue to fund the operations of the Willmott Schemes during this period.

- 57 The Receivers indicated that none of the proposals were acceptable to the Secured Creditors on the basis that they were too uncertain in terms of costs to Growers and assuming the liabilities of the responsible entity. We also did not have sufficient funds to continue to manage the Willmott Schemes, allow the parties additional time to undertake due diligence and cooperate with the due diligence requests without any guarantee of a party agreeing to assume responsibility at the end of the process.
- 58 We informed the bidders that their offers were not acceptable but that we would be willing to consider any further proposals up until such time as the Willmott Schemes had been terminated or the assets of the Willmott Group sold. No further proposals have been received.

*WGG and the 95-99 Scheme*

- 59 The only other party interested in taking over as responsible entity and manager of any of the Willmott Schemes was the Willmott Growers Group (**WGG**).
- 60 On 20 May 2011, the WGG issued a Notice of Meeting to members of the 1995-1999 Registered Scheme (**the 95-99 Scheme**). The Notice of Meeting set out the following 4 resolutions to be considered and voted on at a meeting to be held on 14 June 2011:
- (a) Resolution 1: Approval of the WGG Proposal.
  - (b) Resolution 2: Amendments to the constitution governing the 95-99 Scheme to implement the WGG Proposal.

- (c) Resolution 3: Removal of WFL as the responsible entity of the 95-99 Scheme.
- (d) Resolution 4: Appointment of Primary Securities Limited as responsible entity of the 95-99 Scheme.

61 The resolutions were interdependent so that each resolution would only be passed if all other resolutions were also passed. The Notice of Meeting was accompanied by an explanatory memorandum which set out the WGG Proposal.

62 In short, the WGG Proposal effectively converted the 95-99 Scheme from a non-contributory scheme to a contributory scheme. Under the WGG Proposal, Growers would be required to pay an up-front reconstruction fee and a separate up-front management fee plus ongoing annual management fees as well as any supplementary fees required from the time-to-time. The WGG provided estimates as to what the sum of those fees may be, however this was subject to further due diligence and the responsible entity would always retain a right to charge supplementary fees if necessary. The WGG Proposal included a dilution mechanism whereby Growers' interests in the scheme were reduced for non-payment of the various fees. Growers would have lost their entire interest if they failed to pay \$667/hectare. Based on the fees estimated in the WGG Proposal, this could have occurred in the first year.

63 WFL holds an interest in the 95-99 Scheme as a Grower in its personal capacity. This interest is in the control of the Receivers. The Receivers objected to the WGG Proposal, predominantly on the basis that the dilution mechanism would amount to a fraud on the minority. The Receivers brought injunctive proceedings in the Supreme Court of Victoria against the WGG and other parties involved in the WGG Proposal to restrain them from holding the meeting or, alternatively, from putting resolutions 1 and 2 to the meeting or at any subsequent meeting.

64 An interim injunction was granted on 22 June 2011 and a further interim injunction granted on 1 July 2011 prohibiting the WGG and other parties from putting resolution 2 at a meeting of the 95-99 Scheme. The Court further ordered that the matter proceed by way of pleadings and set down a final hearing for the 14-16 December 2011. That hearing date has been adjourned to 14-16 March 2010.

65 On 28 November 2011, Jonathan Grigg, General Manager Grimsey Financial Services Pty Ltd emailed me a copy of a letter from the WGG to Growers, a Notice of Meeting, proxy form, contribution form and change of details form. The documents effectively set out a new WGG Proposal (the **New WGG Proposal**) and called a meeting for 21 December 2011 to vote on the New WGG Proposal. It appears from the information so



far provided that the New WGG Proposal is similar to the original WGG Proposal (in that it converts the schemes from non-contributory to contributory), but also involves an exit mechanism whereby Growers who are not interested in retaining their interest may potentially either sell their interest or their interest will be acquired by the new responsible entity (subject to it having the required funding) based on a value determined pursuant to a specified formula. One of the variables in the formula is the new responsible entity's determination of the value of the scheme assets at the relevant date. Now produced and shown to me and marked "CDC-6" is a true copy of the New WGG Proposal.

66 I received a further email from Mr Grigg on 28 November 2011 attaching a letter to me. The letter referred to the New WGG Proposal, his understanding of the current sale of the assets of the Willmott Group and requested I put him in contact with the proposed purchaser so that they could discuss whether the proposed purchaser would cooperate with the WGG to allow the New WGG Proposal to go ahead. Now produced and shown to me and marked "CDC-7" is a true copy of Mr Grigg's letter to me.

67 I spoke with the proposed purchaser who was not interested in entering into discussions with the WGG. I subsequently was informed by the proposed purchaser that WGG had contacted the proposed purchaser directly. Now produced and shown to me and marked "CDC-8" is a true copy of the correspondence between the proposed purchaser and WGG.

68 On 28 November 2011, Jane Sheridan of Arnold Bloch Leibler (**ABL**), our solicitors, also forwarded to me a copy of a letter from the WGG's solicitors, Clarendon Lawyers, to her relating to the New WGG Proposal. In addition to the matters already set out in the correspondence and documents referred to above, the letter stated that the WGG considered the land upon which the 95-99 Scheme was operated was scheme property and queried whether the proposed purchaser had been put on notice of this claim. The letter also set out a number of additional schemes which the WGG was interested in taking over as responsible entity (namely all Partnership Schemes, the 1995 No Project Scheme and the Sharp - Reed Plantation Project - 1998 Scheme)(together with the 95-99 Scheme, **the WGG Schemes**) and advised that the WGG intended to claim that the land the subject of these schemes was also scheme property. Now produced and shown to me and marked "CDC-9" is a true copy of this letter.

69 We had kept the proposed purchaser informed of the WGG's Proposal during the due diligence process and negotiation of the sale contracts. I understand that Ms Sheridan also forwarded a copy of the letters she had received from Clarendons to the proposed purchaser as requested.

- 70 On 9 December 2011, I received an email from Clarendon Lawyers attaching a copy of the explanatory memorandum to the New WGG Proposal. Now produced and shown to me and marked "CDC-10" is a true copy of the explanatory memorandum.
- 71 The New WGG Proposal is a matter to be voted upon by the Growers (including the Receivers in relation to WFL's interest as a Grower). As current responsible entity and manager of the schemes the subject of the New WGG Proposal, we are obliged to ensure that Growers are fully informed in relation to the New WGG Proposal before voting at the meeting to be held on 21 December 2011. We note that the WGG Proposal does not guarantee that the 95-99 Scheme will continue (particularly as a review will not be conducted until after the 95-99 Scheme is converted into a contributory scheme) and does not guarantee the return, if any, that Growers will receive. In order to obtain any return, Growers will be required to contribute additional funds or face dilution, unless a purchaser is located for their interests or the new responsible entity obtains the necessary funding to buy back the interest. Given that our sale process provides certainty of Grower returns compared with the uncertainty of the New WGG Proposal, including potential dilution and no certainty of any future return we consider that, notwithstanding the New WGG Proposal, the inclusion of the 95-99 Scheme assets in our sale process outlined below is in the best interests of the Growers in that scheme.
- 72 As Liquidators, we also have obligations to the creditors of the Willmott Group to recover, realise and distribute the company's assets. In this regard, the WGG's assertion that the land relating to the WGG Schemes is scheme property will impact on our ability to realise and distribute the Willmott Group's assets. Our views in this regard are set out in more detail below.

*Continued operation of the Willmott Schemes*

- 73 As of February 2011, we were faced with a situation in which we had no available funding (other than the personal loan secured as set out in paragraph 24 above) and no acceptable proposal for a new responsible entity or manager of any of the Willmott Schemes. It had become clear to us that it was very unlikely a party would be willing to take over as responsible entity and manager of the Willmott Schemes in circumstances where that party would be required to assume the liabilities of WFL and fund the continued operation of the Willmott Schemes without any income or contributions from Growers until harvest.
- 74 As set out in my Third Affidavit and based on my discussions with Stephen Addicott, the WFL Forest Business Manager, we cannot see how the Willmott Schemes are capable of

