

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

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 SCHEDULE 3
AND ORS ACCORDING TO SCHEDULE 1**
Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

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

Prepared by:

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This is the exhibit marked "CDC-1" now produced and shown to **CRAIG DAVID CROSBIE** at the time of swearing his affidavit on 13 December 2011.

MATTHEW GORDON JACKSON

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An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: 

Exhibit "CDC-1"

**Affidavit of Bryan Webster dated 17 June 2011
filed in Federal Court of Australia proceeding
no VID 386 of 2011 (without exhibits)**

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No 386 of 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**

First Plaintiff

CRAIG DAVID CROSBIE

Second Plaintiff

IAN MENZIES CARSON

Third Plaintiff

**AFFIDAVIT OF BRYAN WEBSTER
AFFIRMED ON 17 JUNE 2011
(Order 14 rule 2)**

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Filed on behalf of: the Receivers

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Ref CCHM:120090098 (Clint Hinchin)



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On 17 June 2011, I, BRYAN WEBSTER of 333 Collins Street, Melbourne, in the State of Victoria, Accountant, do solemnly and sincerely affirm:

1. I am a Registered Liquidator, Certified Practising Accountant and a partner of KordaMentha Pty Ltd (**KordaMentha**).
2. On 6 September 2010, I was appointed joint and several receiver and manager of the assets of Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 063 263 650) (**WFL**) and its wholly owned subsidiaries (together, the **Willmott Group**), along with my partners Mark Anthony Korda and Mark Francis Xavier Mentha. Further details of our appointment are set out at paragraphs 7 and 8 below. Where I refer in this affidavit to the **Receivers**, I




am referring to myself and each of Mr Mentha and Mr Korda (as applicable) in our capacities as joint and several receivers and managers of the relevant charged assets of WFL. I am authorised to make this affidavit on behalf of the Receivers.

3. I make this affidavit from my own knowledge, except where otherwise stated. Where I state matters on the basis of information provided to me, I believe such information to be true.
4. I am a Certified Practising Accountant, a Registered Liquidator and a member of the Insolvency Practitioners Association of Australia. I have been practising in the area of corporate insolvency and financial reconstructions for over 15 years.
5. I have reviewed the plaintiffs' application made by originating process dated 11 May 2011. In general terms, the Receivers support the relief sought by the plaintiffs, subject to my comments on the form of orders the Court should make, which I have set out in paragraphs 130 to 130 below.
6. In this affidavit, I have set out information relating to:
 - (a) the scope of the Receivers' appointment over the assets of the Willmott Group, (including some of the assets which are the subject of the plaintiffs' application);
 - (b) the viability of the managed investment schemes operated by WFL and the plantations on which they are operated, based on my knowledge of the relevant assets (including my observations about the Poyry Report described in paragraph 20 below);
 - (c) the status of the sale process for certain land and plantations in the Northern Territory, a small part of which are used in connection with one of the registered managed investment schemes operated by WFL (see paragraphs 69 to 80 below);
 - (d) the Receivers' position in relation to the arrangements entered into between the liquidators of WFL and Hancock Victoria Plantations Pty Ltd (*HVP*), described in paragraphs 108 to 115 below, insofar as they affect the rights of the Receivers; and



- (e) the status of the sale process for certain plantations in Victoria which are used in connection with some of the unregistered managed investment schemes operated by WFL (see paragraphs 116 to 129 below).

PART A: APPOINTMENT OF RECEIVERS AND MANAGERS TO WFL

7. On 6 September 2010 (**Appointment Date**), Mark Anthony Korda and I were appointed joint and several receivers and managers of all of the assets charged by WFL under the following charges:
 - (a) Deed of Charge (Bilateral) dated 17 March 2009, ASIC registered no. 1767770;
 - (b) Deed of Charge (non NSW & SA) dated 17 March 2009, ASIC registered no. 1767711; and
 - (c) Deed of Charge (SA) dated 17 March 2009, ASIC registered no. 1767741.
8. Also on 6 September 2010, Mark Francis Xavier Mentha and I were appointed joint and several receivers and managers of all of the assets charged by WFL under the Deed of Charge (Secondary) dated 17 March 2009, ASIC registered no. 1767723.
9. By order of this Honourable Court, on 26 October 2010, Messrs Ian Carson and Craig Crosbie of the firm PPB Advisory were appointed joint and several voluntary administrators of the Willmott Group. At a meeting of creditors convened by Messrs Carson and Crosbie on 22 March 2011, the creditors of the Willmott Group resolved to wind up the Willmott Group and to appoint Messrs Carson and Crosbie as joint and several liquidators of the Willmott Group.
10. WFL is the responsible entity (**RE**) of a number of registered managed investment schemes and the manager of a number of unregistered managed investment schemes. By Deeds of Partial Termination executed in September 2010 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 managed investment schemes (the **RE/Manager Function**), was terminated (other than in respect of the 'Taylor Singer' partnership schemes, and the 1980 and 1981 "No Project" schemes, as to which, see paragraphs 116 to 129




below). 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. Now produced and shown to me and marked **BW-1** is a circular dated 12 October 2010 published by KordaMentha and entitled '*Update on the responsible managers of the WFL Schemes*' which sets out further details of the partial termination of the Receivers' appointment.

11. In summary, the assets over which the Receivers are appointed, comprise all of the assets, undertaking and rights of WFL and its wholly-owned subsidiaries, subject to certain exclusions. The assets over which the Receivers are appointed include:
 - (a) freehold land located in the Murray Valley and North Coast regions of New South Wales, and in the Katherine region in the Northern Territory;
 - (b) WFL's rights and interests as lessee of land located in Victoria and New South Wales;
 - (c) WFL's interests in farming equipment and inventories; and
 - (d) interests held by WFL in its own right in the managed investment schemes operated by WFL.
12. The exclusions to the assets over which the Receivers are appointed include the following:
 - (a) any land located within a radius of approximately 150 kilometres around the township of Bombala, New South Wales (the **Bombala Land**);
 - (b) any property held by WFL in its capacity as responsible entity, trustee or custodian in respect of the managed investment schemes operated by WFL or any other property held by WFL or its wholly-owned subsidiaries in their capacity as a trustee or custodian; and
 - (c) (following the partial termination of the Receivers' appointment) the RE/Manager Function described in paragraph 10 above.
13. The RE/Manager Function is now under the control of Messrs Carson and Crosbie, as Liquidators of WFL (other than in respect of the 'Taylor Singer' partnership schemes, and the 1980 and 1981 "No Project" schemes, as to which, see paragraphs 116 to 129 below).




14. I refer to the sub-paragraph 43(d) of the affidavit of Mr Crosbie sworn in this proceeding on 11 May 2011 (the **Crosbie Affidavit**), and to paragraph 33 of Mr Crosbie's affidavit sworn in proceeding 1019 of 2011 on 25 November 2010 (and exhibited as exhibit CDC-16 to the Crosbie Affidavit), in which Mr Crosbie states that WFL is insolvent. Based on my own review of the books and records of WFL and the Willmott Group, I agree that WFL is insolvent.

PART B: VIABILITY OF THE WILLMOTT SCHEMES

15. As noted above, WFL is the RE of a number of registered managed investment schemes and the manager of a number of unregistered managed investment schemes (**Willmott Schemes**).
16. I refer to paragraph 43 of the Crosbie Affidavit and note that Mr Crosbie states (at 43(c)) that *'WFL would need to contribute a net present value of \$123 million or \$336.7 million in absolute terms to continue running the Willmott Schemes for the remaining life of the schemes'* and (at 43(d)) that *'WFL is insolvent and not in a position to provide this funding and continue running the Willmott Schemes.'* I agree that WFL is insolvent and is not in a position to provide any funding to continue running the Willmott Schemes.
17. The constituent documents for almost all of the Willmott Schemes provide that:
- (a) participants (**Growers**) are not required to make any payments relating to the leasing of land and maintenance of the forestry plantations which are the subject of the relevant scheme, until completion of the scheme (i.e. at maturity and harvest of the plantations); and
 - (b) at completion of the relevant scheme, the RE or manager is entitled to a deferred lease payment and maintenance fee, paid out of each Grower's gross harvest proceeds.
18. In light of the Growers' deferred payment arrangements described in paragraph 17 above, the RE or manager of the Willmott Schemes is required to meet any ongoing lease and maintenance expenses associated with the Willmott Schemes up to completion of the schemes.
19. Given WFL's insolvency, it is unable to continue as RE or manager of the Willmott Schemes.
20. Following their appointment as voluntary administrators, Messrs Carson and Crosbie engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to




conduct a review and verification of valuations prepared by WFL, and to form an opinion on the viability of each of the Willmott Schemes. On 19 January 2011, Poyry provided a report to Messrs Carson and Crosbie setting out the results of its review and verification, and its opinion on the viability of each of the Willmott Schemes (the **Poyry Report**), which is exhibited as exhibit CDC-9 to the affidavit of Craig Crosbie sworn in proceeding 1019 of 2011 on 4 February 2011, (which in turn comprises exhibit CDC-16 to the Crosbie Affidavit).

21. I have reviewed the Poyry Report and note that Poyry has classified each of the Willmott Schemes into three categories, described at page 67 of the Poyry Report as follows:

- '1. **Long Term Viable Schemes** are schemes that have a positive NPV and which, on the face of it, make commercial sense to be maintained by way of additional voluntary grower contributions;
2. **Potentially Viable Schemes** are listed as "Viable* or Non-viable*" ... Non-viable* indicates that these schemes are non-viable unless there is an increase in yield/price/log grade of at least 25%, and further investment is made in the short term by way of additional voluntary grower contributions. Viable* indicates that the scheme has a positive NPV but that a decrease in yield/price/log grade of 25% or more would make them non-viable. Poyry has defined this category due to the uncertainty regarding the future yields and prices. The viability will depend on maintenance requirements, actual growth rates going forward and actual prices received.
3. **Long-Term Non-Viable Schemes** are schemes which are clearly unviable in the long term, and which, on the face of it, there is no commercial merit in maintaining. The project is estimated to have a clearly negative NPV. The project would require an increase of greater than 25% to net proceeds in order to generate a positive NPV to the grower.'

22. I note that Poyry's analysis of viability is an indication of the net present value of the estimated cash flows expected to be derived from the Willmott Schemes. The net present value does not take into consideration the funding requirement to reach an eventual harvest. To determine what is in the best interests of growers, I am of the opinion that the net present value of the Willmott Schemes should be compared to what is able to be achieved from an immediate sale of the assets of the Willmott Schemes.
23. Poyry's analysis of the viability of the Willmott Schemes is based on a cashflow analysis which incorporates a nominal discount rate of 11% to reflect the risks associated with future cash flows of the Willmott Schemes. In my opinion, a nominal discount rate of 11% is insufficient for the following reasons:




- (a) the long lead time until maturity of the plantations relating to many of the Willmott Schemes (with the plantations relating to 85% of the planted hectares within the Willmott Schemes not expected to reach maturity until at least 2025);
 - (b) uncertainties associated with the species planted in respect of some of the Willmott Schemes (as to which, see paragraphs 51(a), 58, 71, 74 and 74 below);
 - (c) uncertainties associated with plantation yields for the Willmott Schemes (as to which, see paragraph 126 below); and
 - (d) uncertainties associated with markets, including eventual market pricing and the availability of markets for some species (as to which, see paragraphs 51(a), 58, 71 and 74 below).
24. In light of the matters set out in paragraph 22 above, in my view, a nominal discount rate in excess of 11% would be a more appropriate input for a cashflow analysis relating to the Willmott Schemes.
25. I note that in the Poyry Report, Poyry has provided a sensitivity analysis to illustrate the impact of different discount rates. Set out below is a table I have extracted from page 73 of the Poyry Report which demonstrates the sensitivity of Poyry's viability analysis of the Willmott Schemes to varying discount rates.

Summary of Sensitivity Analysis

Discount Rate	Viable	Viable*	Non-Viable*	Non-Viable	Total
	NSA (ha)				
11%	38 072	1 316	4 495	9 008	53 208
13%	17 387	20 777	1 240	13 804	53 208
15%	6 648	6 642	12 681	27 237	53 208

26. I note from the Poyry Report that Poyry's analysis of the viability of the Willmott Schemes is based, among other things, on the following assumptions:
- (a) a new RE / manager (**new RE**) will be appointed to the Willmott Schemes;
 - (b) the new RE will not raise debt to cover costs;




- (c) the Growers in the Willmott Schemes will contribute to estimated costs of maintenance, overheads and administration costs, and a 'safety margin' of 15% (the ***up-front Growers' contribution***);
 - (d) the up-front Growers' contribution will be made in 2011; and
 - (e) WFL will not contribute to the ongoing costs of the schemes in respect of which it holds interests in its own right and the costs for completing those schemes will be incurred by the remaining Growers.
27. In addition to the matters identified above, Poyry's analysis of the viability of the Willmott Schemes assumes that the land on which the Willmott Schemes are conducted would continue to be available for use by those schemes upon the appointment of a replacement RE, which is not necessarily the case. In the Receivers' view, the rights of WFL as owner of the land (including any rights as lessor) would not automatically transfer to a new RE.
28. I also note that, according to the Poyry Report, none of the Willmott Schemes is viable unless the up-front Growers' contribution is made. Poyry has estimated that the required up-front Growers' contribution for all of the Willmott Schemes is \$123.2 million.
29. Should some of the Willmott Schemes not continue, then the fixed costs assumptions in the Poyry Report will need to be changed to reallocate those fixed costs over the remaining Willmott Schemes, thereby increasing the up-front Growers' contribution for those remaining Willmott Schemes and, accordingly, affecting the viability of those Willmott Schemes.
30. I refer to:
- (a) paragraphs 47 to 51 of the affidavit of Craig Crosbie sworn in proceeding 1019 of 2011 on 25 November 2010 (exhibit CDC-16 to the Crosbie Affidavit);
 - (b) paragraphs 17 to 21 of the affidavit of Craig Crosbie sworn in proceeding 1019 of 2011 on 4 February 2011 (exhibit CDC-16 to the Crosbie Affidavit); and
 - (c) paragraphs 8 to 11 of the Crosbie Affidavit,
- which describe the process undertaken by Messrs Carson and Crosbie by which expressions of interest were sought for the assumption of the obligations of RE or manager for all or any of the Willmott Schemes (the ***Expression of***




Interest Campaign). I note from reviewing those affidavits that no acceptable proposal was forthcoming from the Expression of Interest Campaign.

31. As regards Poyry's assumptions in:

- (a) sub-paragraphs 26(a) and 26(b), given the insolvency of WFL and there being no proposal for the replacement of the RE / manager of the Willmott Schemes (other than the Primary Securities Proposal), these assumptions cannot be sustained;
- (b) sub-paragraphs 26(c) and 26(d), these assumptions are dependent upon:
 - (i) the appointment of a new RE / manager to the Willmott Schemes (such that if there is no new RE / manager, these assumptions, as a consequence, are also unsustainable, even if there were an appetite (and ability) by the Growers in each Willmott Scheme to make the required amendments to the constituent documents (see (ii) below) and make the required up-front Growers' contributions (see (iii) below));
 - (ii) the requisite majority of Growers voting in favour of the amendment of the constituent documents of the Willmott Schemes to provide for the up-front Growers' contribution;
 - (iii) the amended constituent documents of the Willmott Schemes binding non-consenting Growers in respect of the provision of up-front Growers' contributions; and
 - (iv) the unanimous agreement of Growers in the Willmott Schemes to make their individual up-front Growers' contribution. If a proportion of Growers were to elect not to make their individual up-front Growers' contribution, this would increase the contributions of the remaining Growers in the relevant Willmott Scheme;
- (c) sub-paragraph 26(e), I confirm that WFL will not contribute to ongoing costs of the schemes in respect of which it holds interests in its own right.

32. I refer to paragraphs 95 to 107 below, in which I make reference to a proposal put forward by the Willmott Growers Grower Inc (**WGG**) for the replacement of

the RE for one of the Willmott Schemes (namely, the Willmott Forests 1995 – 1999 Project). Notwithstanding that proposal, I am of the view that the best course available to Growers and other stakeholders of all of the Willmott Schemes is the immediate sale of the assets of the Willmott Schemes on an unencumbered basis. In my opinion, even if a replacement RE or manager was identified for the Willmott Schemes, Growers would be likely to receive a superior return on their investment via a sale of the assets of the Willmott Schemes on an unencumbered basis on the open market as, under an alternate ownership structure, the assets of the Willmott Schemes could have:

- (a) no requirement or obligation to adopt the onerous costs of restructuring;
- (b) the ability to operate from a potentially lower cost base as part of a larger estate;
- (c) a preferable cost of capital (lower cost of debt through reduced risk of default with a single owner);
- (d) no Australian Financial Services Licence compliance costs;
- (e) no Scheme compliance officer wages;
- (f) no Grower management wages and data management system; and
- (g) no ASIC compliance costs.

33. The orders sought will facilitate the marketing and possible sale of the assets of the Willmott Schemes by provisionally indicating that the Liquidators will be able, subject to the Court's further approval, to take the necessary steps to obtain and transfer clean title to the assets of the Willmott Schemes. Enabling the assets of the Willmott Schemes to be marketed on this basis will assist the Liquidators in obtaining expressions of interest for the assets of the Willmott Schemes so that Growers can compare the return they are likely to receive from that sale campaign with any hypothetical return that they might receive from any proposal for the restructure and continuation of the scheme(s) in which they have an interest (if any such proposal exists).
34. In light of the above, the Receivers support the plaintiffs' application (subject to the matters set out in paragraphs 130 to 130 below).




PART C: OVERVIEW OF THE WILLMOTT SCHEMES

35. To facilitate the court making the orders sought by the plaintiffs in relation to each of the Willmott Schemes, I have instructed my lawyers, Allens Arthur Robinson, to undertake a review of the constituent and related documents for each of the Willmott Schemes and to prepare an overview (***Scheme Overview***) of each of the Willmott Schemes based on that review. Now produced and shown to me and marked **BW-2** is a compilation of the Scheme Overviews prepared by Allens Arthur Robinson for each of the Willmott Schemes. I have also instructed Allens Arthur Robinson to set out in the Scheme Overviews, the:
- (a) up-front Growers' contribution required for each of the individual Willmott Schemes; and
 - (b) the estimated gross revenue for each of the individual Willmott Schemes;
- as identified in the Poyry Report.

PART D: REGIONAL ANALYSIS OF WILLMOTT SCHEME PLANTATIONS

36. I refer to paragraphs 18 and 19 of the Crosbie Affidavit, in which Mr Crosbie sets out details of the primary land assets of WFL and the leases of land on which Willmott Schemes are operated.
37. Based on my review of the Poyry Report and my discussions (or my staff's discussions) with Stephen Addicott, WFL's Forestry Business Manager who has 13 years professional forestry experience (6 years with a major forestry consultancy firm with expertise in plantation valuations and 7 years with WFL), I make the following observations about the plantations on the land on which the Willmott Schemes are operated. In this Part D of my affidavit, I have adopted some terms which are defined in the Crosbie Affidavit.

Murray Valley Land (11,866 ha of Radiata Pine) - Planted between 2004 and 2009

38. Radiata Pine plantations relating to the following Willmott Schemes are located on the Murray Valley Land:
- (a) Willmott Forests Project (in respect of the following 'sub-projects' within that scheme):




- (i) 2004 Replacement Prospectus (2004) (918 ha of a total 1,776 ha planted for that sub-project across the Murray Valley and Bombala Regions);
 - (ii) 2004 Product Disclosure Statement (2005) (1,201 ha of a total 3,249 ha planted for that sub-project across the Murray Valley and Bombala Regions);
 - (iii) 2006 Product Disclosure Statement (2006) (2,260 ha of a total 4,758 ha planted for that sub-project across the Murray Valley, HVP and Bombala Regions);
 - (iv) 2007 Product Disclosure Statement (2007) (1,706 ha of 4,420 ha across the Murray Valley, HVP and Bombala Regions);
 - (v) 2007 Product Disclosure Statement (2008) (1,301 ha of 7,914 ha across the Murray Valley, HVP, FNSW and Bombala Regions);
- (b) Willmott Forests - Professional Investor - 2004 Project (in respect of the following 'sub-projects' within that scheme):
- (i) 2004 Information Memorandum (2,415 ha of a total 2,648 ha planted for that sub-project across the Murray Valley and Bombala Regions);
 - (ii) 2004 Information Memorandum (2005) (1,699 ha of a total 2,772 ha planted for that sub-project across the Murray Valley and HVP Regions); and
- (c) Willmott Forests - Professional Investor - 2006 Project (369 ha of a total 551 ha planted for that Willmott Scheme).
39. Plantations for the above Willmott Schemes are approximately 28,087 ha spread across four separate freehold and leasehold regions.

Present Value of Willmott Schemes on Murray Valley Land

40. I note that according to the Poyry Report, based on an 11% discount rate:
- (a) approximately \$37,685,936 of up-front Grower contributions are required to meet the net peak funding requirements of the Willmott Schemes located on the Murray Valley Land;




- (b) clear fell harvest of the Willmott Schemes located on the Murray Valley Land is not estimated to commence until 2030 (at the earliest);
 - (c) notwithstanding the above, Poyry has estimated that the Growers' interests in the trees located on the Murray Valley Land have a net present value of \$22,379,471 (on the assumptions identified in paragraph 26 above).
41. As noted in paragraph 22 above, in my opinion 11% is an insufficient discount rate for the Willmott Schemes located on the Murray Valley Land. Using discount rates of 13% and 15%, Poyry has estimated that the Growers' interests in the trees located on the Murray Valley Land have a net present value of \$6,445,264 and (\$3,588,838) respectively (on the assumptions identified in paragraph 26 above).

Staff

42. The Receivers have incurred (and continue to incur) costs associated with employing staff and maintaining regional offices in the Murray Valley region. However, due to WFL's insolvency, the time elapsed since our appointment and the cost of maintaining staff in the Murray Valley region, the Receivers have had no alternative but to terminate all but one of the WFL staff located in the Murray Valley region.
43. I note that, according to the Poyry Report, it will cost \$426,200 per annum to maintain adequate staffing for the Willmott Schemes in the Murray Valley region. Given its insolvency, WFL is not in a position to incur this liability.

Maintenance and fertilisation

44. There has been no direct maintenance or fertilisation of the plantations located on the Murray Valley Land since the Appointment Date. From my review of WFL's books and records, I am of the opinion that:
- (a) in light of the relatively young age of these plantations (all of which have been planted since 2005) the failure to maintain or fertilise these plantations since the Appointment Date may have an adverse impact on the outcome of the eventual harvest;
 - (b) there is a pressing and urgent need to complete the overdue maintenance and fertilisation of these plantations.




45. Given its insolvency, WFL is not in a position to meet the costs associated with the overdue maintenance and fertilisation of the plantations located on the Murray Valley Land.

Fire risk

46. No material mechanical work (slashing, earthworks, fuel reduction burns) has been done to reduce fuel loading in the plantations on the Murray Valley Land since the Appointment Date. Now produced and shown to me and marked **BW-3** is a bundle of copies of letters sent to the Receivers from local councils expressing concern about the state of weed growth on the Murray Valley Land.
47. I am informed by Mr Addicott and believe that the 2011 fire season for the Murray Valley Land will commence in October 2011 and I am of the opinion that the plantations located on the Murray Valley Land presently carry fuel loads which are at dangerous levels. Now produced and shown to me and marked **BW-4** is bundle of copies of photographs depicting the fuel load present on the Murray Valley Land.
48. I am further informed by Mr Addicott and believe that fuel loads on the Murray Valley Land are expected to increase over the course of August 2011 and September 2011.
49. I also note that since the appointment of Receivers, there has been flooding in the Murray Valley region, which has caused damage to the fire trails on the Murray Valley Land. Now produced and shown to me and marked **BW-5** is a bundle of copies of photographs depicting damage to fire trails on the Murray Valley Land.
50. Given its insolvency, WFL is not in a position to meet the costs associated with necessary fuel load reduction and related fire prevention works, and the repair of fire trails on the Murray Valley Land. Further, WFL is no longer in possession of equipment and vehicles necessary for the performance of fire prevention works and does not have the necessary staff to perform those works.

North Coast Land (2,908 ha of Sheoak and 2,694 ha of Silky Oak) - Planted between 2005 and 2010

51. Sheoak and Southern Silky Oak plantations relating to the following Willmott Schemes are located on the North Coast Land:
- (a) BioForest Wholesale Project No. 2 (96 ha);




- (b) BioForest Dual Income Project 2006 (307 ha);
- (c) BioForest Sustainable Timber and Biofuel Project 2007 (in respect of the following 'sub-projects' within that scheme):
 - (i) BioForest Sustainable Timber and Biofuel Project 2007 (2007) (1,058 ha);
 - (ii) BioForest Sustainable Timber and Biofuel Project 2007 (2008) (3,559 ha); and
- (d) Willmott Forests Premium Forestry Blend Project (584 ha of a total 5,236 ha planted for that scheme across the North Coast, FNSW and HVP Regions).

52. Plantations for the above Willmott Schemes are approximately 10,255 ha spread across three separate freehold and leasehold regions.

Present Value of Schemes on North Coast Land



53. I note that according to the Poyry Report, based on an 11% discount rate:
- (a) approximately \$22,072,012 of up-front Grower contributions are required to meet the net peak funding requirements of the Willmott Schemes located on the North Coast Land;
 - (b) clear fell harvest of the Willmott Schemes located on the North Coast Land is not estimated to commence until 2017 (at the earliest);
 - (c) notwithstanding the above, Poyry has estimated that the Growers' interests in the trees located on the North Coast Land have a net present value of (\$5,337,117) (on the assumptions identified in paragraph 26 above).
54. As noted in paragraph 22 above, in my opinion 11% is an insufficient discount rate for the Willmott Schemes located on the North Coast Land. Using discount rates of 13% and 15%, Poyry has estimated that the Growers' interests in the trees located on the North Coast Land have a net present value of (\$9,298,487) and (\$11,615,240) respectively (on the assumptions identified in paragraph 26 above).




Staff

55. The Receivers have incurred (and continue to incur) costs associated with employing staff and maintaining regional offices on the North Coast Land. However, due to WFL's insolvency, the time elapsed since our appointment and the cost of maintaining staff in the North Coast region, the Receivers have had no alternative but to terminate all but one of the WFL staff located in the North Coast region.
56. I note that, according to the Poyry Report, it will cost \$335,156 per annum to maintain adequate staffing for the Willmott Schemes in the North Coast region. Given its insolvency, WFL is not in a position to incur this liability.

Plantations

57. In the Poyry Report, Poyry states that:
- (a) WFL's Sheoak plantations are unique in Australia, and are financially non-viable; and
 - (b) there is no international market for Southern Silky Oak.
58. I am informed by Mr Addicott that there are currently no commercially grown Silky Oak and Sheoak plantations in Australia other than those being grown by WFL. Domestic and/or international markets would need to be developed for the volume of produce harvested from the WFL estate and given the low volume of Sheoak and Southern Silky Oak plantations located on the North Coast Land, it would not be commercially viable to establish such a market in relation to those plantations.
59. Further, I am informed by Mr Addicott and believe that it is currently not possible to commercially harvest WFL's Sheoak plantations, because the technology required to commercial harvest these plantations does not presently exist and would need to be developed prior to harvest.
60. I am of the opinion that the costs associated with developing the required technology would likely be several hundreds of thousands of dollars and I am unsure how long the required research and development process would take. Given WFL's insolvency, it is not in a position to spend the time or meet the costs of developing the required technology.
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Maintenance of the plantations

61. The plantations located on the North Coast Land are widely dispersed throughout the region, with up to 760 km between separate plantations.
62. One of the Schemes located on North Coast Land (BioForest Wholesale Project No. 2) is located on land leased from a third party lessor. To the best of my knowledge, the lessor is proposing to terminate (or has terminated) the head lease.
63. Since the appointment of Receivers, WFL has retained only one staff member in the North Coast Land region, compared with 6 staff members who were employed in that region prior to the appointment of Receivers.
64. In the period since the Receivers' appointment, there has been significant weed growth in the plantations located on the North Coast Land. In some cases, the height of the weed growth exceeds the height of the trees. Now produced and shown to me and marked **BW-6** is a copy of a recent photograph depicting weed growth on the North Coast Land.

Fire risk

65. No material mechanical work (slashing, earthworks, fuel reduction burns) has been done to reduce fuel loading in the plantations on the North Coast Land since the Appointment Date. Now produced and shown to me and marked **BW-7** is a bundle of copies of letters sent to the Receivers from local councils and fire authorities expressing concern about the state of the plantations on the North Coast Land and noting the fire risk posed to the surrounding communities.
66. I am informed by Mr Addicott and believe that the 2011 fire season for the North Coast Land will commence in August/September 2011 and I am of the opinion that the plantations located on the North Coast Land presently carry fuel loads which are at dangerous levels. Now produced and shown to me and marked **BW-8** is a bundle of copies of photographs depicting the fuel loads present on the North Coast Land.
67. I am further informed by Mr Addicott and believe that fuel loads on the North Coast Land are expected to increase before the commencement of the 2011 fire season.



68. Given its insolvency, WFL is not in a position to meet the costs associated with necessary fuel load reduction and related fire prevention works on the North Coast Land. Further, WFL is no longer in possession of equipment and vehicles necessary for the performance of fire prevention works and does not have the necessary staff to perform those works.

Northern Territory Land (159 ha of African Mahogany) – Planted January 2010

69. 159 Ha of African Mahogany plantations relating to the Willmott Forests Premium Timberland Fund No. 1 are located on the Northern Territory Land. These are the only plantations relating to Willmott Schemes which are located on the Northern Territory Land.
70. Poyry has classified the Willmott Forests Premium Timberland Fund No. 1 (**Timberland Fund**) as non-viable. WFL in its own right holds 91.8% of the interests in the Timberland Fund.

Present Value of Schemes on Northern Territory Land

71. I note that according to the Poyry Report, based on an 11% discount rate:
- (a) approximately \$650,504 of up-front Grower contributions are required to meet the net peak funding requirements of the Timberland Fund;
 - (b) I understand that approximately \$181,000 is held in a separate trust account and relates to the Timberland Fund;
 - (c) clear fell harvest of the Timberland Fund is estimated to commence in 2028 (at the earliest);
 - (d) notwithstanding the above, Poyry has estimated that the Growers' interests in the Timberland Fund have a net present value of \$134,838 (on the assumptions identified in paragraph 26 above).
72. As noted in paragraph 22 above, in my opinion 11% is an insufficient discount rate for the Timberland Fund. Using discount rates of 13% and 15%, Poyry has estimated that the Growers' interests in the Timberland Fund have a net present value of (\$48,485) and (\$173,499) respectively (on the assumptions identified in paragraph 26 above).
73. It is also important to note that WFL in its own right holds 91.8% of the interests in the Timberland Fund. Due to its insolvency, WFL will not be contributing to the required up-front Grower contributions referred to in sub-paragraph 71(a)




above. Accordingly, for the Timberland Fund to continue, the remaining Growers would be required to meet 100% of the up-front Grower contributions in order to receive only 8.2% of the harvest proceeds. This is unlikely to be a commercial investment from those Growers' perspective.

Plantations

74. In the Poyry Report, Poyry states that there is currently no domestic market to process African mahogany in the Northern Territory. Further, I am informed by Mr Addicott and believe that plantation African mahogany is an un-trialled species with no developed markets.
75. WFL does not have any staff in the Northern Territory to maintain the plantation located on the Northern Territory Land. Further, given its insolvency, WFL does not have funds to make any up-front Growers' contribution in respect of its own interests in the Timberland Fund.
76. Now produced and shown to me and marked **BW-9** is a copy of a letter sent by me (in my capacity as joint and several receiver and manager of WFL in its own right) to Mr Crosbie (in his capacity as voluntary administrator of WFL) requesting that WFL (in its capacity as RE of the Timberland Fund) take steps to wind up the Timberland Fund in accordance with section 601NC of the *Corporations Act*.
77. I have not received any formal response to the letter referred to in paragraph 76 above. To the best of my knowledge, information and belief, no steps have been taken to wind up the Timberland Fund.

Sale process

78. I am informed by Mr Addicott and Mr Stephen Hoban (the former manager of the Northern Territory Land) and believe that that now is the optimal time to sell the Northern Territory Land. Now produced and shown to me and marked **BW-10** is a bundle of copies of emails to me from Mr Addicott and Mr Hoban.
79. I have determined that it is in the best interest of WFL's creditors to seek immediate expressions of interest for the Northern Territory Land, in order to enable any purchaser of the Northern Territory Land to:
 - (a) sow a cover crop and realise feed benefits of both sown land and open woodland in the second half of 2011 (in respect of a purchaser who wishes to use the Northern Territory Land for agricultural purposes); or



- (b) sow pasture grasses to reduce weed competition, prepare the land and grow the appropriate number of seedlings for the next planting season in January 2012 (in respect of a purchaser who wishes to use the Northern Territory Land for forestry purposes).
80. The Receivers have sought expressions of interest in relation to the Northern Territory Land. Non-binding indicative bids for the Northern Territory Land are due by 17 June 2011.

Bombala Land (18,842 ha of Radiata Pine) – Planted between 1983 and 2008

81. For the reasons stated in paragraph 12 above, the Bombala Land is under the control of Messrs Carson and Crosbie, as liquidators of WFL.
82. Radiata Pine plantations relating to the following Willmott Schemes are located on the Bombala Land:
- (a) 1983 "No Project" (114 ha);
 - (b) 1984 "No Project" (37 ha);
 - (c) 1985 "No Project" (78 ha);
 - (d) 1986 "No Project" (146 ha);
 - (e) 1987 "No Project" (125 ha);
 - (f) 1989 "No Project" (31 ha);
 - (g) Willmott Forests 1989 - 1991 Project (in respect of the following 'sub-projects' within that scheme):
 - (i) First Prospectus 1989 (1989) (28 ha);
 - (ii) Second Prospectus 1990 (1990) (120 ha);
 - (iii) Second Prospectus 1990 (1991) (12 ha);
 - (iv) Third Prospectus 1991 (1991) (288 ha);
 - (h) 1990 "No Project" - Interest Only Offer (1990) (54 ha);
 - (i) 1991 "No Project" (7 ha);
 - (j) 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (170 ha);

- (k) 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (196 ha);
- (l) 1994 Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (93 ha);
- (m) 1993 McKenzie & Partners - Forestry Partnership No.1 (62 ha);
- (n) 1994 McKenzie & Partners - Forestry Partnership No.2 (39 ha);
- (o) 1995 "No Project" (Custom) (20 ha);
- (p) Willmott Forests 1995 - 1999 Project (in respect of the following 'sub-projects' within that scheme):
 - (i) 1995 Prospectus (1995) (967 ha);
 - (ii) 1995 Prospectus (1996) (3 ha);
 - (iii) 1996 Prospectus (1996) (1,030 ha);
 - (iv) 1997 Prospectus (1997) (1,288 ha);
 - (v) 1998 Prospectus (1998) (1,309 ha);
 - (vi) 1999 Prospectus (1999) (876 ha);
- (q) Sharp/Reed Plantation Project (1998 Information Memorandum) (136 ha);
- (r) 2001 "No Project" (40 ha);
- (s) Willmott Forests - Professional Investor - 2001 Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2001 Information Memorandum (2001) (288 ha);
- (t) Willmott Forests - Professional Investor - 2002 Project (in respect of the following 'sub-project' within that scheme):
 - (i) (2002 Information Memorandum (2002) (266 ha);
- (u) Willmott Forests - Professional Investor - 2003 Project (in respect of the following 'sub-projects' within that scheme):
 - (i) 2003 Information Memorandum (2003) (1,543 ha);
 - (ii) 2003 Information Memorandum (2004) (630 ha);




- (v) Willmott Forests - Professional Investor - 2004 Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2004 Information Memorandum (2004) (233 ha of a total 2,648 ha planted for that sub-project across the Bombala and Murray Valley Regions);
- (w) Willmott Forests Project (in respect of the following 'sub-projects' within that scheme):
 - (i) 2000 Prospectus - 20/10/1999 (2000) (55 ha);
 - (ii) 2000 Prospectus No. 1 (2000) (380 ha);
 - (iii) 2000 Prospectus No. 2 (2000) (220 ha);
 - (iv) 2001 Prospectus (2001) (764 ha);
 - (v) 2002 Prospectus (2002) (101 ha);
 - (vi) 2002 Replacement Prospectus (2002) (669 ha);
 - (vii) 2003 Prospectus (2003) (69 ha);
 - (viii) 2003 Replacement Prospectus (2003) (1,143 ha);
 - (ix) 2003 Replacement Prospectus (2004) (53 ha);
 - (x) 2004 Product Disclosure Statement (2004) (858 ha of a total 1,776 ha planted for that sub-project across the Bombala and Murray Valley Regions);
 - (xi) 2004 Product Disclosure Statement (2005) (2,048 ha of a total 3,249 ha planted for that sub-project across the Bombala and Murray Valley Regions);
 - (xii) 2006 Product Disclosure Statement (2006) (949 ha of a total 4,758 ha planted for that sub-project across the Bombala, HVP and Murray Valley Regions);
 - (xiii) 2007 Product Disclosure Statement (2007) (990 ha of a total 4,420 ha planted for that sub-project across the Bombala, HVP and Murray Valley Regions);



- (xiv) 2007 Product Disclosure Statement (2008) (318 ha of a total 7,914 ha planted for that sub-project across the Bombala, HVP, FNSW and Murray Valley Regions).
- 83. Plantations for the above Willmott Schemes are approximately 38,211 ha spread across four separate freehold and leasehold regions.
- 84. Further, WFL leased 13 properties covering 2,140 ha from Forestry NSW in the Bombala region (the **FNSW Leasehold Land**).
- 85. Radiata Pine plantations relating to the following Willmott Schemes are located on FNSW Leasehold Land in the Bombala region.
 - (a) Willmott Forests Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2007 Product Disclosure Statement (2008) (658 ha of a total 7,914 ha planted for that sub-project across the FNSW, Bombala, HVP and Murray Valley Regions).
 - (b) Willmott Forests Premium Forestry Blend Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2009 Product Disclosure Statement (2009) (1,483 ha of a total 5,236 ha planted for that sub-project across the FNSW, HVP and North Coast Regions);
- 86. Plantations for the above Willmott Schemes are approximately 13,150 ha spread across five separate freehold and leasehold regions.

Present Value of Schemes on Bombala Land

- 87. I note that according to the Poyry Report, based on an 11% discount rate:
 - (a) approximately \$46,059,530 of up-front Grower contributions are required to meet the net peak funding requirements of the Willmott Schemes located on the Bombala Land;
 - (b) harvest of the Willmott Schemes located on the Bombala Land is currently possible although is not estimated to commence on a material scale (in excess of 500 ha per annum) until 2021;
 - (c) notwithstanding the above, Poyry has estimated that the Growers' interests in the trees located on the Bombala Land have a net present

value of \$21,858,818 (on the assumptions identified in paragraph 26 above).

88. As noted in paragraph 22 above, in my opinion 11% is an insufficient discount rate for the trees located on the Bombala Land. Using discount rates of 13% and 15%, Poyry has estimated that the Growers' interests in the Willmott Schemes located on the Bombala Land have a net present value of \$14,064,697 and \$8,612,860 respectively (on the assumptions identified in paragraph 26 above).

Staff

89. From my review of WFL's books and records, I am aware that WFL has only one staff member in the Bombala region.
90. I note that, according to the Poyry Report, it will cost \$666,700 per annum to maintain adequate staffing for the Willmott Schemes in the Bombala region. Given its insolvency, WFL is not in a position to incur this liability.

Maintenance and Fertiliser

91. Now produced and shown to me and marked **BW-11** is a copy of WFL's 2010 Grower Report (the **2010 Grower Report**). From my review of WFL's books and records and the 2010 Grower Report, I am of the opinion that the plantations relating to the Willmott Schemes located on the Bombala Land are in urgent need of maintenance works as those plantations are suffering from siren wood wasp infections and various hail and snow damage events.

Fire risk

92. I am informed by Mr Addicott and believe that the 2011 fire season will commence in October 2011 and that the plantations located on the Bombala Land presently carry fuel loads which are at dangerous levels.

WFL's interest in the Willmott Schemes located on the Bombala Land

93. WFL in its own right holds a material interest in a number of the Willmott Schemes located on the Bombala Land. Now produced and shown to me and marked **BW-12** is a copy of a document setting out WFL's interest in these schemes.




94. Given its insolvency, WFL does not have funds to make any up-front Growers' contribution in respect of its own interests in the Willmott Schemes located on the Bombala Land.

PART E: WILLMOTT FORESTS 1995-1999 PROJECT

95. On 23 December 2010, a Notice of Meeting of Growers (**23 December Notice**) was sent to Growers by WGG for the purpose of calling a meeting of Growers in the Willmott Forests 1995-1999 Project (the **1995-1999 Scheme**) to be held on 4 February 2011. Now produced and shown to me marked **BW-13** is a true copy of the 23 December Notice.
96. On 28 January 2011, I instructed my solicitors, Allens Arthur Robinson (**AAR**), to send a letter to Mr Paul Challis of WGG which outlined the Receivers' concerns regarding the form of the 23 December Notice. Now produced and shown to me marked **BW-14** is a true copy of that letter.
97. I am informed by Clint Hinchin and believe that following correspondence between AAR and Clarendon Lawyers, who act for WGG, the 23 December Notice was withdrawn. Now produced and shown to me marked **BW-15** is a true copy of a letter from Clarendon Lawyers to AAR dated 2 February 2011 which refers to the withdrawal of the 23 December Notice.
98. On 20 May 2011, Grimsey Financial Services Pty Ltd (**Grimsey**) and Redisland Australia Limited (**Redisland**) with the assistance of WGG issued a Notice of Meeting of Growers in the 1995-1999 Scheme (**20 May Notice**). The resolutions to be put at the proposed meeting were:
- (a) an ordinary resolution: *'That, subject to Resolutions 2, 3 and 4 being passed, the Growers approve the WGG Proposal as described in the Explanatory Memorandum, as amended, given to Growers with this Notice of Meeting (**Explanatory Memorandum**).'* (**First Resolution**);
 - (b) a special resolution: *'That, subject to Resolutions 1, 3 and 4 being passed, the Constitution of the Project be amended by PSL, immediately following its appointment as the responsible entity under section 601FJ of the Act, in accordance with the amendments set out in the Explanatory Memorandum, as amended, and any consequential amendments that may be required to give effect tot the WGG Proposal.'* (**Second Resolution**);

- (c) an extraordinary resolution: '*That, subject to Resolutions 1,2, and 4 being passed, WFL be removed as responsible entity of the Project in accordance with section 601 FM of the Act.*' (**Third Resolution**); and
- (d) an extraordinary resolution: '*That, subject to Resolutions 1, 2 and 3 being passed, PSL be appointed as the new responsible entity of the Project in accordance with section 601FM of the Act.*'

Now shown and produced to me marked **BW-16** is a true copy of the 20 May Notice.

- 99. In support of the resolution to restructure the 1995-1999 Scheme, Grimsey and Redisland, with the assistance of WGG, provided members of the Scheme with an Explanatory Memorandum. Now produced and shown to me marked **BW-17** is a true copy of the Explanatory Memorandum.
- 100. On 30 May 2011, I instructed AAR to send a letter to Clarendon Lawyers which summarised the Receivers' response to the 'WGG Proposal' (as described in the 20 May Notice and Explanatory Memorandum). The letter requested that the meeting be adjourned given that serious deficiencies in the information provided to Growers needed to be addressed. Now produced and shown to me marked **BW-18** is a true copy of the letter from AAR to Clarendon Lawyers dated 30 May 2011 (**30 May Letter**).
- 101. I am informed by Mr Hinchin of AAR and believe that on 2 June 2011 AAR received a letter from Clarendon Lawyers in response to the 30 May Letter referred to in paragraph 100 above. Now produced and shown to me and marked **BW-19** is a true copy of that letter. In that letter, Clarendon Lawyers stated that WGG did not '*intend to take steps to adjourn the Meeting*' and foreshadowed that WGG would issue a letter to Growers addressing the Receivers' concerns expressed in the 30 May Letter.
- 102. I am informed by Mr Hinchin of AAR and believe that AAR subsequently received a letter from Clarendon Lawyers on 7 June 2011 in which Clarendon Lawyers stated that WGG would '*support an adjournment of the meeting for approximately 10 days*' to enable Growers to consider additional information in relation to the WGG Proposal. Now produced and shown to me marked **BW-20** is a true copy of that letter.

103. I am informed by Mr Hinchin and believe that on 8 June 2011 Clarendon Lawyers sent AAR a letter which indicated that:

- (a) WGG would issue a letter to Growers advising of WGG's intention to adjourn the meeting; and
- (b) WGG members holding approximately 40% of the votes undertook to attend the meeting and vote in favour of the adjournment.

Now shown and produced to marked **BW-21** is a true copy of the letter sent by Clarendon Lawyers to AAR on 8 June 2011.

104. I am informed by Mr Hinchin and believe that on 10 June 2011 Clarendon Lawyers sent AAR a copy of a letter from WGG addressed to Growers which stated that at *'the meeting of Growers scheduled for 14 June 2011, the WGG intends to move and vote on a resolution to adjourn the meeting until 10am EST on Thursday 23 June 2011'*. Now shown and produced to marked **BW-22** is a true copy of the letter sent by WGG to Growers on 10 June 2011 (the **10 June Letter**).

105. I attended the meeting of Growers in the 1995-1999 Scheme on 14 June 2011. At that meeting, a resolution was passed adjourning the meeting to 10:00 am on 23 June 2011.

106. I am currently considering the contents of the 10 June Letter and the amendments it has made to WGG's proposal in relation to the 1995-1999 Scheme. However, as stated in paragraph 32 above, I am presently of the view that the best course available to Growers in the 1995-1999 Scheme (including WFL) is the immediate sale of the assets of the 1995-1999 Scheme on an unencumbered basis. In my opinion, Growers in the 1995-1999 Scheme would be likely to receive a superior return on their investment via a sale of the assets of the 1995-1999 Scheme on an unencumbered basis on the open market as, under an alternate ownership structure, the assets of the 1995-1999 Scheme could have:

- (a) no requirement or obligation to adopt the onerous costs of restructuring;
- (b) the ability to operate from a potentially lower cost base as part of a larger estate
- (c) a preferable cost of capital (lower cost of debt through reduced risk of default with a single owner)



- (d) no AFS Licence compliance costs
- (e) no Scheme compliance officer wages
- (f) no Grower management wages and data management system, and
- (g) no ASIC compliance costs.

107. Further, as stated in the 30 May Letter and at paragraph 33 above, the orders sought by the Liquidators will assist them in obtaining expressions of interest for the assets of the 1995-1999 Scheme on the open market so that Growers in the 1995-1999 Scheme (including WFL) can compare the return they are likely to receive from that sale campaign with any hypothetical return that they might receive WGG's proposal for the restructure of the 1995-1999 Scheme.

PART E: HVP LAND

108. Pine plantations relating to the following Willmott Schemes are located on land leased by WFL from HVP (**HVP Land**):

- (a) Willmott Forests Project (in respect of the following 'sub-projects' within that scheme):
 - (i) 2006 Product Disclosure Statement (2006) (1,550 ha of a total 4,758 ha planted for that sub-project across the HVP, Bombala and Murray Valley Regions);
 - (ii) 2007 Product Disclosure Statement (2007) (1,725 ha of a total 4,420 ha planted for that sub-project across the HVP, Bombala and Murray Valley Regions);
 - (iii) 2007 Product Disclosure Statement (2008) (5,638 ha of a total 7,914 ha planted for that sub-project across the HVP, FNSW, Bombala and Murray Valley Regions);
- (b) Willmott Forests - Professional Investor - 2004 Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2004 Information Memorandum (2005) (1,074 ha of a total 2,772 ha planted for that sub-project across the HVP and Murray Valley Regions); and




- (c) Willmott Forests - Professional Investor - 2006 Project (182 ha of a total 551 ha planted for that scheme across the HVP and Murray Valley Regions).
 - (d) Willmott Forests Premium Forestry Blend Project (in respect of the following 'sub-project' within that scheme):
 - (i) 2009 Product Disclosure Statement (2009) (3,107 ha of a total 5,236 ha planted for that sub-project across the HVP, FNSW and North Coast Regions);
109. The plantations located on the HVP Land comprise 13,338 ha and are of a similar age to the plantations located on the Murray Valley Land. Maintenance and fertilisation of the plantations on the HVP Land has been conducted by HVP following the appointment of Receivers pursuant to commercial agreements negotiated between WFL and HVP prior to the appointment of the Receivers. The costs of the maintenance and fertilisation of the plantations on the HVP Land has been met by HVP, in order to avoid significant damage to the plantations. The Receivers have not adopted the commercial agreements between WFL and HVP.
110. I refer to paragraphs 68 to 81 of the Crosbie Affidavit which concern negotiations between Messrs Crosbie and Carson on the one hand, and HVP on the other, relating to HVP's offer to acquire the plantations located on the land leased by WFL from HVP, together with a termination or surrender of all leases, sub-leases, licences, sub-licences and sub-sub-licences in respect of that land (**HVP Negotiations**).
111. As stated above, the Receivers' appointment extends to WFL's rights and interests under any leases, sub-leases, licences and sub-licences of land, including any such rights and interests in respect of the land leased from HVP (**HVP Leases**). On that basis:
- (a) it will be necessary for the Receivers to agree to the terms of any proposed surrender of the HVP Leases; and
 - (b) the Receivers (and their appointors) have a significant commercial interest in the terms of any such proposed surrender.
112. The Receivers are not parties to the Implementation Deed described in paragraph 79 of the Crosbie Affidavit. I have been provided with a copy of the




Implementation Deed and note that it is a condition precedent to that Deed that releases be obtained from the Receivers (and their appointors) in respect of the HVP Leases.

113. Now produced and shown to me and marked:
- (a) **BW-23** is a copy of a letter dated 23 March 2011 from AAR to Mallesons Stephen Jacques; and
 - (b) **BW-24** is a copy of a letter dated 11 April 2011 from me to Mr Crosbie; in which the Receivers' position in relation to the HVP Negotiations is set out. In summary, the Receivers will not agree to provide a surrender of the HVP Leases in the absence of an acceptable payment to the Receivers in consideration for such surrender.
114. The Receivers do not accept the terms of the Implementation Deed agreed between Messrs Carson and Crosbie and HVP, nor do they accept that Messrs Carson and Crosbie had the power to execute the Implementation Deed on behalf of WFL acting in its personal capacity (as described above, the rights and assets held by WFL in its personal capacity remain within the scope of the Receivers' appointment). As a result, the Receivers are not prepared at this time to provide any of the releases or consents contemplated by the terms of the Implementation Deed.
115. I have requested that Messrs Carson and Crosbie, and HVP, include the Receivers in negotiations concerning the possible surrender of the HVP Leases. As at the date of making this affidavit, the negotiations between the Receivers, HVP and Messrs Carson and Crosbie are continuing.

PART F: SALE PROCESS FOR TALLANGATTA LAND

116. WFL's earliest plantations were established in 1980 and 1981 on a property known as 'Tallangatta', which forms part of the Murray Valley Land. The registered proprietor of the land is Cravensville Estate Pty Ltd (ACN 007 179 142) (**Cravensville**), a company unrelated to WFL.
117. Plantations relating to the following Willmott Schemes are located on the Tallangatta land:
- (a) 1980 Taylor Singer No 1 Partnership;
 - (b) 1980 Taylor Singer No 5 Partnership;




- (c) 1981 Taylor Singer No 2 Partnership;
- (d) 1981 Taylor Singer No 3 Partnership;
- (e) 1981 Taylor Singer No 6 Partnership;
- (f) 1980 "No Project"; and
- (g) 1981 "No Project",

collectively, the **Tallangatta Schemes**.

118. For convenience, I refer to the each of the schemes described in paragraph 117(a) - 117(e) above as the **Taylor Singer Schemes** and each of the schemes described in paragraph 117(f) - 117(g) above as the **Tallangatta No Project Schemes**.
119. As noted in paragraphs 10 and 13 above, the Receivers remain in control of the RE/Manager Function for the Tallangatta Schemes.
120. From my review of the books and records of WFL, I am aware that WFL holds in its own right a number of interests in the Tallangatta Schemes.
121. WFL's 2010 Growers Report states that WFL have historically sought to realise the assets of the Tallangatta Schemes (**Tallangatta Assets**) although *'[t]he harvesting of this plantation remains a challenge'* and *'due to a number of factors including the remote geographic location, limited access and relatively small size of the parcel of wood'* WFL have not been successful in realising the assets of the Tallangatta Schemes.
122. On 18 February 2011, I caused letters to be sent to each of the members in the Tallangatta Schemes informing them, among other things, of the appointment of the Receivers to WFL and the Receivers' intention to conduct an expressions of interest campaign for the Tallangatta Assets. Now produced and shown to me and marked **BW-25** is a copy of a letter dated 18 February 2011 addressed to Dr Frank Johnson, which is an example of the letters that were sent each of the members of the Tallangatta Schemes.
123. None of the members of the Tallangatta Schemes raised any objections to the immediate realisation of the Tallangatta Assets.
124. As a result, the Receivers prepared an Information Memorandum for distribution to 28 interested parties that were identified following consultation with the WFL forestry management team and advertisements were placed in local




publications. Now produced and shown to me and marked **BW-26** is a copy of the Information Memorandum dated 28 February 2011. Further, to facilitate the realisation of the Assets, Cravensville sought indicative offers for the sale of the Tallangatta land.

125. Of the 28 interested parties, nine submitted indicative offers. The Receivers assessed which of those indicative offers were in an acceptable bid range and five further offers were submitted.
126. Following receipt of those further offers, the Receivers negotiated with a select number of bidders and have secured a sale of the Tallangatta Assets for a net return to members of the Tallangatta Schemes of approximately \$400,000. Cravensville has also secured a sale of the Tallangatta Land.
127. The Receivers have executed the following agreements to give effect to the sale of the Tallangatta Assets:
 - (a) a Sale and Purchase Agreement;
 - (b) an Interdependence Deed, which provides that the sale of the Tallangatta Assets and the sale of the Tallangatta Land are interdependent.

The Receivers have not yet received the purchaser's signed counterparts of those documents, but expect to receive them imminently.

128. The Sale and Purchase Agreement provides that the sale of the Tallangatta Assets is conditional upon, among other things:
 - (a) each of the members of the Tallangatta No Project Schemes executing a deed to:
 - (i) authorise WFL to sell the assets the subject of the scheme on their behalf and to enter into a sale and purchase agreement for that purpose;
 - (ii) set out the terms on which WFL may bind the members to the sale and purchase agreement; and
 - (iii) authorise WFL to execute a surrender of any leases (or to otherwise relinquish any tenancy rights subsisting in the land on which the scheme is conducted) and any other documents, considered reasonably necessary by WFL, for the purpose of




providing WFL with the authority to enter into the sale and purchase agreement on behalf of each member of the scheme, and perform the transactions contemplated by the sale and purchase agreement; and

- (b) the members of each of the Taylor Singer Schemes holding a majority of interests in that scheme agreeing to amend the partnership agreement to that scheme to:
 - (i) authorise WFL to sell the assets the subject of the scheme on their behalf and to enter into a sale and purchase agreement for that purpose;
 - (ii) set out the terms on which WFL may bind the members to the sale and purchase agreement; and
 - (iii) authorise WFL or oblige Acuity Nominees Pty Ltd (ACN 005 317 993) in its capacity as custodian of the Taylor Singer Schemes (as applicable) to execute a surrender of any leases (or to otherwise relinquish any tenancy rights subsisting in the land on which the scheme is conducted) and any other documents, considered reasonably necessary by WFL, for the purpose of providing WFL with the authority to enter into the sale and purchase agreement on behalf of each member of the scheme, and perform the transactions contemplated by the sale and purchase agreement.

129. The Receivers are currently communicating with members of the Tallangatta Schemes with a view to obtaining the agreement from the requisite number of members described in paragraph 128 above. To date all bar one of the members of the Tallangatta No Project Schemes have executed the relevant deed. In addition, members of each of the Taylor Singer Schemes holding a majority of interests in that scheme have agreed to amend the partnership agreement.

PART H: ORDERS

130. As noted above, the Receivers are broadly supportive of the relief sought by the plaintiffs pursuant to this application. The Receivers propose, however, that the form of orders which the Court should make in determining this application



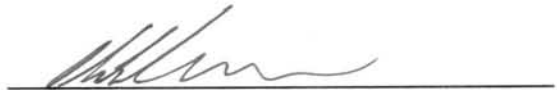

should be different to the form of orders proposed by the plaintiffs. Specifically, the Receivers are of the view that the Court should make the directions sought by the plaintiffs on the basis that Growers will be entitled to the net proceeds of the sale of *the Trees*.

131. The constituent documents for the Willmott Schemes (as summarised in the exhibit BW-2 to this affidavit) generally provide that Growers' interest in the relevant scheme comprises their interest in an area described as a 'Hectare' or 'Woodlot' which is leased to the Growers and managed by Willmott entities. The constituent documents also generally provide that Growers either legally or beneficially own the trees located on their 'Hectares' or 'Woodlots'.
132. Given the terms of the scheme documents, as well as the present circumstances of the Willmott Schemes, including but not limited to:
 - (a) WFL's insolvency;
 - (b) the absence of a proposed replacement RE for the Willmott Schemes (other than the 1995-1999 Scheme);
 - (c) the lack of clear delineation of Growers' 'Hectares' or 'Woodlots' (as described in paragraphs 30 to 33 of the Crosbie Affidavit);
 - (d) the inability of individual Growers to maintain and/or harvest their own 'Hectares' or 'Woodlots' (as described in paragraphs 34 to 36 of the Crosbie Affidavit);
 - (e) the likely inability of individual Growers to insure their own 'Hectares' or 'Woodlots' (as described in paragraphs 37 to 40 of the Crosbie Affidavit); and
 - (f) the fact that the Liquidators of WFL consider that the Growers' leases are therefore frustrated or onerous and capable of being disclaimed;

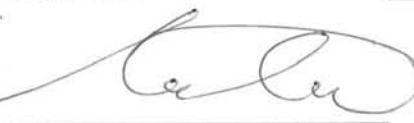
the Receivers consider that the Growers' interest in (or with respect to) the Trees located on their 'Hectares' or 'Woodlots' are the Growers' only asset, or only asset of (potential) commercial value, which might be sold as part of the proposed sale process.
133. Accordingly, the Receivers are of the view that the orders made by this Honourable Court ought to refer specifically to the Trees, as summarised in paragraph 130 above. The Receivers consider that such orders would provide greater precision in relation to the extent of Growers' entitlement to the net

proceeds of sale of the assets of the Willmott Schemes. Now produced and shown to me and marked **BW-27** is a copy of the form of orders proposed by the Receivers, and a further copy marked-up to show amendments to the form of orders proposed by the plaintiffs.

AFFIRMED by BRYAN WEBSTER at
Melbourne in the State of Victoria this
17th day of June 2011



Before me



MATTHEW CRESDEE WHITTLE
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No 386 of 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

First Plaintiff

CRAIG DAVID CROSBIE

Second Plaintiff

IAN MENZIES CARSON

Third Plaintiff

AFFIDAVIT – CERTIFICATE OF COMPLIANCE
(Order 14 rule 5A)

I, MATTHEW CRESDEE WHITTLE, certify to the Court that the affidavit of BRYAN WEBSTER affirmed on 17 June 2011 and filed on behalf of the Receivers complies with Order 14 rule 2 of the Federal Court Rules.

Dated 17 June 2011



Matthew Cresdee Whittle
Allens Arthur Robinson
Solicitor for the Receivers

Filed on behalf of: the Receivers

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