

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 PERSONAL CAPACITY AND IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF EACH OF THE MANAGED INVESTMENT SCHEMES LISTED IN
SCHEDULE 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED
INVESTMENT SCHEMES LISTED IN SCHEDULES 3 AND 4 AND ORS ACCORDING TO
SCHEDULE 1**

Plaintiffs

AFFIDAVIT OF MARK JAMES HODDINOTT

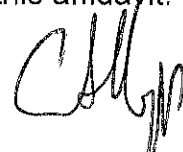
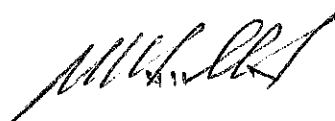
Date of documents: 23 January 2012
Filed on behalf of: WILLMOTT ACTION GROUP INC (Reg No A0055149L) seeking leave
under Order 2.13 Supreme Court (Corporations) Rules 2003

Prepared by: Lloyd and Lloyd Solicitors
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On 23 January 2012, I, Mark James Hoddinott of 517 Old Maitland Road, Mardi
NSW, financial planner, accountant and tax agent, **affirm and say** that:

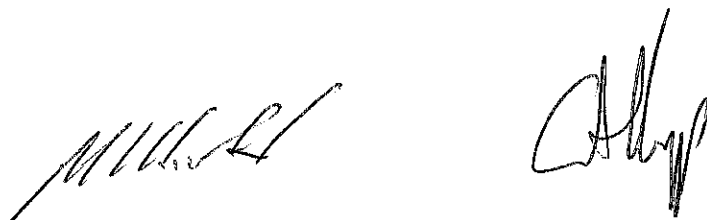
1. I am a member and Chair of the Executive Committee of the
WILLMOTT ACTION GROUP INC (Reg No A0055149L) (**WAG**) and am
authorised to make this affidavit on WAG's behalf.
2. I make this affidavit from my own knowledge, except where otherwise stated,
and after having made all due and proper enquiries. Where I depose to
matters on the basis of information or belief, I believe those matters to be true.
3. I refer to my affidavits affirmed in this proceeding on 9 January 2012 (**First
Affidavit**) and First Affidavit and I adopt those definitions in this affidavit.



4. I am personally a member of some of the Schemes. I refer to paragraphs 14 to 22 of my First Affidavit, which set out the details of my personal investments in the Schemes.

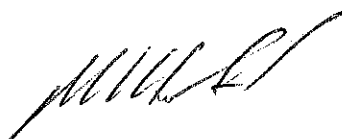
Grower Loans

5. I refer to exhibit "CDC-5" to the affidavit of Craig Crosbie dated 13 December 2011 (**Exhibit CDC-5**), which contains the constituent documents for the Willmott Schemes, including loan application forms and loan agreements. Now produced and shown to me and marked "**MJH-30**" are printouts of sample loan application forms and sample loan agreements relating to both Professional and Retail Schemes.
6. I am aware that Growers in the Retail and Professional Schemes entered into loan agreements on the same or similar terms to loan agreements included in exhibit "MJH-30" to fund the acquisition of their interests in the Willmott Schemes (**Grower Loans**). To the best of my knowledge, WFL organised and secured financiers in respect of all Grower Loans.
7. I do not know the current outstanding balance owing on the Grower Loans. In its 2009 annual report, WFL reported term receivables at \$94.8 million. To the best of my knowledge, these term receivables represented Grower Loans owing to WFL as at the end of the 2009 financial year. In addition, in its 2007 annual report year WFL reported that it had sold \$90.4 million of its Grower Loan book to MIS Funding No. 1 Pty Ltd (a subsidiary of Commonwealth Bank Australia). I am also aware that MIS Funding No.1 Pty Ltd issued further Grower Loans in 207, 2008, 2009 and 2010, although I am not aware of the value of the Grower Loans issued. My understanding is that the largest investment in the Schemes occurred in 2007 and 2008. Now produced and shown to me and marked "**MJH-31**" is a printout of pages 27 and 54 of the WFL Annual Report for the financial year ended 30 June 2009 and page 6 of the WFL Annual Report for the financial year ended 30 June 2007.



8. WAG has received legal advice concerning the effect of orders being made as sought by the Plaintiffs in respect of Grower Loans. WAG claims legal professional privilege over this advice. As a result of receiving this advice, WAG and the Growers hold grave fears that the orders sought by the Plaintiffs, if made, will trigger a demand for immediate repayment of all outstanding Grower Loans from their financiers.
9. This will have the practical consequence that millions of dollars owing on Grower Loans will be demanded within days of orders being made, which would otherwise not be repayable under their terms.
10. For instance, the information memorandum in respect of the Willmott Forests – Professional Investor – 2001 Project indicates that investment in the scheme may be made by cash or through finance (together with payment of a deposit) through Willmott Finance Pty Ltd on a 10 year interest only facility at 8.75% per annum converting to a five-year principal and interest facility at 8.75% per annum at the end of year 10 of the loan. The document also provides the process of executing a forestry management agreement and lease agreement.
11. The investment deeds in respect of each of the relevant schemes requires growers to execute a forestry management agreement and lease / sub-lease / pre- lease agreement in the form specified by the manager at the time in order to participate in the scheme. The deeds also each provide that WFL may retire as manager of the schemes either voluntarily or by compulsion of law.
12. The loan agreements in respect of the 2001, 2002 and 2003 projects are, in essence, in the same form. Whilst the loan agreements in respect of the 2004 and 2005 projects are in slightly different form, the relevant provisions are to the same effect. Each of the loan agreements provides that the purpose of the loan is as follows (or to similar effect):

“the loan is made for the purpose of carrying on the business of primary production, as a member of the Partnership (particularly forestry operations) and is to be applied in investing in Hectares.”



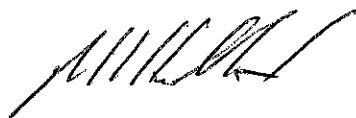
13. Each of the loan agreements also contains provisions defining an event of "default" by the Grower and entitles the lender to immediately seek repayment of the whole of loan in the event of a default upon notice to the Grower.
14. Relevantly, clause 7 of the 2001, 2002 and 2003 loan agreements provides that the Grower is in default if, inter alia, "the Agreements are terminated or any party to them threatens to do so". "Agreements" are defined as the forestry management agreement and the lease agreement. Clause 5(c) of the 2004 project loan agreement (provided to me but which refers to a "partnership") provides that the Grower is in default if "there is a default under any of the Agreements or if any of the Agreements are terminated or any party to them, other than Wilmott Forests Limited, threatens to do so". Clause of the 6(a) of the 2006 loan agreement similarly provides that the Grower is in default if there is "default under any Relevant Agreements or if any of the Relevant Agreements are terminated or threatened to be terminated by any party or repudiated by me [the Grower]". ("Relevant Agreements" are defined as the forestry management agreement and lease or sub-lease or pre-lease agreements.)
15. Under the terms of each of the loan agreements:
- (a) the Grower will be in default if, inter alia, the forestry management agreement and the lease are terminated; and
 - (b) in the event of a default, the lender may immediately seek repayment of the whole of the loan upon notice to the Grower.
16. Thus, if the liquidators are successful in obtaining the approval of the Court to terminate the project documents, and they subsequently do so, the lender is entitled under the terms of the loan agreement to immediately demand repayment of the loans.
17. Prior to receiving the legal advice referred to above, neither I nor WAG appreciated that the orders sought by the Plaintiff would have the potential consequences for Grower Loans as set out above.



18. I am deeply concerned that, as far as I am aware, neither the Liquidators nor the Receivers have ever made disclosure to the court about the consequences for Grower Loans if the orders sought by the Plaintiffs are made. The court orders are not in the best interests of the growers at all.
19. WAG's proposals to replace the responsible entity and manager of the Willmott Schemes are intended to obviate any potential breaches of the Grower Loans, as leasing and sub-leasing arrangements will subsist, and will be assigned to the replacement responsible entity and manager.

Replacement responsible entity and manager

20. I refer to paragraph 44 of the affidavit of Craig Crosbie dated 18 January 2012, and to exhibit "CDC-42" to that affidavit, which is an affidavit of Marie Bermingham dated 22 June 2011 and filed in Federal Court proceeding VID 386 of 2011 (**Bermingham Affidavit**).
21. I refer to paragraphs 50 to 53 of the Bermingham Affidavit, regarding enquiries undertaken by WAG to replace the responsible entity and manager of the Schemes.
22. In addition to the proposals referred to in the Bermingham affidavit, WAG also in discussion with Primary regarding the appointment of a replacement responsible entity and manager for the Schemes.
23. At a duly convened meeting of WAG on the 10th June 2011 at the offices of Lloyd & Lloyd Solicitors, Primary Securities were endorsed as the preferred Responsible Entity for the Willmott Schemes.
24. In August 2011, WAG received a draft proposal from Primary to become the responsible entity and manager of the Schemes. In August 2011 WAG also retained Primary to conduct a due diligence on the Schemes.
25. As referred to in paragraphs 11 to 54 of the affidavit of Mark Bland dated 15 December 2011 (**Bland Affidavit**), I and WAG were aware that the Willmott

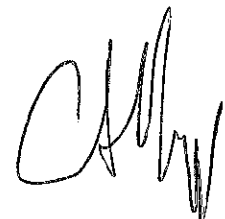
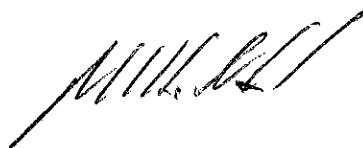


Growers Group Inc (Reg No A0055077L) (**WGG**) were seeking to replace WFL of the responsible entity of the Willmott Forests 1995-1999 Project ARSN 089 598 612 (**1995-1999 Project**). WGG's proposed replacement responsible entity was Primary.

26. I refer to paragraphs 47, 48 and 55 of the affidavit of Dan Mackay dated 20 January 2012 (**Mackay Affidavit**), regarding the WGG proposals for the WGG unregistered schemes. I have read those paragraphs and adopt them in this affidavit.
27. I was also aware that the Receivers and Liquidators of WFL opposed the WGG proposal, as set out in the Bland Affidavit and Mackay Affidavit. To the best of my knowledge, the WGG proposal was only approved by members of the 1995-1999 Project on 21 December 2011.
28. WAG's negotiations with Primary were very tentative in the period from August 2011 to 21 December 2011, as WAG was aware of the resistance that WGG and Primary were facing from the Liquidators and Receivers of WGG. Since the WGG proposal was approved on 21 December 2011, WAG has been able to again progress negotiations with Primary, as WGG have demonstrated that alternatives to the Liquidators' approach to the Schemes can be successfully put to members of Schemes and approved.

Negotiations with potential replacement manager for unregistered schemes

29. I refer to paragraphs 11 to 14 of my Second Affidavit, regarding the WAG Professional Investor Proposal. Since my Second Affidavit, this proposal has been progressed further with Primary. Now produced and shown to me and marked "**MJH-32**" is the current draft of the WAG Professional Investor Proposal. This draft has not yet been agreed to by Primary and WAG, and is subject to the ongoing negotiations between Primary and WAG.

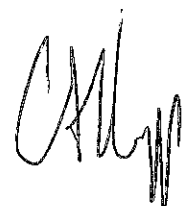
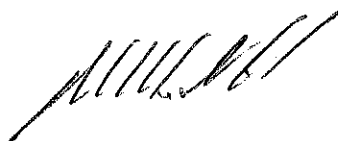


Meetings of members of Professional Schemes

30. I refer to paragraph 25 of my Second Affidavit regarding, regarding WAG facilitating the calling the meetings of members of the Professional Schemes.
31. I refer to Exhibit CDC-5, which contains investment deeds for each of the Professional Schemes. As far as I am aware, the investment deeds for the Professional Schemes do not provide for the calling of meetings of members of the relevant Professional Scheme by members.
32. WAG is seeking further legal advice regarding the process that will need to be undertaken to call meetings of members of the Professional Schemes. As an interim step, WAG is in the process of sending a letter to be sent to members of the Professional Schemes setting out details of the WAG Professional Investor Proposal and seeking support for the proposal. Now produced and shown to me and marked "MJH-33" is a copy of the draft of the letter to be sent.

Meetings of members of Retail Schemes

33. I refer to paragraphs 26 and 27 of my Second Affidavit, regarding the calling of informal meetings of the members of the Retail Schemes. Now produced and shown to me and marked "MJH-34" is a copy of a notice of meeting that was sent to members of the Retail schemes by email or mail on 18 January 2012.
34. I am not aware of whether the purchaser would be prepared to proceed in a fashion similar to its approach to the WGG proposal, in that WAG seeks to carve out of WFL the schemes listed in paragraph 6 of my Second Affidavit and appoint a replacement responsible entity in its place in respect of those schemes. The Plaintiffs have made no statement about this prospect.



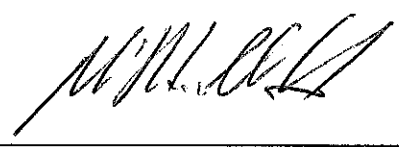
Support for WAG Professional Investor Proposal

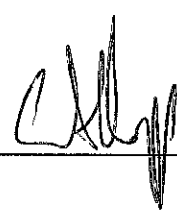
35. I refer to paragraphs 11 to 14 of my Second Affidavit, regarding the Professional Schemes. In respect of the Professional Schemes, I have a reasonable belief that members of the Professional Schemes either have or will support the WAG Professional Investor Proposal. The summary details of each scheme and its members support of which I am aware are as follows:

- a. Willmott Forests – Professional Investor – 2001 Project – 2001 Information Memorandum: There are five members of this scheme. Four of the members support the WAG Professional Investor Proposal. The fifth member is currently in the process of selling the units, and I understand that the proposed purchaser support the WAG Professional Investor Proposal.

- b. Willmot Forests – Professional Investor – 2002 Project – 2002 Information Memorandum: There are four members of this scheme. Three of the Four members support the WAG Professional Investor Proposal. The fourth member is currently in the process of selling the units, and I understand that the proposed purchaser support the WAG Professional Investor Proposal.

Affirmed at Melbourne)
 In the State of Victoria)
 by **MARK JAMES HODDINOTT**)
 this 23rd day of January 2012.)



Before me: 
 Craig Allsopp

Level 14, 25 Bligh Street, Sydney NSW 2000
 An Australian Legal Practitioner within the meaning of the
 Legal Profession Act 2004

SCHEDULE ONE
REGISTERED MANAGED INVESTMENTS SCHEMES

- (a) Willmott Forests 1989 – 1991 Project (ARSN 092 516 651)
- (b) Willmott Forests 1995 – 1999 Project (ARSN 089 598 612)
- (c) Willmott Forests Project (ARSN 089 379 975)
- (d) BioForest Dual Income Project 2006 (ARSN 1149 153 535)
- (e) BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
- (f) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- (g) Willmott Forests Premium Forestry Blend Project – 2010 (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

SCHEDULE TWO

**UNREGISTERED MANAGED INVESTMENTS SCHEMES: PROFESSIONAL INVESTOR
SCHEMES**

Professional Investor Schemes

- (a) Willmott Forests – Professional Investor – 2001 Project – 2001 Information Memorandum;
- (b) Willmott Forests – Professional Investor – 2002 Project – 2002 Information Memorandum;
- (c) Willmott Forests – Professional Investor – 2003 Project – 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004);
- (d) Willmott Forests – Professional Investor – 2004 Project – 2004 Information Memorandum and 2004 Information Memorandum (2005);
- (e) 2005 BioForest Wholesale Project No. 2 – 2005 Wholesale Forestry Memorandum (BioForest);
- (f) Willmott Forests – Professional Investor – 2006 Project – 2006 Information Memorandum.

SCHEDULE THREE

**UNREGISTERED MANAGED INVESTMENT SCHEMES: CONTRACTUAL SCHEMES AND
PARTNERSHIP SCHEMES**

Contractual Schemes

- (a) 1983 (No project);
- (b) 1984 (No project);
- (c) 1985 (No project);
- (d) 1986 (No project);
- (e) 1987 (No project);
- (f) 1989 (No project);
- (g) 1990 (No project) Interest only offer;
- (h) 1991 (No project);
- (i) 1995 (No project) (Custom);
- (j) Sharp/Reed Plantation Project – 1998 Information Memorandum;
- (k) 2001 (No project).

Partnership schemes

- (a) McKenzie & Partners – Forestry Partnership No. 1 (1993);
- (b) Grimsey & Associates Pty Ltd Forestry Partnership No. 1 (1994);

(c) Grimsey & Associates Pty Ltd – Forestry Partnership No. 2 (1994);

(d) Grimsey & Associates Pty Ltd – Forestry Partnership No. 3 (1994);

(e) McKenzie & Partners – Forestry Partnership No. 2 (1994).