

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

CORPORATIONS LIST
S CI 2011 6816

**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

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

COMMERCIAL LIST
S CI 2011 6762

**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

AFFIDAVIT OF CRAIG DAVID CROSBIE

Date of document: 21 February 2012
Filed on behalf of: The Plaintiffs

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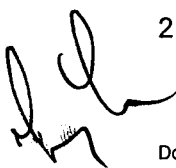
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(Kimberley MacKay - kmackay@abl.com.au)

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

1 I am the second plaintiff in this proceeding. Ian Carson and I are the liquidators of 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 the "Liquidators", "we", "us", "our" or "ourselves" is a reference to Mr Carson and me.

3 I have previously sworn affidavits in proceeding number 6816 of 2011 (**Main Sale Proceeding**) on 13 December 2011 (**Seventh Affidavit**), 18 January 2012 (**Eighth Affidavit**) and 15 February 2012 (**Tenth Affidavit**) and in proceeding number 6762 of 2011 (**HVP Proceeding**) on 13 December 2011 (**Sixth Affidavit**) and 23 January 2012 (**Ninth Affidavit**). I have defined a number of terms in the Sixth, Seventh Affidavit, Eighth Affidavit, Ninth Affidavit and Tenth Affidavit and I adopt those definitions in this affidavit.

Report of Hamish Blair

4 I have been provided with a copy of the report prepared by Hamish Blair dated 16 February 2012 and filed by the WAG in these proceedings (**Blair Report**).

5 The Blair Report refers to and critiques:

- (a) The Poyry Viability Report;
- (b) The Poyry Valuation Report; and
- (c) The M3 Report.

6 I have read the Blair Report and provide my comments below.

7 I also provided a copy of the Blair Report to Poyry and M3 for comment. Now produced and shown to me and marked "CDC-53" and "CDC-54" are copies of the comments received from Poyry and M3 respectively.

Poyry Viability Report

8 As set out in paragraphs 38-45 of my First Affidavit (which is exhibited as CDC-1 to my Seventh Affidavit), the Poyry Viability Report was commissioned in order to assess the solvency and viability of each of the Willmott Schemes and consider whether the schemes are viable in the long term based on additional voluntary Grower contributions.

9 Paragraph 38 of the Blair Report states that:

"the Growers themselves are not insolvent, and that if the RE can be changed, the Growers are willing and able to contribute the necessary funds to cover these operating expenses if there is an incentive to do so".

10 Paragraph 39 of the Blair Report then states:



“there is the possibility of asking the Growers whether they would be willing and able to continue to hold their investments by contributing to the upkeep of the schemes, thereby preserving their investment (as per the grower vote arranged by the Willmott Growers Group)”.

11 As set out in paragraph 49 of my Seventh Affidavit, the Poyry Viability Report concluded that, for the Willmott Schemes to be viable, further funding of \$336.7 million in absolute terms (\$123 million net present value) would be required. Removing the Contractual and Partnership Schemes and the 95-99 Scheme, further funding of \$312.7 million in absolute terms (\$111 million net present value) would be required for the Registered and Professional Investor Schemes to be viable.

12 Further, as set out in paragraph 73 of my Seventh Affidavit, we have not been able to identify any party willing to take over the role of responsible entity of the Willmott Schemes the subject of this application. Without a responsible entity, the Willmott Schemes cannot continue.

13 As set out in paragraphs 26 to 37 of my Eighth Affidavit, the responsible entity of the 95-99 Scheme was changed following the WGG calling a meeting and proposing WFL's replacement. The WGG had identified Primary Securities who agreed to take over the role of responsible entity of the 95-99 Scheme. The ability of Growers to take a similar course in relation to the other Willmott Schemes remains available.

14 On or about 8 February 2012, I was provided with copies of notices of meetings called by the WGG in relation to a number of the Partnership Schemes in which the WGG proposes the appointment of a new Forestry Manager (**Partnership Meetings**).

15 I also refer to paragraphs 30 to 34 of the affidavit of Mark Hoddinott affirmed 23 January 2012 and filed by the WAG in these proceedings in which Mr Hoddinott refers to a number of meetings recently called by the WAG (**WAG Meetings**). I note that the matters for discussion at the meetings are:

- (a) to review and discuss the HVP and GFP Transactions contemplated by these proceedings;
- (b) to review and discuss alternative proposals;
- (c) to ascertain a consensus as to what is in the best interests of Growers; and
- (d) once the above is determined, to call a further meeting to formally endorse what Growers consider is the option in their best interests.



- 16 According to this agenda, the WAG Meetings will not result in the replacement of WFL as Responsible Entity of the relevant Willmott Schemes nor the necessary amendments to the scheme documents to allow the schemes to continue. This would need to be the subject of further meetings.
- 17 Other than the meetings relating to the 95-99 Scheme, the Partnership Meetings and WAG Meetings, I am not aware of any other meetings being called by Growers to consider the replacement of WFL as responsible entity or the continued operation of the Willmott Schemes in the 16 months since the Willmott Group was placed in administration.
- 18 At paragraph 48 of the Blair Report, Mr Blair states that he has been advised by WAG that, based on research it had conducted on its members, over 90% of Growers responding to the WAG survey indicated that they would be willing and able to fund the additional costs required to continue operation of the Willmott Schemes.
- 19 At paragraph 48 of my Eighth Affidavit, I refer to the WAG's Grower Statement of Wishes and exhibit at CDC-43 an analysis prepared by my team in relation to that survey. As can be seen from CDC-43 to that affidavit, the total number of responses received from WAG represents 13.81% of all Grower interests (being 7,703.9 ha held by WAG respondees divided by 55,777.7 ha held in all Willmott Schemes).
- 20 The Blair Report does not consider the effect of only a proportion of Growers electing to continue operating a Willmott Scheme and/or to contribute additional funds. The remaining Growers would need to increase their contributions on a pro rata basis. It is also not clear how the interests of Growers unable or unwilling to contribute the additional funds are to be treated and the Growers compensated for any loss of that interest.

Poyry Valuation Report

- 21 As set out in paragraphs 129-130 of my Seventh Affidavit, the Poyry Valuation Report was commissioned to value the trees for the purpose of assessing the reasonableness of any offers received in the Sale Campaign.
- 22 At paragraphs 22, 63 and 65 of the Blair Report, Mr Blair states that he considers land rental should be excluded from the operating expenses in the Valuation Report as these costs have already been paid by the Growers. This is incorrect. Whilst any rental due by Growers was generally fully paid in advance in the Contractual and Partnership Schemes, the rent for the Registered Schemes and Professional Investor Schemes was payable:

- (a) quarterly (Willmott Forests Project, 2000 Prospectus);



- (b) annually (1989-1991 Project, Bioforest Wholesale Project No 2 and Bioforest Dual Income Project 2006); or
- (c) on harvesting (for all other Registered Schemes and Professional Investor Schemes).

23 In the 1989-1991 Project (1991 Prospectus), Growers had the option to prepay all rent in advance.

24 Now produced and shown to marked "CDC-55" is a summary of the key terms of the Willmott Schemes.

25 The conclusions set out in paragraph 69 of the Blair Report are therefore incorrect.

M3 Report

26 As set out in paragraphs 129-130 of my Seventh Affidavit, the M3 Report was commissioned to value the land for the purpose of assessing the reasonableness of any offers received in the Sale Campaign.

27 In the affidavit sworn by Mr Craig Allsop on 25 January 2012 and filed by the WAG, Mr Allsop exhibits at CRA-1 a letter from Mr Blair which states:

"please note that we are not qualified property valuers, so if necessary we can discuss with you retaining the services of an [sic] expert property valuers."

28 At paragraph 99, Mr Blair considers that potential rental income should be excluded in valuing the land on the basis that the Growers have prepaid the rent. As set out in paragraph 22 above, this is incorrect. The rent for the Registered Schemes and Professional Investor Schemes was payable quarterly, annually or on harvesting.

29 Paragraph 102 of the Blair Report states:

"We are advised that the Liquidators via their legal representative advised the Supreme Court of Victoria that no offer was made for the land on an encumbered basis. This suggests to me that since no one wants to buy the land on an encumbered basis, the majority of the value should relate to the trees."

30 It is not clear to me how such a conclusion could be reached. In my opinion, the absence of interest in purchasing the assets encumbered by the Willmott Schemes reflects a lack of interest and/or value in the Willmott Schemes as opposed to any illustration of the value of either the land or the trees.

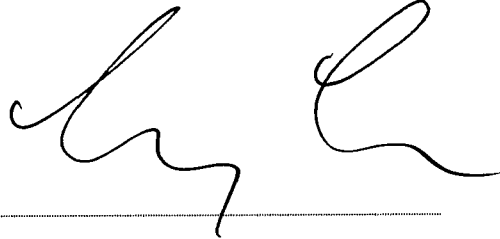
Further Comments

- 31 At paragraph 106 of the Blair Report, Mr Blair states that he has been instructed that the Liquidators have determined that since WFL is insolvent, the MIS Schemes are also insolvent. This is not correct and I do not recall ever making such statement. The cash flow issues arising from the insolvency of WFL do, however, affect the viability of the Willmott Schemes.
- 32 Paragraph 106 of the Blair Report further states:
- "the Growers themselves are not insolvent, and I am advised that they are willing and able to contribute the funds necessary to continue operating the Schemes. This will require a vote being put to the Growers to enable them to change the RE from the Liquidator to another entity."*
- 33 As set out in paragraph 19 above, the WAG interest represents 13.81% of all Grower Interests. Mr Blair does not consider the increase in contributions that would be required if 100% of Growers were not willing or able to contribute the additional funds. For example, WFL holds interests in many of the Willmott Schemes in its personal capacity. Given WFL is insolvent, it would obviously not be in a position to make any additional contributions.
- 34 In addition to requiring a vote being put to Growers to enable them to change the RE, the constitutions of the Registered Schemes and the investment deeds of the Professional Investor Schemes would also need to be amended to change the schemes from being non-contributory to contributory.
- 35 The conclusion at paragraph 109 of the Blair Report is incorrect given the rent was, in most cases, not prepaid.
- 36 For the foregoing reasons, I am satisfied that apportioning the sale proceeds by having regard to the reports of Poyry and M3 and the matters set out in my Seventh Affidavit is a reasonable approach.

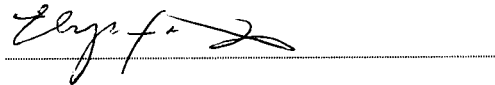


37 The sensitivity analysis at paragraphs 110 to 121 of the Blair Report would also appear to be incorrect given the rent was generally not prepaid.

SWORN at Melbourne in the State of Victoria)
by **CRAIG DAVID CROSBIE** this 21st day of)
February 2012)



Before me:



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An Australian Legal Practitioner within the
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