

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

PLAINTIFFS' OUTLINE OF SUBMISSIONS

A PURPOSE OF APPLICATION

1 The Plaintiffs seek orders and directions pursuant to the *Corporations Act 2011* (**the Act**) in connection with a number of managed investment schemes for which the First Plaintiff (**WFL**) is the manager or responsible entity. Specifically, the Plaintiffs seek *inter alia* the following orders and directions -

- (a) Pursuant to s 477(2B) of the Act, the Court approves entry by the Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) into the Sale Contracts.
- (b) A declaration pursuant to s 511 of the Act that the Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) are justified in procuring the First Plaintiff to enter into and perform the Sale Contracts.
- (c) A declaration pursuant to s 511 of the Act that the Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) are justified and are otherwise acting properly and reasonably in procuring the First Plaintiff, as responsible entity of the managed investment schemes listed in Schedule 2 to the Originating Process, to terminate or surrender each of the Project Documents (as defined in the Eighth Crosbie Affidavit) of the managed investment schemes listed in the said Schedule 2,¹ and to surrender, relinquish or release the rights of the Growers in the trees the subject of the Sale Contracts, on the basis that the net proceeds of sale under the Sale Contracts are distributed in accordance with the spreadsheets exhibited to the Seventh Crosbie Affidavit and marked Confidential CDC-22 and CDC-23.

¹ The Project Documents of the managed investment schemes listed in Schedule 2 of the Originating Process are set out in exhibit CDC-26 to the Eighth Crosbie Affidavit.

- (d) A direction pursuant to s 511 of the Act that the Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) are justified and are otherwise acting properly and reasonably in procuring the First Plaintiff, as manager of the unregistered schemes listed in Schedule 3 to the Originating Process, to terminate or surrender the Project Documents of the unregistered schemes listed in the said Schedule 3,² and to surrender, relinquish or release the rights of the Growers in the trees the subject of the Sale Contracts, on the basis that the net proceeds of sale under the Sale Contracts are distributed in accordance with the spreadsheet exhibited to the Seventh Crosbie Affidavit and marked Confidential CDC-22 and CDC-23.
- (e) Pursuant to paragraph 3 of the orders made by Justice Dodds-Streeton of the Federal Court of Australia on 29 June 2011 in proceeding number VID 386 of 2010, the Court consents to the disclaimer of the Project Documents of the Contractual and Partnership Schemes listed in Schedule 4³ pursuant to s.568(1) of the Act by the Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff), on the basis that the net proceeds of sale under the Sale Contracts are distributed in accordance with the spreadsheet exhibited to the Seventh Crosbie Affidavit and marked Confidential CDC-22 and CDC-23.
- (f) A direction pursuant to s.511 of the Act that the Second and Third Plaintiffs (in their capacity as the Liquidators of the Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)) are justified in procuring the First Plaintiff to exercise its power under section 10.3 of the Constitution of the Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520) to sell the following scheme properties situated in the North Coast region:
- (i) Amarina Property (Certificate of Title Volume 1001770 Folio 103);
 - (ii) Culmaran Creek Property (Certificate of Title Volume 661658 Folio 024);
and
 - (iii) Clearfield Property (Certificate of Title Volume 1116259 Folio 002)
(together the **Timberland Scheme Properties**).

2 The Plaintiffs rely upon the following:

- (a) the affidavit of Craig David Crosbie sworn 13 December 2011 in this proceeding (**Seventh Crosbie Affidavit** [Vol A1, CB 10 to CB 60]);

² The Project Documents of the schemes listed in Schedule 3 of the Originating Process are set out in exhibit CDC-27 to the Eighth Crosbie Affidavit.

³ The Project Documents of the schemes listed in Schedule 4 of the Originating Process are set out in exhibit CDC-28 to the Eighth Crosbie Affidavit.

- (b) the affidavit of Craig David Crosbie sworn 25 November 2010 in Federal Court proceeding VID 1019 of 2010 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**First Crosbie Affidavit** [Vol A1, CB 105 to CB 130]);
- (c) the affidavit of Craig David Crosbie sworn 4 February 2011 in Federal Court proceeding VID 1019 of 2010 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**Second Crosbie Affidavit** [Vol A1, CB 132 to CB 141]);
- (d) the affidavit of Craig David Crosbie sworn 11 May 2011 in Federal Court proceeding VID 386 of 2011 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**Third Crosbie Affidavit** [Vol A1, CB 143 to CB 173]);
- (e) the affidavit of Craig David Crosbie sworn 22 June 2011 in Federal Court proceeding VID 386 of 2011 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**Fourth Crosbie Affidavit** [Vol A1, CB 174 to CB 184]);
- (f) the affidavit of Craig David Crosbie sworn 24 June 2011 in Federal Court proceeding VID 386 of 2011 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**Fifth Crosbie Affidavit** [Vol A1, CB 185 to CB 187]);
- (g) the affidavit of Craig David Crosbie sworn 13 December 2011 in Supreme Court of Victoria proceeding no SCI 2011 6762 and exhibited at CDC-1 to the Seventh Crosbie Affidavit (**Sixth Crosbie Affidavit** [Vol A1, CB 188 to CB 214]);
- (h) the affidavit of Craig David Crosbie sworn 18 January 2012 in this proceeding (**Eighth Crosbie Affidavit** [Vol A5, CB 2706 onwards]);
- (i) the affidavit of Bryan Webster affirmed 15 December 2011 in this proceeding (**Second Webster Affidavit** [Vol A1, CB 489 to CB 506]), on behalf of the receivers and managers of WFL (**Receivers**); and,
- (j) the affidavit of Bryan Webster affirmed 17 June 2011 in Federal Court proceeding VID 386 of 2011 and exhibited as BW-1 to the Second Webster Affidavit (**First Webster Affidavit** [Vol A1, CB 508 to CB 544]), on behalf of the Receivers.

B DIRECTIONS UNDER S 511

3 Section 511 of the Act provides:

“ (1) The liquidator, or any contributory or creditor, may apply to the Court:

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

...

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the applications as it thinks just.”

- 4 This power in relation to voluntary liquidators, and its counterparts (for example section 479(3), which applies in compulsory liquidations), developed from the practice of the Court of Chancery under the general law in giving directions to those entrusted with the administration of property under the control of the Court.⁴ The Court has a discretion to decide whether giving directions will be of advantage in the liquidation. It will give directions where it can summarily solve a difficulty that has arisen in the liquidation in a cheap and efficient manner.⁵ A direction given under s 511 will protect the liquidator who acts in accordance with it, but does not give rise to a *res judicata* as between parties who may have competing interests affected by it.⁶ The Court does not finally determine the rights and liabilities of parties arising out of the subject-matter of the application for directions.⁷ Although in giving directions the Court will not pronounce upon the commercial prudence of a particular transaction, it will act in an appropriate case to protect insolvency practitioners from claims that they have acted unreasonably in taking certain action.⁸

C WFL’S MANAGED INVESTMENT SCHEMES

- 5 WFL acts as the responsible entity and manager of 8 registered (**Willmott Registered Schemes**) and 29 unregistered (**Willmott Unregistered Schemes**) managed investment schemes. WFL’s rights, title and interest in respect of its role as the responsible entity of the 8 Willmott Registered Schemes and its rights and obligations as manager of 22 of 29 Willmott Unregistered Schemes, are outside the control of the Receivers.⁹
- 6 The Willmott Unregistered Schemes under the control of the Liquidators comprise the following categories:¹⁰
- (a) 11 Contractual Schemes constituted between 1983 and 1995 (**the Contractual Schemes**);

⁴ *Re GB Nathan & Co Pty Ltd (in liq)* (1991) 24 NSWLR 674, 677C.

⁵ *Dean-Willcocks v Soluble Solution Hydroponics Pty Ltd* (1997) 42 NSWLR 209, 212F.

⁶ *Meadow Springs Fairway Resort Ltd (in liq) v Balanced Securities Ltd* (2007) 25 ACLC 1433, 1441-1442 [48].

⁷ *Re GB Nathan & Co Pty Ltd (in liq)* (1991) 24 NSWLR 674, 679-80.

⁸ *Re Ansett Australia v Mentha* (2001) 39 ACSR 355, 371 [66].

⁹ First Crosbie Affidavit at [14]-[16] [Vol A1, CB 109]. Seven of the Unregistered Schemes remain in the Receivers’ control. See, First Webster Affidavit at [10], [Vol A1, CB 512 to CB 513] and Seventh Crosbie Affidavit at [13], [Vol A1, CB 14].

¹⁰ See Third Crosbie Affidavit at schedule 2 [Vol A1, CB 172 to CB 173].

- (b) 5 Partnership Schemes constituted between 1993 and 1994 (**the Partnership Schemes**); and
- (c) 6 Professional Investor Schemes constituted between 2001 and 2006 (**the Professional Investor Schemes**).
- 7 There are 6,329 Growers involved in the various Willmott schemes.¹¹ The Willmott Schemes are conducted on approximately 510 plantations, with 13 of the 30 Willmott schemes conducted on more than one plantation. One scheme (the Willmott Forests Project) is conducted on 105 different plantations.¹²
- 8 The Willmott Group has two¹³ primary regional plantations relevant to this application:
- (a) softwood pine operations in the Bombala and Murray Valley Regions of New South Wales and throughout the major softwood growing regions of Victoria; and
- (b) she-oak and silky oak operations in Northern New South Wales and Southern Queensland.
- 9 The Willmott Registered and Willmott Unregistered Schemes are operated on land which is either freehold land (approximately 62,000 hectares) owned by WFL¹⁴ or leasehold/third party land (over 15,000 hectares) leased or managed by WFL from third parties.¹⁵ Approximately 27,600 hectares of WFL's freehold land (located in the Bombala region of New South Wales) is unencumbered (**Bombala Land**).¹⁶
- 10 The leased land is owned by Hancock Victorian Plantations Pty Ltd (**HVP**), Grand Ridge Plantations Pty Ltd (a related body corporate of HVP) (**GRP**) or Forestry Commission of New South Wales (**FNSW**).¹⁷
- 11 The land used in each of the Willmott Registered Schemes and Willmott Unregistered Schemes is described in exhibits CDC-32,¹⁸ and CD-33¹⁹ to the Eighth Crosbie Affidavit.
- 12 Pursuant to registered charges dated 17 March 2009,²⁰ the Receivers have been relevantly appointed in relation to the following assets of the Willmott Group:²¹
- (a) freehold land located in the Murray Valley and North Coast regions of New South Wales;

¹¹ Seventh Crosbie Affidavit at [9], [Vol A1, CB 13].

¹² Seventh Crosbie Affidavit at [40], [Vol A1, CB 20].

¹³ The Northern Territory Land is not included in the sale.

¹⁴ Seventh Crosbie Affidavit at [76], [Vol A1, CB 29 to CB 30].

¹⁵ Seventh Crosbie Affidavit at [77], [Vol A1, CB 30].

¹⁶ First Crosbie Affidavit at [6] [Vol A1, CB 107]. Seventh Crosbie Affidavit at [76(a)], [Vol A1, CB 29 to CB 30]. This is land within a radius of approximately 150 kilometres around the township of Bombala, New South Wales.

¹⁷ First Crosbie Affidavit at [7] [Vol A1, CB 107].

¹⁸ [Vol A5].

¹⁹ [Vol A5].

²⁰ See First Webster Affidavit at [7], [Vol A1, CB-512].

²¹ Second Webster Affidavit at [9], [Vol A1, CB 491].

- (b) WFL's rights and interests as lessees of land located in Victoria and New South Wales, in particular of land leased from HVP, GRP and FNSW;
- (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.

13 The Receivers are not appointed in relation to the following assets of the Willmott Group:²²

- (a) the Bombala Land;
- (b) any "Excluded Trust Property" being:
 - (i) any application monies received by WFL in its capacity as trustee or custodian in respect of the managed investment schemes operated by WFL;
 - (ii) any money or property which, in respect of any managed investment scheme operated by WFL, is scheme property for the purposes of the Act;
- (c) forestry rights held by WFL in its capacity as trustee or custodian in respect of the managed investment schemes operated by WFL; and
- (d) any other property held by WFL in its capacity as trustee or custodian.

D THE OPERATION OF THE SCHEMES AND THE CONSTITUENT DOCUMENTS

14 Although each of the Willmott Schemes is governed by a suite of different documents, the constituent documents of all of the schemes, other than the Willmott Forests Premium Timberland Fund No 1,²³ include at least a lease or licence in relation to certain plantation land (**Grower Leases**) and a Forestry Management Agreement (sometimes called a Contract for Works and Services, Establishment and Maintenance Agreement or Land Sourcing and Management Agreement) (**Forestry Management Agreement**). In addition, the constituent documents of many schemes include a forestry right agreement (**Forestry Right Agreement**).²⁴

15 A summary of the relevant terms of the constituent documents for the Willmott Schemes is set out in Annexure 1 to these submissions. The constituent documents of the Willmott Schemes²⁵ 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

²² Second Webster Affidavit at [10], [Vol A1, CB 491 to CB 492].

²³ The Willmott Forests Premium Timberland Fund No 1 is a unit trust, with Growers holding units, rather than receiving a lease over land.

²⁴ Third Crosbie Affidavit at [27] [Vol A1, CB 153].

²⁵ See the First Webster Affidavit at [35] [Vol A1, CB 520], and exhibit BW-2 [CB xx]. See also, Fourth Crosbie Affidavit at [11] [Vol A1, CB 176 to CB 177].

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”.

The Willmott Registered Schemes

- 16 The constituent documents of the Willmott Registered Schemes are:²⁶
- (a) a Product Disclosure Statement (**PDS**);
 - (b) Constitution;
 - (c) Grower Lease; and
 - (d) Maintenance Agreement.
- 17 Taking the Willmott Forests Project (ARSN 089 379 975) as an exemplar,²⁷ the Constitution provides that:
- (a) the Manager must hold the “Assets” on trust for the Growers,²⁸
 - (b) All Land acquired by the Manager for the purposes of the Project is held beneficially by the Manager in the course of, and in accordance with, its duties as responsible entity of the Project;²⁹
 - (c) A Woodlot must only be issued at an application price which is the amount payable as specified in the relevant PDS or other disclosure document and set out in the Project Documents in respect of the issue of each Woodlot;³⁰
 - (d) “Assets” are “all the property, rights and income *of the Project*, but not application moneys or property in respect of which Woodlots have not yet been issued”,³¹
 - (e) “Woodlot” is an interest in half a hectare of the Land and all the improvements to the Land pursuant to the Project Documents and any relevant Forestry Right;
 - (f) “Project Document” is the current Land Tenancy Agreement (and/or, if applicable, a Pre-Lease Agreement) and Forestry Management Agreement executed by a Grower and the Manager;

²⁶ Seventh Crosbie Affidavit at [46], [Vol A1, CB 22].

²⁷ It is submitted that this an appropriate exemplar scheme as it involves land in Bombala, Murray Valley, and the North Coast, together with HVP and FNSW land. See exhibit CDC-33 to the Eighth Crosbie Affidavit [Vol A5].

²⁸ See, for example, clause 2 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1750].

²⁹ See, for example, clause 6.7 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1754].

³⁰ See, for example, clause 3 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1750].

³¹ See, for example, clause 26.1 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1769].

- (g) "Land Tenancy Agreement" is an agreement or other instrument under which the Manager grants to the Grower a right to enter, occupy and use the Land which may include a Lease Agreement or Licence;
- (h) "Lease Agreement" is a lease or sub-lease in the form for the time being specified by the Manager;
- (i) "Forestry Right" is an interest in the land granted by the owner of the land, or any other person entitled to grant such an interest in the land, under which the person who has the benefit of the interest is generally, among other things, entitled to enter the land to establish, maintain and harvest a crop of trees on the land;
- (j) "Project" is the project established pursuant to this constitution and includes all the Assets and Liabilities of the Project;
- (k) "Manager" is the company which is registered with the ASIC as the single responsible entity for the Project under the Act;
- (l) Woodlots are taken to be issued if the Manager accepts the application;³²
- (m) In respect of all Woodlots issued on or after 12 December 2003, the harvesting and sale of a Grower's trees is to be carried out, or arranged to be carried out, by the Manager unless the Manager is otherwise notified by the Grower in accordance with the procedure set out in a New Product Disclosure Statement;³³
- (n) The total proceeds of the sale ("Gross Timber Proceeds"), from all trees marketed and harvested by the Manager that relate to Woodlots planted in a particular Financial Year ("Harvested Woodlots") will be dealt with as follows:
 - (i) The Harvesting Fee relating to the marketing and harvesting of the trees (together with the amounts payable under the terms of the Project Documents) will be deducted from the Gross Timber Proceeds; and
 - (ii) The balance of the Gross Timber Proceeds ("Net Timber Proceeds") will be distributed to the Growers based on the percentage that their Harvested Woodlots in respect of a Financial Year bear to the total number of all Harvested Woodlots for that Financial Year.

18 According to the 2002 Replacement Prospectus for Willmott Forests Project (ARSN 089 379 975), if a Grower paid the \$3,850 (per Woodlot) application fee and was accepted, WFL would:³⁴

- (a) administer the Project;

³² See, for example, clause 4.5 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1751].

³³ See, for example, clause 14.1 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1759].

³⁴ See, for example page 3 of the 2002 Replacement Prospectus in respect of the Willmott Forests Project (ARSN 089 379 975) [Vol A4, CB 1780].

- (b) lease the land to Growers;
- (c) obtain planning and development approval;
- (d) prepare the plantation site;
- (e) manage the plantations through to clear fell;
- (f) arrange harvesting operations if required; and
- (g) distribute harvesting proceeds to Growers.

19 According to the Forestry Management Agreement for the Willmott Forests Project (ARSN 089 379 975), the Growers would pay WFL (in its capacity as Manager):³⁵

- (a) a one-off fee for the preparation of the site and planting of the trees; and
- (b) an annual fee for further establishment work and general maintenance after planting.

The Willmott Professional Investor Schemes

20 The constituent documents of the Willmott Unregistered Professional Investor Schemes are:³⁶

- (a) an Information Memorandum;
- (b) an Investment Deed;
- (c) Grower Leases; and
- (d) Maintenance Agreements.

21 Taking the Willmott Forests - Professional Investor - 2004 Project as an exemplar, the Investment Deed provides that:

- (a) the Manager must hold the “Assets” on trust for Growers;³⁷
- (b) “Assets” are “the property, rights and income *of the Project*, but not application money or property in respect of which Hectares have not yet been issued”;³⁸
- (c) all Land acquired or leased by the Manager for the purposes of the Project is held beneficially by the Manager in the course of, and in accordance with, its duties as manager of the Project;³⁹

³⁵ See, for example, clause 1 and the Schedule of the exemplar Forestry Management Agreement for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1832 to CB 1833].

³⁶ Seventh Crosbie Affidavit at [45], [Vol A1, CB 21 to CB 22].

³⁷ See, for example, clause 2 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1870].

³⁸ See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1885].

³⁹ See, for example, clause 6.7 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1874].

- (d) a Hectare must only be issued at an application price which is the amount payable as specified in the relevant Information Memorandum and set out in the Project Documents in respect of the issue of each Hectare;⁴⁰
- (e) a "Hectare" is an interest in one hectare of the Land and all improvements to that Land pursuant to a Project Document and any applicable Forestry Right;⁴¹
- (f) the "Project Documents" are the current Lease Agreement or Sublease Agreement (as applicable) (and/or, if applicable, a Pre-Lease Agreement) and a Forestry Management Agreement executed by a Grower and the Manager;⁴²
- (g) a "Lease Agreement" is a lease in the form for the time being specified by the Manager, and a "Sub-Lease Agreement" is a sublease agreement being in the form for the time being specified by the Manager, being a lease of a leasehold interest (known as the Headlease) to which the Manager is the sub-lessor and the Grower the sublessee;⁴³
- (h) a "Forestry Right" is an interest in the land granted by the owner of the land under which the person who has the benefit of the interest is generally, among other things, entitled to enter the land to establish, maintain and harvest a crop of trees on the land, including, without limitation, a forestry right within the meaning of section 87A of the *Conveyancing Act 1919* (NSW);⁴⁴
- (i) the "Project" is the project established pursuant to this Investment Deed and includes all the Assets and Liabilities of the Project;⁴⁵
- (j) the "Manager" is specified as Willmott Forests Ltd;
- (k) Hectares are taken to be issued when the Manager accepts the application;⁴⁶
- (l) in respect of all Hectares issued on or after 12 December 2003, the harvesting and sale of a Grower's trees is to be carried out, or arranged to be carried out, by

⁴⁰ See, for example, clause 3 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1870].

⁴¹ See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1886].

⁴² See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1886].

⁴³ See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1886].

⁴⁴ See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project Vol A4, [CB 1885].

⁴⁵ See, for example, clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1886].

⁴⁶ See, for example, clause 4.5 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1871].

the Manager unless the Manager is otherwise notified by the Grower in accordance with the procedure set out in an Information Memorandum,⁴⁷ and

- (m) the total proceeds of sale (“Gross Timber Proceeds”), from all trees marketed and from all trees marketed and harvested by the Manager that relate to Hectares planted in a particular Financial Year (“Harvested Hectares”) will be dealt with as follows:
 - (i) the Harvesting Fee relating to the marketing and harvesting of the trees (together with the amounts payable under the terms of the Project Documents) will be deducted from the Gross Timber Proceeds; and
 - (ii) the balance of the Gross Timber Proceeds (“Net Timber Proceeds”) will be distributed to the Growers based on the percentage that their Harvested Hectares in respect of a Financial Year bear to the total number of all Harvested Hectares for that Financial Year.

22 According to the Information Memorandum dated 19 May 2004 for the Willmott Forests - Professional Investor - 2004 Project, if a Grower paid the \$7,700 application fee per Hectare, fulfilled the minimum subscription requirement and was accepted, WFL would:⁴⁸

- (a) administer the Project;
- (b) lease the land to Growers;
- (c) obtain planning and development approval;
- (d) prepare the plantation site(s);
- (e) plant suitable stock at a rate appropriate to the specific site;
- (f) grow trees to produce sawlogs;
- (g) manage the plantations through to clear fell;
- (h) arrange harvesting operations (unless the Manager is notified otherwise by the Grower); and
- (i) distribute the harvesting proceeds to Growers.

23 Under the Forestry Management Agreement for the Willmott Forests - Professional Investor - 2004 Project, the Growers would pay WFL (in its capacity as Manager);

- (a) a one-off, upfront fee for the preparation of the site and planting of the trees; and
- (b) 7% of the Gross Timber Proceeds received from the thinning and felling of trees on each Hectare would be deducted by the Manager prior to distribution, in order

⁴⁷ See, for example, clause 14.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1879].

⁴⁸ See, for example, page 2 of the Information Memorandum dated 19 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1895].

to cover the Manager's fees for further establishment and general maintenance of the trees after planting.⁴⁹

The Willmott Partnership Schemes

- 24 The constituent documents of the Willmott Partnership Schemes are:⁵⁰
- (a) a Deed of Covenant; and/or
 - (b) a Deed of Trust; and
 - (c) Grower Leases; and
 - (d) Maintenance Agreements.
- 25 Taking the 1994 McKenzie & Partners - Forestry Partnership No 2 as an exemplar, the Partnership Agreement provides that:
- (a) the Partnership (comprised of the Growers listed in Schedule 1 to the Partnership Agreement) shall carry on the business of afforestation for the purpose of investment (the "Business");⁵¹
 - (b) a Unit in the Partnership will be issued to a Partner upon the contribution of \$11,950;⁵²
 - (c) a "Unit" is an investment by a Partner of a minimum area of one hectare of property;⁵³
 - (d) the assets of the Partnership shall consist of the Capital and all such forests, goods and other property and improvements thereon as shall accrue to or arise for the benefit of or be acquired by the Partnership from time to time and of all moneys in bank accounts belonging to the Partnership;⁵⁴
 - (e) the "Capital" of the Partnership consists of the sums and assets which the Partners from time to time bring into the Partnership;⁵⁵ and
 - (f) the affairs of the Partnership and the Business shall be managed by a Manager as appointed by the Partners in accordance with the provisions of the Partnership Agreement.⁵⁶

⁴⁹ See, for example, clause 4 (together with Schedule 1) of the Forestry Management Agreement in respect of the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1969, CB 1971 and CB 1972].

⁵⁰ Seventh Crosbie Affidavit at [44], [Vol A1, CB 21].

⁵¹ See, for example, clause 5 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2008 to CB 2009].

⁵² See, for example, clause 4.4 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2008].

⁵³ See, for example, clause 4.2 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2008].

⁵⁴ See, for example, clause 6 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2009].

⁵⁵ See, for example, clause 4.1 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2008].

- 26 The Deed of Trust of the 1994 McKenzie & Partners - Forestry Partnership No 2 provides that:
- (a) all property of the Partnership shall vest in the Trustee;⁵⁷ and
 - (b) the Trustee shall not at any time exercise in relation to any property for the time being vested in its subject to the trusts any power in which it is endowed under the Deed of Trust except with the approval of the Partners (being the “Growers” of the Project).⁵⁸
- 27 The Deed of Covenant of the 1994 McKenzie & Partners - Forestry Partnership No 2 provides that:
- (a) the Manager shall manage the business and attend to all duties pertaining thereto faithfully and diligently;⁵⁹
 - (b) pay regularly all monies received to the Trustee;⁶⁰ and
 - (c) purchase either outright or by way of Terms Contract, take on lease or in exchange hire and otherwise acquire any real or personal property and any rights or privileges which the Partnership may think necessary or convenient for the purposes of the business and in particular any land, buildings, easements, machinery, plant and stock in trade.⁶¹
- 28 Under the Establishment and Maintenance Agreement, the Partnership appoints the “Company” to carry out planting, general establishment and general maintenance works for a fee of \$3,000 per hectare of land.⁶²

The Willmott Contractual Schemes

- 29 There are no overarching documents (such as a constitution or investment deed) which govern the Willmott Contractual Schemes. The key constituent documents that compromise each Willmott Contractual Schemes are a:
- (a) Grower Lease; and

⁵⁶ See, for example, clause 7 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2009].

⁵⁷ See, for example, clause 2 of the Deed of Trust of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2027 to CB 2028].

⁵⁸ See, for example, clause 3(vi) of the Deed of Trust of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2028].

⁵⁹ See, for example, clause 2 of the Deed of Covenant of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2038 to CB 2039].

⁶⁰ See, for example, clause 2(vii) of the Deed of Covenant of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2038 to CB 2039].

⁶¹ See, for example, clause 3(ii) of the Deed of Covenant of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2039].

⁶² See the Establishment and Maintenance Agreement in respect of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2046].

(b) Maintenance Agreement (referred to in some of the Willmott Contractual Schemes as a 'Contract for Works and Services').⁶³

30 Taking the 1989 (No Project) as an exemplar, the Grower Lease provides that the lessor leases the demised land to the Grower lessee on the following conditions.⁶⁴

(a) the Grower is entitled to plant the demised land with trees and use and maintain it for the purposes of afforestation;⁶⁵

(b) the Grower is able to engage the contractor of the Grower's choice or to himself perform the requisite works and services;⁶⁶

(c) the Grower shall not join with any other person, firm or company in any common enterprise involving the demised land, and the Lessee shall retain the right to determine when the demised land shall be planted and when the produce of the land may be realised and marketed;⁶⁷

(d) the Grower pays rent of \$250.00 per hectare for the first four years of the demise, and \$62.50 for the remaining term of the demise;⁶⁸ and

(e) the Lessor covenants with the Grower that the Grower paying rent and performing and observing the covenants given by the Grower under the lease and the right of re-entry not having arisen as may peaceably and quietly hold and enjoy the demised land during the term without any interruption or disturbance by the Lessor.⁶⁹

31 According to the Contract for Works and Services in respect of the 1989 (No Project), the Grower pays the "Company" a one-off fee per hectare in consideration of the Company performing clearing, fencing, plantation and general works in respect of the Grower's demise.

E INSOLVENCY OF WFL AND VIABILITY OF THE SCHEMES

32 On 22 March 2011, creditors resolved to place the Willmott Group in liquidation.⁷⁰

33 The Liquidators have determined that WFL is insolvent and does not have funds available to it to:⁷¹

⁶³ Seventh Crosbie Affidavit at [43] [Vol A1, CB 21].

⁶⁴ See, for example, the lease in respect of the 1989 (No Project) [Vol A4, CB 2122].

⁶⁵ See, for example, clause A of the lease in respect of the 1989 (No Project) [Vol A4, CB 2122].

⁶⁶ See, for example, clause A(i) of the lease in respect of the 1989 (No Project) [Vol A4, CB 2122].

⁶⁷ See, for example, clause A(iii) of the lease in respect of the 1989 (No Project) [Vol A4, CB 2122].

⁶⁸ See, for example, clause B(1)(a) together with item 6 of the Schedule of the lease in respect of the 1989 (No Project) [Vol A4, CB 2123].

⁶⁹ See, for example, clause B(2) of the lease in respect of the 1989 (No Project) [Vol A4, CB 2123].

⁷⁰ Seventh Crosbie Affidavit at [18], [Vol A1, CB 15].

⁷¹ First Crosbie Affidavit at [33] [Vol A1, CB 114]. See also, Seventh Affidavit at [73], [Vol A1, CB 27].

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

34 As Mr Crosbie has deposed, the timber plantations require ongoing maintenance to:⁷²

- (a) comply with the Willmott Group's statutory maintenance obligations;
- (b) protect the Willmott Group's public liability exposure in relation to fire prevention;
- (c) satisfy the terms and conditions of any insurance policies such that the policies remain enforceable; and
- (d) maintain the current condition of the plantations.

35 The Liquidators have determined that there was (and remains) insufficient cash to meet the day-to-day expenditure of the Willmott Schemes. Importantly, there is no obligation in most of the Willmott Schemes for the Growers to make additional payments. The day-to-day management expenditure of the Willmott Schemes includes fire prevention, road maintenance, insurance, weed and pest control, plantation maintenance, motor vehicle running costs, lease obligations, maintenance of accreditations, preparation of plantation condition and maintenance programs and information technology and telecommunication expenses.⁷³ Failure to attend to those tasks has diminished, and will continue to diminish, the value of the trees.⁷⁴

36 The Liquidators engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to conduct a detailed Viability Analysis (**Poyry Report**).⁷⁵ The Poyry Report concludes that, depending on the discount rate applied (11%, 13% or 15%), a number of the Willmott Schemes are not financially viable but, more importantly, that for the Willmott Schemes to be viable, further funding of \$123 million will be required.⁷⁶ In particular, Poyry made the following findings:⁷⁷

“Poyry has estimated the present value of future plantation maintenance, overheads and administration costs for all the Willmott projects to be in the order of AUD107.1 million. This estimate includes the cost of maintaining plantation projects owned by Willmott. Poyry has assumed the growers' contribution to be AUD 123.2 million, which is the estimated costs plus a contingency of 15%. Poyry has assumed that this funding will be available immediately for an assumed new RE to manage the

⁷² First Crosbie Affidavit at [52] [Vol A1, CB 118].

⁷³ First Crosbie Affidavit at [39]-[40] [Vol A1, CB 115]. See also: First Webster Affidavit at [43], [45], [50], [53], [56], [59], [60], [68], [71], [73], [87], [90], [91], [92], [93], [94] [Vol A1, CB 522 to CB 534].

⁷⁴ Seventh Crosbie Affidavit at [51], [Vol A1, CB 23].

⁷⁵ Second Crosbie Affidavit at [6], [Vol A1, CB 134].

⁷⁶ Second Crosbie Affidavit at [6], [Vol A1, CB 134].

⁷⁷ Poyry Report, exhibit CDC-9 to the Second Crosbie Affidavit [Vol A4, CB 2138].

plantations in order to ensure adequate funds are available to see the projects through to maturity.

...

All schemes require a large upfront contribution to cover costs. The estimated per-ha contributions required for each scheme are shown in Table S-2. The required contributions are estimated on the assumption that all growers except [sic] Willmott will contribute to the costs. If say, one third of growers by area does not contribute to costs, the required contribution per ha of the contributing growers will increase by 50%. In Poyry's opinion, it appears likely that for younger schemes that require large contributions per-ha relative to their NPV per ha, many growers may not contribute to costs."

37 The Liquidators and Receivers consider that the discount rate of 11% is too low.⁷⁸ The Liquidators consider a discount rate of *at least* 15% is more appropriate⁷⁹. If a discount rate of 15% is adopted, the viability of a number of schemes is dramatically affected.⁸⁰ This is amply demonstrated by the sensitivity analysis at page 73 of the Poyry Report.⁸¹ In addition to the selected discount rate, the viability of the Willmott Schemes is also based, among other things, on the following assumptions:

- (a) the plantations have been professionally managed and maintained to date, and that any maintenance operations that may have been missed will be brought up to date in 2011;⁸²
- (b) a new RE / manager (**New RE**) will be appointed to the Willmott Schemes;⁸³
- (c) the New RE will not raise debt to cover costs;⁸⁴
- (d) 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**);⁸⁵

⁷⁸ First Webster Affidavit at [23] [Vol A1, CB 515 to CB 516]. Factors which Mr Webster states support a higher discount rate include: 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 are not expected to reach maturity until at least 2025); uncertainties associated with the species planted in respect of some of the Willmott Schemes (as to which, see paragraphs 51(a), 58, 69 and 74 of the First Webster Affidavit); uncertainties associated with plantation yields for the Willmott Schemes (as to which, see paragraph 126 of the First Webster Affidavit); and, uncertainties associated with markets, including eventual market pricing and the availability of markets for some species (as to which, see paragraphs 51(a), 58, 69 and 74 of the First Webster Affidavit) [Vol A1, CB 508 to CB 544].

⁷⁹ Fourth Crosbie Affidavit at [5] [Vol A1, CB 175].

⁸⁰ First Webster Affidavit at [40], [41], [3], [45], [50], [53], [54], [56], [59], [60], [68], [71], [72], [73], [87], [88], [90], [91], [92] [Vol A1, CB 521 to CB533].

⁸¹ Vol A4, CB 2218.

⁸² Poyry Report [Vol A4, CB 2137].

⁸³ Poyry Report [Vol A4, CB 2137].

⁸⁴ Poyry Report [Vol A4, CB 2137].

⁸⁵ Poyry Report [Vol A4, CB 2137].

- (e) the Up-front Growers' Contribution will be made in 2011;⁸⁶
- (f) 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;⁸⁷ and,
- (g) 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.

38 In this regard, Poyry also made the following observations:

- (a) given the relatively young age of the plantations, none of the existing projects will be viable in the absence of further and ongoing maintenance work;⁸⁸
- (b) in Poyry's opinion, no new RE would accept responsibility for any scheme under the current scheme structure;⁸⁹ and
- (c) with an increasing discount rate, more plantation area is deemed to be non-viable with the effect that overhead costs can be expected to increase across the remaining viable schemes.⁹⁰

39 As a result of the foregoing analysis, there has been very little appetite amongst the Grower cohort and prospective replacement REs to restructure the WFL Schemes. In particular:

- (a) Over the period of 9 months since the resolution to liquidate the Willmott Group, only one proposal to replace WFL as RE has come to fruition - Primary Securities Proposal in respect of the Willmott Forests 1995-1999 Project (ARSN 089 598 612);⁹¹
- (b) Whilst the WGG have expressed an interest in a number of other schemes,⁹² no concrete proposals have been forthcoming, despite the effluxion of a significant period of time; and
- (c) In respect of other Willmott Schemes, there is no evidence that the necessary constitutional amendments could be passed and/or the requisite number of Growers will make the significant up-front contributions required to restructure the schemes (particularly in circumstances where WFL will not contribute to ongoing costs of the schemes in respect of which it holds interests in its own right and the

⁸⁶ Poyry Report [Vol A4, CB 2137].

⁸⁷ Poyry Report [Vol A4, CB 2137].

⁸⁸ Poyry Report [Vol A4, CB 2139 and CB 2219].

⁸⁹ Poyry Report [Vol A4, CB 2219].

⁹⁰ Poyry Report [Vol A4, CB 2219].

⁹¹ Eighth Crosbie Affidavit at [26] to [37], [Vol A5]. Indeed, given the operation of s601FS and s601 FT of the Act, it is not surprising that there has been little appetite to replace WFL as RE of the Registered Schemes. See "Insolvency of Registered Managed Investment Schemes" by RI Barrett (writing extra-judicially) at 11-12 and *Syncap Management (Rural) Australia Ltd v Lyford* (2004) 51 ACSR 223, esp 232 [48]. See also Fourth Crosbie Affidavit at [6] [Vol A1, CB 175 to CB 176].

⁹² Seventh Crosbie Affidavit at [68], [Vol A1, CB 26] and exhibit CDC-9 [Vol A1, CB 338 to CB 340].

cost to Growers would further increase if certain Growers elected not to participate in the restructure).

40 The lack of an appetite amongst prospective REs and Managers was exemplified by the expression of interest campaign conducted by the Liquidators. An expression of interest campaign commenced on 12 November 2010.⁹³ Save for an offer from HVP, no unconditional offer from a new RE or manager capable of acceptance was received.⁹⁴ As most of the schemes are structured so that the Growers pay an up-front fee, and then no rent or other fees until termination of the project, there is very little commercial return to be derived from taking on the role of RE or manager and continuing to operate the schemes.⁹⁵ Thus, all of the proposals received involved amending the Willmott Schemes to allow the new responsible entity to charge additional fees to the Growers.⁹⁶

41 Furthermore, it is not practicable for the ongoing maintenance and harvest of the trees to revert to individual Growers. Specifically-⁹⁷

- (a) Land owned or leased by WFL and used in the Willmott Schemes has been divided into individual lots.
- (b) The way in which lots have been allocated creates a “checkerboard effect”, with some lots surrounded on all sides by other lots, and others on the edge of a plantation. A Grower whose lot is surrounded on all sides by other Growers’ lots could not access his or her lot to commence harvesting without obtaining access across the surrounding lots. Further, the clear felling of an individual Grower’s lot is likely to result in damage to trees on adjacent lots as trees fall.
- (c) It is not feasible to harvest and sell trees on such a small scale.
- (d) Significant and substantial fire maintenance and access works would need to continue, requiring the co-ordination of Growers.

F STEPS TAKEN IN PREPARATION FOR SALE

42 To avoid further wastage of the trees and increased fire risk, the Liquidators considered it necessary to commence the process of attempting to sell the land and the scheme assets (including the trees) on an unencumbered basis, as quickly as possible.⁹⁸ Further, the

⁹³ First Crosbie Affidavit at [47] [Vol A1, CB 117].

⁹⁴ Second Crosbie Affidavit at [21] [Vol A1, CB 137]. Seventh Crosbie Affidavit at [56], [Vol A1, CB 23 to CB 24].

⁹⁵ Fourth Crosbie Affidavit at [7] [Vol A1, CB 176].

⁹⁶ Seventh Crosbie Affidavit at [56], [Vol A1, CB 23 to CB 24].

⁹⁷ Seventh Crosbie Affidavit at [74], [Vol A1, CB 27 to CB 29].

⁹⁸ Fourth Crosbie Affidavit at [28] [Vol A1, CB 181].

intermingling of land used in the schemes⁹⁹ made it desirable that the power of sale is available for all of the Freehold Land, rather than being confined to certain schemes.¹⁰⁰

43 As Mr Crosbie deposed in his Third Affidavit:¹⁰¹

“63. We consider that the best possible price will be achieved by offering all the Freehold Land and the FNSW Leases (collectively the **Sale Assets**) for sale at the one time and providing interested parties with the option of bidding for part or all of the Sale Assets. We have spoken with the Receivers who have informed us that they agree with this proposition and we have therefore agreed to coordinate a joint sale process.

...

65. We consider that the granting of a power of sale and/or the confirmation of the liquidators' right to disclaim the Project Documents will provide sufficient comfort to potential purchasers of the ability of the liquidators to give clear title on settlement of any sale. Potential purchasers should therefore be willing to participate in the sale process and incur the costs and take the time needed to submit a binding bid. This should maximise the price obtained both for the land and trees.

66. Any sale contract will be conditional on the liquidators obtaining approval from the court to the exercise of the power of sale or right to terminate, relinquish, surrender or disclaim. It is our intention to request potential purchasers to allocate the purchase price between the land and the trees, so that this can be used as a basis for the allocation of the purchase price between Growers and creditors. We will seek an opinion from an independent expert as to the reasonableness of any offer. If necessary, at the time of seeking approval to the exercise of the power or right, a process will be established for determining the appropriate allocation of the purchase price.”

44 Accordingly, on 29 June 2011, the Liquidators sought and obtained orders to the following effect from Justice Dodds-Streeton (**Orders**):¹⁰²

- (a) the Liquidators are justified in procuring WFL to amend the constitutions of the Registered Willmott Schemes, pursuant to section 601GC(1)(b) of the Act by executing the proposed deeds in the form annexed to Schedule 1 of the order, on the basis that such amendments will not adversely affect members' rights;
- (b) the Liquidators are justified in procuring WFL to amend the investment deeds and constitutions of the Professional Investor Schemes executing the proposed deeds in the form annexed to Schedule 2 of this order, on the basis that such amendments will not adversely affect members' rights; and

⁹⁹ Third Crosbie Affidavit at [32] [Vol A1, CB 154].

¹⁰⁰ Fourth Crosbie Affidavit at [21] [Vol A1, CB 179 to CB 180].

¹⁰¹ See [63]-[66] [Vol A1, CB 28]. See also, First Webster Affidavit at [33] [Vol A1, CB 519].

¹⁰² Seventh Crosbie Affidavit at CDC-3 [Vol A1, CB 253 to CB 256].

- (c) the Liquidators are justified in disclaiming the Project Documents (referred to in paragraph 4(a) of the Third Crosbie Affidavit) of the Contractual and Partnership Schemes as onerous, pursuant to section 568(1) of the Act, on the condition that the Plaintiffs will seek the Court's consent before disclaiming the Project Documents.

45 By reason of the Orders, WFL now has the power to terminate or surrender each of the Project Documents (as defined in the Eighth Crosbie Affidavit) of the Willmott Registered Schemes and the Willmott Professional Investor Schemes and to surrender, relinquish or release the rights of the Growers in the trees the subject of the Sale Contracts. Therefore, the *first* question now arising for determination is whether the exercise of that power by the Liquidators is justified. In answering this question, it is submitted that the Court ought to consider:

- (a) the robustness of the sale process conducted by the Plaintiffs;
- (b) the allocation and apportionment of the sale proceeds amongst Growers; and
- (c) the existence and viability of any concrete competing proposals to continue the affected Willmott Registered Schemes and Professional Investor Schemes.

46 Furthermore, Dodds-Streeton J has determined that WFL is justified in disclaiming the Project Documents of the Contractual and Partnership Schemes pursuant to s.568(1) of the Act, on the condition that the Plaintiffs will seek the Court's consent before so doing. As a consequence, the *second* question now arising for determination is whether the court ought to consent to the disclaimer by WFL. In considering whether consent to the disclaimer, the Court is required to consider:

- (a) the effect of the disclaimer on the rights of the Growers;¹⁰³
- (b) any new circumstances not before Dodds-Streeton J, such as:
 - (i) the robustness of the sale process conducted by the Plaintiffs;
 - (ii) the allocation and apportionment of the sale proceeds amongst Growers; and
 - (iii) the existence and viability of any concrete competing proposals to continue the affected Contractual and Partnership Schemes.

G RELEVANT TERMS OF THE SALE CONTRACTS

47 The Sale Assets comprise:¹⁰⁴

¹⁰³ See, paragraph 119 of Dodds-Streeton J's reasons for judgment, exhibit CDC-34 to the Eighth Crosbie Affidavit, [Vol A5] (cf paragraph 69).

¹⁰⁴ Seventh Crosbie Affidavit at [76]-[80], [Vol A1, CB 29 to CB 31].

- (a) Freehold land, being
 - (i) the Bombala Land;
 - (ii) 22,312 hectares of freehold land located in the Murray Valley region of New South Wales and Victoria (**Murray Valley Land**); and
 - (iii) 8,709 hectares of freehold land located on the North Coast of New South Wales and South Coast of Queensland (**North Coast Land**);
- (b) 2,140 hectares of land leased from FNSW (**FNSW Leased Land**);
- (c) Assets situated upon the Freehold land and FNSW Land including the trees and other facilities (such as forestry offices, storage facilities, stock yards and residential dwellings).

48 The Sale Contracts also provide for the assignment of the FNSW Contract, Leases and Deed creating a Forestry Right from WFL to GFP plus the trees relating to that land for consideration.¹⁰⁵

49 A confidential summary of the Sale Contracts is annexed to these submissions as Annexure 2. In general terms the Sale Contracts each contain the following terms:

- (a) Title to the Sale Assets passes to the purchaser at settlement free of the encumbrances arising out of the Willmott Schemes;¹⁰⁶
- (b) Title to the trees passes to the purchaser on settlement;¹⁰⁷
- (c) A condition precedent to the Sale Contracts that WFL would obtain an order or declaration from the Court that would allow it to: (a) exercise its powers under the constitutions of the Willmott Registered Schemes and investment deeds of the Professional Investor Schemes and (b) disclaim the Project Documents of the Contractual and Partnership Schemes as onerous pursuant to section 568(1) of the Act so as to allow settlement to occur (clause 60.1);¹⁰⁸
- (d) If WFL was unable to deliver clear title to the Sale Assets over a certain threshold, and agreement cannot be reached between the parties as to an acceptable way to proceed, each party has a right to walk away;¹⁰⁹ and

¹⁰⁵ Seventh Crosbie Affidavit at [144], [Vol A1, CB 48].

¹⁰⁶ See, by way of example, clause 56 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1413].

¹⁰⁷ See, by way of example, clause 57 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1413].

¹⁰⁸ See, by way of example, clause 59.1 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1414].

¹⁰⁹ See, by way of example, clause 66.1 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1418A].

- (e) If the trees suffered damage over a certain threshold and agreement cannot be reached between the parties as to an acceptable way to proceed, each party has a right to elect to walk away.¹¹⁰

H THE SALE PROCESS HAS BEEN A ROBUST ONE

50 The campaign for the sale of the assets was operated on the basis that parties could either purchase the Sale Assets unencumbered by the Willmott Schemes or purchase the Sale Assets encumbered by the Willmott Schemes, with the ability to take over as responsible entity and manager of those schemes.¹¹¹

51 A detailed, robust and competitive sale process was conducted over a period of three months.¹¹² Specifically:

- (a) the sale campaign was advertised in local, national and international media;¹¹³
- (b) 364 parties were specifically contacted by email and provided with an Interested Parties Pack;¹¹⁴
- (c) 227 parties expressed an interest in participating in the sale process;¹¹⁵
- (d) 92 parties submitted indicative non-binding offers;¹¹⁶ and
- (e) 54 binding offers were received, ranging from bids for a single plantation to bids for all of the Sale Assets.¹¹⁷

52 In assessing the bids, the Liquidators appropriately took into account the following matters:

- (a) the imperative was to obtain the maximum price for all of the Sale Assets;¹¹⁸
- (b) whether the conditions precedent attached to the bids or other factors may have impeded the ability of purchasers to assume responsibility prior to the fire season;¹¹⁹
- (c) the fact that the bids received on a property-by-property basis were generally substantially below bids from parties interested in entire regions or all of the Sale

¹¹⁰ See, by way of example, clause 60 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1415].

¹¹¹ Seventh Crosbie Affidavit at [88], [Vol A1, Vol A1, CB 33].

¹¹² Seventh Crosbie Affidavit at [83], [Vol A1, CB 31].

¹¹³ Seventh Crosbie Affidavit at [85], [Vol A1, CB 32 to CB 33].

¹¹⁴ Seventh Crosbie Affidavit at [86]-[87], [Vol A1, CB 33].

¹¹⁵ Seventh Crosbie Affidavit at [89], [Vol A1, CB 33].

¹¹⁶ Seventh Crosbie Affidavit at [95], [Vol A1, CB 34].

¹¹⁷ Seventh Crosbie Affidavit at [101], [Vol A1, CB 35] and Confidential Exhibit CDC-15, [Vol A3, Confidential CB 1258].

¹¹⁸ Seventh Crosbie Affidavit at [102], [Vol A1, CB 35].

¹¹⁹ Seventh Crosbie Affidavit at [103], [Vol A1, CB 36].

Assets meant that the best price would be achieved by selling all of the Sale Assets to a single party or on a regional basis;¹²⁰ and,

- (d) by reason of the fact that best price would be achieved by selling of the Sale Assets to a single party or on a regional basis, the five parties that had offered to purchase predominantly all of the Sale Assets were selected as the preferred bidders with whom negotiations would continue.¹²¹

53 In negotiating with the preferred bidders, the Liquidators properly:

- (a) endeavoured to extract the maximum price for the Sale Assets;¹²²
- (b) assessed the financial capability of the highest bidder to fund the purchase prior to the target settlement date;¹²³
- (c) took into account the additional conditions precedent imposed by the highest bidder and apparent reluctance of the highest bidder to fully commit to the bidding process;¹²⁴
- (d) requested further information from the highest bidder before determining that the information was insufficient to allay the Liquidators' concerns;¹²⁵
- (e) having determined that the highest bid could not be accepted, focussed on the second highest bid from GFP.¹²⁶

54 In dealing with GFP, the Liquidators prudently:

- (a) obtained information that GFP had definitive and unconditional equity financing documents sufficient to cover 100% of the purchase price for the Sale Assets;¹²⁷
- (b) advised GFP that it would need to increase its offer should it wish to be competitive with the highest bidder;¹²⁸ and,
- (c) accordingly obtained the Revised GFP Offer.¹²⁹

55 Having determined that the Revised GFP Offer was the best price reasonably attainable, the Liquidators approached the remaining three preferred bidders inviting them to increase their offer.¹³⁰ The unwillingness of those bidders to increase their offer in a

¹²⁰ Seventh Crosbie Affidavit at [105], [Vol A1, CB 36].

¹²¹ Seventh Crosbie Affidavit at [106], [Vol A1, CB 36] and exhibit CDC-16 [Confidential Vol A3, CB 1259 to CB 1319].

¹²² Seventh Crosbie Affidavit at [107], [Vol A1, CB 36].

¹²³ Seventh Crosbie Affidavit at [108], [Vol A1, CB 37].

¹²⁴ Seventh Crosbie Affidavit at [108], [Vol A1, CB 37].

¹²⁵ Seventh Crosbie Affidavit at [109], [Vol A1, CB 37].

¹²⁶ Seventh Crosbie Affidavit at [110]-[111], [Vol A1, CB 37].

¹²⁷ Seventh Crosbie Affidavit at [111], [Vol A1, CB 37].

¹²⁸ Seventh Crosbie Affidavit at [112], [Vol A1, CB 37].

¹²⁹ Seventh Crosbie Affidavit at [113], [Vol A1, CB 38].

¹³⁰ Seventh Crosbie Affidavit at [118], [Vol A1, CB 39].

competitive bidding environment is a strong indication that the Liquidators did obtain the best available price for the Sale Assets.

I THE EFFECT OF THE REPLACEMENT OF WFL AS RE OF THE 1995-1999 SCHEMES

56 WFL has been replaced as the Responsible Entity of the 1995-1999 Registered Scheme.¹³¹ Accordingly, the Liquidators do not seek any orders in relation to the Project Documents for that scheme. The assets used in that scheme will not be sold pursuant to the Sale Contracts.¹³²

57 Further, as a result of the intermingling of the land used in the 1995 (No Project) scheme with land used in the 1995-1999 Registered Scheme, the assets used in the 1995 (No Project) scheme will also not be sold pursuant to the Sale Contract, and no orders are sought in relation to the Project Documents for that scheme.¹³³

J APPORTIONMENT OF THE SALE PROCEEDS

58 The Receivers have insisted on agreeing the apportionment of the sale proceeds prior to entering into the Sale Contracts and providing releases of the relevant charges.¹³⁴ An apportionment was approved by Pagone J *in the matter of Timbercorp Securities Limited (in liquidation)* [2009] VSC 597¹³⁵ in circumstances where the secured creditor would not consent to release of its security without its entitlement to the sale proceeds being agreed upon.¹³⁶ This has required the Liquidators to:

- (a) consider whether the freehold land and FNSW leases the subject of the Sale Contracts constituted “scheme property”; and,
- (b) determine how the consideration for the Sale Assets should be allocated as between land (or leasehold in the case of the FNSW leases) and trees.

Is the freehold land or FNSW leases the subject of the Sale Contracts “scheme property”

59 The question of whether any of the land owned by or leased to, WFL is scheme property was left open in the reasons for decision given by Dodds-Streton J on 23 December 2011. This question must now be determined in the context of considering whether the

¹³¹ Eighth Crosbie Affidavit at [31], [Vol A5].

¹³² Eighth Crosbie Affidavit at [34], [Vol A5]. See, by way of example, clause 66 of the Sale Contract in respect of Bombala (NSW) [Confidential Vol A3, CB 1418A to CB 1420A].

¹³³ Eighth Crosbie Affidavit at [36] and [37], [Vol A5].

¹³⁴ Seventh Crosbie Affidavit at [127], [Vol A1, CB 42].

¹³⁵ See especially at [8] and [9].

¹³⁶ See especially at [8] and [9].

dichotomy between land and trees in the allocation proposed by the Liquidators is justified. This dichotomy is founded upon a conclusion that the Growers' interests are limited to an interest in the trees. If that conclusion were not correct because the Growers have an interest in the land, or WFL's leasehold interests, as scheme property, then the proposed allocation could not be justified.¹³⁷

60 Part 5C.2 of the Act provides the legislative framework for managed investment schemes. Section 601 FC(2) of the Act, "declares in unequivocal terms that the responsible entity of a registered managed investment scheme 'holds' scheme property on trust for scheme members"¹³⁸.

61 The Act¹³⁹ relevantly defines a "managed investment scheme" as follows:

" (a) a scheme that has the following features:

- (i) *people* contribute money or money's worth as consideration to acquire rights (**interests**) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
- (ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the **members**) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);
- (iii) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions);..."

62 Importantly, "scheme property" in respect of registered schemes is defined in s.9 of the Act to mean:

- "(a) contributions of money or money's worth to the scheme; and
- (b) money that forms part of the scheme property under provisions of this Act or the ASIC Act; and
- (c) money borrowed or raised by the responsible entity for the purposes of the scheme; and
- (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a),(b) or (c); and

¹³⁷ The Timberland Scheme Properties (see paragraph 1(f), above) are "scheme property" of the Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520).

¹³⁸ *Re Investa Properties Ltd* (2001) 187 ALR 462, 465. See also, *Treecorp Australia Ltd (in liquidation*

¹³⁹ Section 9. Emphasis added.

- (e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d)."

63 As Gordon J noted in *Treecorp Australia Ltd (in liquidation) v Dwyer* [2009] FCA 278 at [40]:

"The definition of 'managed investment scheme' makes it clear that **investors** contribute "money or money's worth" to a "program or plan of action" and those contributions are pooled to produce benefits for those who made contributions."
[emphasis added]

64 The only apposite element of the definition of "scheme property" in relation to the land owned by WFL and the HVP and FNSW leases is sub-section (d). As Keane J stated in *Mier v FN Management Pty Ltd* [2006] 1Qd R 339 at 350:¹⁴⁰

"It follows that, if property is to be considered "scheme property", the property in question must have been contributed to the scheme **or must have been obtained in connection with such contributions. The absence of any such connection would make it doubtful that the property was really part of, or subject to, the scheme.**"
[Emphasis added]

65 The consequence is that s.601FC(2) does not necessarily apply to all property held by a responsible entity or used in the operation of the scheme.¹⁴¹ The question therefore becomes, were any of these interests acquired *in connection with contributions* made by the Growers and, as a consequence, *scheme property*?

66 Before turning to this overarching question, it is necessary to consider the test applicable in relation to the Professional Investor Schemes.

67 The definition of "scheme property" in s.9 of the Act does not strictly apply to unregistered schemes. However, courts have proceeded on the basis that in determining what constitutes the "scheme property" of an unregistered scheme, the statutory definition must serve as a guide.¹⁴² As Keane JA stated in *Mier* in the context of a winding up of an unregistered scheme pursuant to s.601EE of the Act (at 351):

"Apart from registration itself, there is little to differentiate between registered and unregistered managed investment schemes. Whereas a company only comes into existence upon registration,[footnote omitted] a managed investment scheme can exist independently of registration, with registration only being necessary if the scheme meets certain other criteria[footnote omitted]. **Registration is therefore only an incident, rather than the necessary source, of the existence of a scheme.**
Unlike a company, a scheme does not cease to exist if it is deregistered [footnote

¹⁴⁰ Cited with apparent approval by Gordon J in *Treecorp* at [41].

¹⁴¹ See: *Mier* at 350-351 per Keane JA; *Hance v Commissioner of Taxation* [2008] FCAFC 196, [95]-[100], *Treecorp* at [42].

¹⁴² See: *Australian Securities and Investments Commission v Letten (No 5)* [2010] FCA 1047 at [10] and the cases cited therein (per Gordon J).

omitted]. The result is that a scheme remains a scheme whether or not it is registered so long as it meets the definition of “managed investment scheme” contained in s.9 of the Act. **This suggests that the definition of “scheme property” for a registered scheme must serve as a guide to what should be considered to be the property of an unregistered scheme.** [Emphasis added]

68 It is arguable that the application of the s.9 definition to unregistered schemes applies only in the context of the winding up of an unlawful unregistered scheme, as opposed to lawful unregistered schemes. However, the analysis below proceeds on the assumption that section 9 provides the guidance generally in relation to unregistered schemes.

69 In resolving whether the freehold land, FNSW leases and HVP leases¹⁴³ are “scheme property”, “it is of necessity”¹⁴⁴ to consider the constituent terms of the relevant schemes to ascertain the property interests which have been contributed, or which are otherwise subject, to the scheme. As Barrett J said in *Australian Securities and Investments Commission v Takaran Pty Ltd.*¹⁴⁵

“The essence of a ‘scheme’ is a coherent and defined purpose, in the form of a ‘programme’ or ‘plan of action’, coupled with a series of steps or a course of conduct to effectuate the purpose and pursue the programme or plan. In some cases, the scope of the scheme will readily be gathered from some constitutive document in the nature of a blueprint setting out all relevant matters. In others, there may be no writing or such as there is may tell only part of the story leaving the remainder to be supplied by necessary implication from all the circumstances.”

70 As detailed in section D above, in the present case, the “blueprint” of each of the schemes was documented. It is evident from the constituent documents that the interest to be acquired by the Growers as a result of their contributions was an interest in the Project, not an interest in the Land upon which the Project was to be conducted. There is nothing in the constituent documents which indicate that the land was contributed by the Growers. It was sufficient for the Project that the Growers obtain a leasehold interest. The Land did not have to be contributed to the Project by the Growers. It could have been owned by a third party, as was the case with the FNSW and HVP land. Similarly, the Growers did not have to acquire an interest as head tenant for the purposes of the Project. The conclusion that the Growers acquired only an interest in the Project and not the Land or head leases is supported by:

¹⁴³ In relation to the HVP leases, see paragraphs 33 - 36 of the outline of submissions in proceeding SCI 2011 6762.

¹⁴⁴ *Mier* at 351 per Keane JA. *Treecorp* at [44] per Gordon J.

¹⁴⁵ [2002] NSWSC 834 at [15], cited with approval in *Mier* per Keane JA at 351.

- (a) the definition of “Assets” held on trust for the Growers are “all the property, rights and income *of the Project*, but not application moneys or property in respect of which Woodlots have not yet been issued”;¹⁴⁶
- (b) the definition of “Project” means “the project established pursuant to this constitution [investment deed] and includes all the Assets and Liabilities of the Project”;
- (c) In the Willmott Registered Schemes and Willmott Professional Investor Schemes, the PDS and Information Memoranda specified that if a Grower paid the application fee and was accepted, WFL would take a number of steps including: preparing the plantation site and managing the plantations. Critically, the PDS’s and Information Memoranda did not say that WFL would *buy* the land upon which the schemes were conducted.
- (d) Similarly, the Forestry Management Agreements made clear that the applicable fees were referable to preparing the site, planting the trees and general maintenance rather than the *purchase* of the freehold land. Furthermore, certain of those fees were annual or deferred and were therefore payable long after the relevant freehold land was acquired.
- (e) Furthermore, the relevant scheme documents¹⁴⁷ contain no express reference to the power of WFL to pay for the freehold land or to a right of indemnity in favour of WFL specifically in relation to the acquisition of the freehold land – if WFL were acting in its capacity as responsible entity in connection with the acquisition of the freehold land, one would expect such provisions to be included in the scheme documentation.

71 In *Huntley Management Limited v Timbercorp Securities Limited* [2010] FCA 576 a question arose as to whether a head lease between the responsible entity and a related landowner was transmitted to a new responsible entity pursuant to s.601FS and s.601 FT of the Act, and whether the lease was “scheme property” notwithstanding that it was expressed as being entered into by the responsible entity in its personal capacity. In the Liquidators’ submission the conclusion that the lease was scheme property is distinguishable because the structure of the relevant scheme was quite different. In particular, it is relevant that in the Timbercorp structure the responsible entity was a mere conduit for licence fees. As Rares J said, “those licence fees were contributions to the scheme so that the leaseholds could be held in order that mangoes could be grown for

¹⁴⁶ See, for example clause 26.1 of the Constitution for the Willmott Forests Project (ARSN 089 379 975), [Vol A4, CB 1769] and clause 21.1 of the Investment Deed dated 7 May 2004 for the Willmott Forests - Professional Investor - 2004 Project [Vol A4, CB 1885].

¹⁴⁷ I.e. the constitutions, investment deeds, PDS’s and information memoranda.

sale. The leases were thus scheme property.”¹⁴⁸ In the Willmott structure WFL is not a mere conduit: it is liable for rent (including the Upfront Rent Portion in a number of schemes) and it is the owner of land and receives rent in circumstances which cannot be correlated to the acquisition of that land.

72 The Partnership Schemes were not “managed investment schemes”. There was only one member – the Partnership itself. The Partnership did not pool contributions with any other Grower. The Partnership entered into the lease with WFL together with the Establishment & Maintenance Agreement¹⁴⁹ and Plantation Development Agreement. There was therefore no relevant collective of members. Even if the Liquidators are incorrect in that contention, the constituent documents of the Partnership Schemes also support a conclusion that the freehold land is not scheme property. In particular, taking the 1994 McKenzie & Partners - Forestry Partnership No 2 as an exemplar -

- (a) The operation of the Partnership Agreement is conditional on the partners entering into a Lease Agreement, Plantation Development Agreement and Establishment & Maintenance Agreement and not the *acquisition* of the freehold land.¹⁵⁰
- (b) The Lease Agreement, Plantation Development Agreement and Establishment & Maintenance Agreement were attached to the Partnership Agreement
- (c) Assets of the partnership are defined in clause 6 of the partnership agreement as including “forests, goods and other property and improvements thereon as shall accrue to or arise for the benefit of or be acquired by the Partnership from time to time”.¹⁵¹ The land does not fit within this definition as the then landowner, HJ Selected Properties (Projects) Pty Ltd was not, at any time, a partner in the partnership or the manager or trustee of the partnership.
- (d) The lease is between HJ Selected Properties Pty Ltd as lessor and McKenzie & Partners – Forestry Partnership No. 2 as lessee and is signed by or on behalf of each of the partners and sets out details of the demised land and the rental payable.¹⁵² The lessor, HJ Selected Properties Pty Ltd, is a separate legal entity to HJ Selected Properties (Projects) Pty Ltd. It is unclear the basis upon which HJ Selected Properties Pty Ltd had the capacity to lease the land.

¹⁴⁸ At [64]. See also, at [61], where Rares J expresses a broader basis for the conclusion in relation to “scheme property”.

¹⁴⁹ See the unnumbered opening paragraph of the Establishment and Maintenance Agreement for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2046].

¹⁵⁰ See clause 2(iv) and Item 3 of the Schedules of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2007 and CB 2022].

¹⁵¹ See clause 6 of the Partnership Agreement of the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2009].

¹⁵² [Vol A4, CB 2051 to CB 2056].

- (e) The Establishment & Maintenance Agreement is between Willmott Forests Management Limited (**WFML**) and McKenzie & Partners – Forestry Partnership No. 2 and is signed by or on behalf of each of the partners.¹⁵³
- (f) Under the Establishment & Maintenance Agreement¹⁵⁴ and Plantation Development Agreement,¹⁵⁵ WFML submits an estimate for carrying out certain works and services on “your [the partnership’s] Leased property”.
- (g) The Information Memorandum:
 - (i) refers to the Land Owner as HJ Selected Properties Pty Ltd;¹⁵⁶
 - (ii) provides for the Title to the land to be lodged with the Partnership Trustee for security and to allow the Partnership Trustee to have first ranking security over the land on behalf of the Partnership;¹⁵⁷
 - (iii) refers to the land being leased to the Partnership”;¹⁵⁸
 - (iv) provides that the Land Owner will purchase the appropriate land and lodge the Title with the Partnership Trustee;¹⁵⁹ and,
 - (v) contains a taxation report from McKenzie & Partners which refers to the land being owned by HJ Selected Properties Pty Ltd and leased to the Partnership.¹⁶⁰

73 The Partnership Schemes were conducted on certain parts of the Bombala Land.¹⁶¹ The land was purchased by WFL in 2000 for \$700,000,¹⁶² several years after the Partnership Schemes were commenced. There is no reference in any constituent document of the Partnership Schemes to the acquisition of the land by WFL being funded by Grower contributions.¹⁶³ The available documents reveal that the Partnership Schemes

¹⁵³ See the Establishment and Maintenance Agreement for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2046].

¹⁵⁴ See the unnumbered opening paragraph of the Establishment and Maintenance Agreement for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2046].

¹⁵⁵ See the unnumbered opening paragraph of the Plantation Development Agreement for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2057].

¹⁵⁶ See the page entitled “Directory” of the Information Memorandum for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2064].

¹⁵⁷ See page 1 of the Information Memorandum for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2066].

¹⁵⁸ See pages 1 and 4 of the Information Memorandum for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2066 and CB 2069].

¹⁵⁹ See page 2 of the Information Memorandum for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2067].

¹⁶⁰ See page 10 of the Information Memorandum for the 1994 McKenzie & Partners - Forestry Partnership No 2 [Vol A4, CB 2075].

¹⁶¹ Eighth Crosbie Affidavit at exhibit CDC-33, [Vol A5].

¹⁶² Eighth Crosbie Affidavit at exhibit CDC-30, [Vol A5].

¹⁶³ This is evident when comparing the dates of the Constituent Documents of the Partnership Schemes (included in CDC-5 to the Seventh Crosbie Affidavit [Vol A1, CB 314]) against the land transfer documents exhibited as CDC-30 to the Eighth Crosbie Affidavit [Vol A5].

contributions were confined to paying WFL rent¹⁶⁴ as well as the fees under the Establishment & Maintenance Agreement and Plantation Development Agreement. WFL appears to have done no more than purchase the relevant land after the Partnership Schemes commenced, provided a continuing lease of that land to the Partnership Schemes and managed the plantations located on that land.

- 74 The Information Memoranda might give rise to an intention to create an equitable mortgage in favour of the Partnership Trustee. However, for the following reasons it must be concluded that no such interest presently encumbers the land by WFL:
- (a) the Partnership Trustee was deregistered on 10 May 2000 and does not appear to have been replaced;¹⁶⁵
 - (b) WFL acquired the land and the title deeds are held by WFL and its solicitors or agents;¹⁶⁶ and,
 - (c) the title searches reveal that no mortgage or caveat was registered by the Partnership Trustee.¹⁶⁷
- 75 The conclusion that the Freehold Land is not scheme property¹⁶⁸ is reinforced by the following facts:
- (a) the financial contributions made by the Growers cannot be traced into the acquisition of the freehold land¹⁶⁹ - the absence of evidence of this type was considered relevant by Gordon J in *ASIC v Letten (No 5)*;¹⁷⁰
 - (b) at least 25% of the freehold land was acquired prior to the commencement of the scheme in which it was used;¹⁷¹
 - (c) WFL has borne the costs associated with acquiring and holding the freehold land and has not been directly reimbursed or indemnified for any of those costs;¹⁷²
 - (d) The land was included as an asset of WFL's in the company accounts prior to the Liquidators' appointment;¹⁷³ and,
- 76 Such a conclusion is consistent with the tax driven nature of the schemes and the emphasis placed on the deductibility of contributions.¹⁷⁴

¹⁶⁴ Eighth Crosbie Affidavit at [11], [Vol A5].

¹⁶⁵ Eighth Crosbie Affidavit at [10], [Vol A5].

¹⁶⁶ Eighth Crosbie Affidavit at [11] and [12], [Vol A5].

¹⁶⁷ Eighth Crosbie Affidavit at [11], [Vol A5].

¹⁶⁸ As set out in footnote 137, above, this conclusion does not relate to the Timberland Scheme Property, which is scheme property of the Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520).

¹⁶⁹ Seventh Crosbie Affidavit at [136(h) and (i)], [Vol A1, CB 44 to CB 45].

¹⁷⁰ Seventh Crosbie Affidavit at [136(h) and (i)], [Vol A1, CB 44 to CB 45].

¹⁷¹ Seventh Crosbie Affidavit at [136(c)], [Vol A1, CB 44 to CB 45].

¹⁷² Seventh Crosbie Affidavit at [136(d)], [Vol A1, CB 44 to CB 45].

¹⁷³ Seventh Crosbie Affidavit at [136(b)], [Vol A1, CB 44 to CB 45].

- 77 Turning to the question of whether the FNSW leases are scheme property, it is evident that they are not scheme property for the following reasons:
- (a) The land the subject of the FNSW leases was secured by WFL so that it *may* be further sub-leased to the Growers;¹⁷⁵
 - (b) The \$1 rental for the FNSW leases was payable up-front and was not referable to the establishment of a particular scheme or the payment of application money for that scheme;¹⁷⁶
 - (c) In both of the Registered Willmott Schemes in which FNSW leases were used,¹⁷⁷ the relevant PDS specified that if a Grower paid the application fee and was accepted, WFL would take a number of steps including: preparing the plantation site and managing the plantations. Critically, the PDS's did not say that WFL would procure a lease of the land upon which the schemes were conducted.¹⁷⁸
 - (d) Similarly, the Forestry Management Agreements and Land Sourcing and Management Agreements made clear that the applicable fees were referable to preparing the site, planting the trees and general maintenance rather than procuring a lease of the FNSW land.¹⁷⁹
- 78 Finally, the “scheme property” question does not arise in respect of the Contractual Schemes as each Grower lease and service contract is independent of each other Grower’s contractual documentation. There is therefore no pooling of contributions or “common enterprise” sufficient to give rise to a “scheme”.
- 79 As the foregoing analysis demonstrates, the Liquidators are justified in having reached the conclusion that the Freehold Land and FNSW leases the subject of the Sale Contracts are not “scheme property”.

¹⁷⁴ See, for example, the 2002 Replacement Prospectus in respect of the Willmott Forests Project, which states at page 3 [Vol A4, CB 1780] that “under current taxation legislation expenses incurred under the Project are expected to be 100% tax deductible as per ATO Product Ruling PR 2002/76”, and at page 32 [Vol A4, CB 1809] that “product ruling 2002/76 has been issued by the ATO confirming that the tax benefits set out in the Product Ruling are available to Growers provided the arrangement is carried out in the manner described”. See, for further example, page 2 of the Information Memorandum in respect of the Willmott Forests Professional Investor - 2004 Project [Vol A4, CB 1895], which states that WFL is offering a sound investment in a softwood plantation project which is tax deductible as per ATO Product Ruling PR 2004/58; also page 19 of the Information Memorandum [Vol A4, CB 1912] which states that, “based on ATO Product Ruling PR 2004/58) ... expenses incurred under the Project are 100% tax deductible”.

¹⁷⁵ Clause 2.2(b), Lease Agreement between FNSW and WFL dated 30 June 2009 [Vol A4, CB 2238].

¹⁷⁶ See, for example, clause 8.2 of the Lease Agreement between FNSW and WFL dated 30 June 2009 [Vol A4, CB 2239].

¹⁷⁷ The Willmott Forests Project (ARSN 089 379 975) and the Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589).

¹⁷⁸ See, for example, the PDS dated 20 August 2008 in respect of the Willmott Forests Premium Forestry Blend Project [Vol A4, CB 2250].

¹⁷⁹ See, for example, the Land Sourcing and Forestry Management Agreement in respect of the Willmott Forests Premium Forestry Blend Project [Vol A4, CB 2404].

The Timberland Scheme Properties

- 80 Unlike the other Willmott Registered Schemes, the Willmott Forests Premium Timberland Fund No. 1 was established as a unit trust, and units in the Fund were offered to Growers.¹⁸⁰
- 81 WFL purchased the Timberland Scheme Properties in its capacity as the RE of the Willmott Forests Premium Timberland Fund No. 1.¹⁸¹ WFL accepts that the Timberland Scheme Properties are “scheme property” and intends to distribute the proceeds of sale relating to land portion of the Timberland Scheme Properties pursuant to the Constitution of the Willmott Forests Premium Timberland Fund No. 1 scheme.¹⁸²

The apportionment of value between trees and land

- 82 In negotiating the apportionment of the value of the land (or leasehold in the case of the FNSW leases) and the trees, the Liquidators have acted properly and reasonably in trying to ensure that the Sale Contracts reflect the best possible deal available to Growers and Unsecured Creditors. Specifically, the Liquidators have:
- (a) appointed independent experts to value the land (**M3 Report**)¹⁸³ and the trees (**Second Poyry Report**);¹⁸⁴
 - (b) considered the reasonableness of the allocation between the value of the land and trees in the Revised GFP Offer;¹⁸⁵
 - (c) compared the allocation in the Revised GFP Offer with the M3 Report and Poyry Report in determining the allocation between land and trees;¹⁸⁶
 - (d) adjusted the allocation between the Bombala land and Bombala trees so as to give a greater return to the Growers and enhance the prospect of their support for the sale process (**Bombala Adjustment**);¹⁸⁷
 - (e) assessed whether the Revised GFP Offer (as revised by the Bombala Adjustment) for land and trees is proportionately balanced having regard to the M3 Report and Poyry Report;¹⁸⁸

¹⁸⁰ Seventh Crosbie Affidavit at [32(h)], [Vol A1, CB 18].

¹⁸¹ Eighth Crosbie Affidavit at [20], [Vol A5].

¹⁸² Seventh Crosbie Affidavit at CDC-5 [Vol A1]. The Constitution of the Willmott Forests Premium Timberland Fund No. 1 scheme is included in Vol A5 of the Court Book.

¹⁸³ Seventh Crosbie Affidavit at [130] [Vol A1, CB 43], exhibit CDC-20 [Confidential Vol A3, CB 1529 to CB 1710].

¹⁸⁴ Seventh Crosbie Affidavit at [130] [Vol A1, CB 43], exhibit CDC-20 [Confidential Vol A3, CB 1529 to CB 1710].

¹⁸⁵ Seventh Crosbie Affidavit at [131], [Vol A1, CB 43].

¹⁸⁶ Seventh Crosbie Affidavit at [132], [Vol A1, CB 43 to CB 44].

¹⁸⁷ Seventh Crosbie Affidavit at [132], [Vol A1, CB 43 to CB 44].

¹⁸⁸ Seventh Crosbie Affidavit at [133], [Vol A1, CB 44].

- (f) considered the Receivers' offer in relation to the FNSW leases and determined that it was acceptable in light of Poyry's valuation of the trees on the land leased from FNSW;¹⁸⁹
- (g) attempted to negotiate with the Receivers to transfer the allocation of:
 - (i) value from land which was secured to the trees in all regions;¹⁹⁰
 - (ii) value from land which was secured by the charge to the unsecured Bombala land;¹⁹¹ and,
- (h) in the absence of a further offer, determined that it was preferable to reach agreement rather than allow the sale to GFP to fall through.

83 It is evident that the Liquidators have undertaken a detailed negotiation in the best interests of Growers and unsecured creditors by seeking to improve the value of the trees and unsecured land. This negotiation has been informed by expert independent advice. Having negotiated the best available outcome, the Liquidators have prudently observed that it would be preferable and in the best interests of Growers and unsecured creditors to complete the Sale Contracts, rather than see the sale process "fall through".

The apportionment of funds as between Growers

84 Having determined that the Freehold Land and FNSW leases are not scheme property, the Liquidators have focussed on the reasonableness of the Revised GFP Offer in relation to the trees.¹⁹² The Liquidators have determined that it is appropriate to apportion the Revised GFP Offer value of the trees for each region having regard to the value reached by the independent expert (Poyry).¹⁹³ This approach is reasonable and justified in circumstances where the Poyry Report adopted the harvesting model employed in the schemes and therefore reflects the hypothetical starting point for tracing the value of the Growers' rights into the existing sale proceeds.

85 Having determined that part of the sale proceeds are referable to the trees, the Liquidators have considered the appropriate means of distributing the proceeds. The schemes vary in their treatment of the distribution of the sale proceeds. In some schemes, Growers are entitled to the proceeds of sale specifically referable to their trees.¹⁹⁴ In others, WFL is responsible for harvesting the trees and for pooling and

¹⁸⁹ Seventh Crosbie Affidavit at [157]-[158], [Vol A1, CB 50] and Exhibit CDC-20, [Confidential Vol A3, CB 1529 to CB 1710].

¹⁹⁰ Seventh Crosbie Affidavit at [132], [Vol A1, CB 43 to CB 44].

¹⁹¹ Seventh Crosbie Affidavit at [134], [Vol A1, CB 44].

¹⁹² Seventh Crosbie Affidavit at [159], [Vol A1, CB 50 to CB 51].

¹⁹³ Seventh Crosbie Affidavit at [160], [Vol A1, CB 51].

¹⁹⁴ See, for example, page 15 of the Information Memorandum in respect of the Willmott Forests - Professional Investor - 2003 Project [Vol A4, CB 2421].

distributing the proceeds in proportion to the Growers' interest in that project.¹⁹⁵ Ultimately, as the GFP bid and Poyry valuation were conducted on a plantation-by-plantation basis it is not practicable to determine the actual value attributable to a specific Growers' lot. It is thus appropriate and reasonable that the proceeds of sale are pooled and distributed on a project by project basis in accordance with confidential exhibit CDC-23. This conclusion is reinforced by the fact that this was, in practice, the approach adopted by WFL even in schemes in which a Grower had a personal right to harvest the trees.¹⁹⁶

K DISCLAIMER

86 The Contractual Schemes and Partnership Schemes do not have a constitution.¹⁹⁷ Nor are the Liquidators empowered to sell the WFL Assets related to those schemes.¹⁹⁸ Thus, the disclaimer of the Project Documents¹⁹⁹, including the Grower Leases, is necessary to facilitate an unencumbered sale. The general legislative intent of Division 7A of the Act is to "enable insolvency administrators to relieve themselves of ongoing liabilities which so prolong the administration and delay the dividend".²⁰⁰ What is important is whether the Project Documents can be carried out compatibly with the Liquidators' duty to realise WFL's property and pay a dividend at the earliest possible time.²⁰¹ In the present case, it is apparent that the Project Documents require performance for over 25 years and that their performance would substantially delay the provision of a dividend to creditors.

87 Dodds-Streeton J has ordered that the Liquidators are justified in disclaiming the Project Documents of the Contractual and Partnership Schemes. The terms of the Grower Leases are onerous and/or unprofitable because:²⁰²

(a) the Grower Leases generally run for 25 years;²⁰³

¹⁹⁵ See, for example, clause 14 of the Constitution of the Willmott Forests Project [Vol A4, CB 1759].

¹⁹⁶ Seventh Crosbie Affidavit at [172], [Vol A1, CB 53].

¹⁹⁷ Third Crosbie Affidavit at [53] [Vol A1, CB 160 to CB 161].

¹⁹⁸ Ibid.

¹⁹⁹ The Forestry Right Agreement terminates at the same time as the lease of the relevant plantation terminate: see Third Crosbie Affidavit at [45] [Vol A1, CB 159].

²⁰⁰ *Global Television Pty Ltd v Sportsvision Australia Pty Ltd (in liq)* (2000) 35 ACSR 484 at 498 [65] (per Santow J); approved by Spigelman CJ in *Sims and Anor (as liqs of Enron Australia Pty Ltd) v TXU Electricity Ltd* (2005) 53 ACSR 295 at 299 [18]. See also [16]-[17].

²⁰¹ *Global Television Pty Ltd v Sportsvision Australia Pty Ltd (in liq)* (2000) ACSR 484 at 496-497 [57]-[63] (per Santow J).

²⁰² See generally: *Re Real Investments Pty Ltd* [2000] 2 Qd R 555 at 559 [14] (per Chesterman J) and *Global Television Pty Ltd v Sportsvision Australia Pty Ltd (in liq)* (2000) 35 ACSR 484 at 497 [61]-[62] (per Santow J) adopting the observations of Chesterman J in *Transmetro Corporation Ltd v Real Investments Pty Ltd (in liq)* (1997) 17 ACLC 1314 at 1318-1320 [15]-[20].

²⁰³ Third Crosbie Affidavit at [43(a)] [Vol A1, CB 157].

- (b) in most cases, WFL will not receive any further rent payments during the term of the Grower Leases and thus will receive no (or very little) cashflow until the end of the schemes,²⁰⁴
- (c) continuing to run the schemes subject to the Grower Leases would delay the winding up of the Willmott Group for up to 25 years,²⁰⁵
- (d) the demised land may only be used for the establishment and maintenance of trees in accordance with the scheme being managed by WFL²⁰⁶ – and the scheme can no longer be managed by WFL due to its insolvency;²⁰⁷ and
- (e) even if the Growers were able to enter upon the land and harvest the trees, the exercise of that right would increase WFL's liability, would be onerous to monitor and would create serious risks.²⁰⁸

88 Further, the Forestry Management Agreements are themselves onerous and unprofitable. In addition to being performable over the same onerous length of time and subject to the same absence of adequate revenue, the Forestry Management Agreements provide for the establishment, maintenance and harvesting of Growers' trees by WFL.²⁰⁹ As stated above,²¹⁰ the Poyry report estimates 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.²¹¹ Of course, WFL does not have the requisite funds to do so.

89 The WGG contended before Dodds-Streeton J that a disclaimer by the Liquidators of the Grower leases would not terminate the Growers' leasehold estate.²¹² Her Honour expressly left open the question of whether a disclaimer of the Grower Leases would extinguish the Growers' leasehold estate.²¹³ In the Liquidators' submission, the effect of the disclaimer of the Grower leases is that the leasehold estate ceases to exist. Lord Nicholls of Birkenhead in *Hindcastle Ltd v Barbara Attenborough Ltd*,²¹⁴ said:

²⁰⁴ *Ibid.*

²⁰⁵ Third Crosbie Affidavit at [43(b)] [Vol A1, CB 157].

²⁰⁶ Consider for example the wording of the lease in Willmott Forests Project (ARSN 089 379 975): "[t]he lessee may use the land only as part of a managed investment scheme by which investors including the lessee ('Growers') participate in the establishment and maintenance of trees ('Trees'), **which scheme is managed by the lessor**" [emphasis added] [Vol A4, CB 1834].

²⁰⁷ Third Crosbie Affidavit at [29(c)] [Vol A1, CB 153].

²⁰⁸ Third Crosbie Affidavit at [43(h)] [Vol A1, CB 158 to CB 159].

²⁰⁹ Third Crosbie Affidavit at [46] [Vol A1, CB 159].

²¹⁰ See paragraph [16], above.

²¹¹ Third Crosbie Affidavit at [43(c)] [Vol A1, CB 158]; Poyry Report at [Vol A4, CB 2147].

²¹² WGG Outline of Submissions dated 22 June 2011 at [28]-[30] [Vol A1, CB 631].

²¹³ Reasons for judgment of the Honourable Justice Dodds-Streeton in respect of Federal Court proceeding no VIC 2011 386 dated 23 December 2011 §119, - see also §110 (exhibited as CDC-34 to the Eighth Crosbie Affidavit [Vol A5]).

²¹⁴ [1997] AC 70 at 87E-F. See also *Sandtara Pty Ltd v Abigroup Ltd* (1996) 42 NSWLR 491, 493D-494A.

“Disclaimer operates to determine all the tenant’s obligations under the tenant’s covenants, and all his rights under the landlord’s covenants. In order to determine these rights and obligations it is necessary, in the nature of things, that the landlord’s obligations and rights, which are the reverse side of the tenant’s rights and obligations must also be determined. If the tenant’s liabilities to the landlord are to be extinguished, of necessity so also must be the landlord’s rights against the tenant. The one cannot be achieved without the other. Disclaimer also operates to determine the tenant’s interest in the property, namely the lease. Determination of a leasehold interest has the effect of accelerating the reversion expectant upon the determination of that estate. The leasehold estate ceases to exist.”

- 90 In the Liquidators’ submission this statement is equally applicable to disclaimer on behalf of a landlord. Further, it should be noted that s.568(1A) of the Act, which empowers a liquidator to disclaim a lease without leave, makes no distinction between the capacity of the party to the lease as a tenant or landlord.
- 91 The contention that the Growers’ rights as lessees survive also fails to have regard to the words “except so far as necessary in order to release the company and its property from liability” in s.568D(1) of the Act. The fundamental object of a lease is to confer upon the tenant a right of possession of the land in accordance with terms of the demise. The obligation of the landlord is to allow the tenant to occupy the land in accordance with the demise. If the disclaimer of the lease does not have the effect of terminating the tenant’s right of possession, then disclaimer of the lease would be inutile. If the WGG contentions were accepted the power under s.568(1A) would be effectively illusory when considered from the perspective of a landlord. The Liquidators submit that the rights of the landlord and tenant respectively are correlative²¹⁵ as discussed by Lord Nicholls in *Hindcastle*, with the result that the disclaimer by a liquidator of either the tenant’s or landlord’s rights extinguishes the other party’s rights.
- 92 The Growers’ rights upon disclaimer would be limited to their accrued rights²¹⁶ and WFL (and the demised land) would be freed from the onerous and unprofitable obligations of specific performance.
- 93 One might ask rhetorically, if the Growers’ rights as lessees survive, against whom would they be enforceable? The Growers have previously attempted to answer this question by contending that title in the land would escheat to the Crown.²¹⁷ However, as the cases

²¹⁵ See also: *Re Jandowae Estates Pty Ltd* (1989) 7 ACLC 179 at 181.

²¹⁶ *Sims & Anor (as liqs of Enron Australia Pty Ltd) v TXU Electricity Ltd* (2005) 53 ACSR 295 at 300-301 [23]-[24].

²¹⁷ WGG Outline of Submissions dated 22 June 2011 in respect of Federal Court proceeding number VID 2010 386 at [27] (exhibited as MAB-1 to the affidavit of Mark Bland dated 15 December 2011 in this proceeding), [Vol A1, CB 631].

previously relied upon by the WGG make clear,²¹⁸ the doctrine of escheat is invoked upon the disclaimer of *land* as opposed to the disclaimer of a lease.²¹⁹

- 94 Furthermore, the construction favoured by the Growers gives rise to an absurd statutory result: namely, a landlord could disclaim a lease but not sell the freehold unencumbered by the very tenancy disclaimed. Such a result does not conform with the objects of Division 7A of the Act and ought not be preferred.
- 95 If the Court is not satisfied that the disclaimer would extinguish the Growers' leasehold estate, subject to their rights of appeal under s.568 B(3) referred to below, it should not give its consent to the disclaimers as required by the orders of Dodds-Streton J. The whole object of the transaction is to give the purchaser unencumbered title to the land, with the proceeds to be divided between Growers, secured creditors and unsecured creditors. If this cannot be achieved because the Liquidators cannot extinguish the Growers' leasehold interest in the land by disclaimer, then the question left open by Dodds-Streton J would be answered against the objective the Liquidators are endeavouring to achieve, namely an unencumbered sale.
- 96 Pursuant to s 568B(3) of the Act, a Court's power to set aside a disclaimer under s 568 is conditional upon satisfaction that the disclaimer would cause, to persons who have, or claim to have, interests in the property, prejudice that is "grossly out of proportion" to the prejudice that setting aside the disclaimer would cause to the company's creditors. It is of course critical that the prejudice to the Growers must not only outweigh prejudice to creditors: the prejudice must be *grossly* out of proportion to the prejudice to creditors.²²⁰
- 97 Thus, if *at a later stage*, the Liquidators exercise that power, the Growers will have an opportunity to set aside those disclaimers. For the Growers to establish the requisite prejudice, they will need to show that there is a realistic opportunity to restructure the schemes before the trees are materially impaired *and that* the prejudice to the Growers from enabling the Liquidators to disclaim the Grower Leases is *grossly* out of proportion to the prejudice to the creditors.

²¹⁸ *National Australia Bank v New South Wales* (2009) 182 FCR 52; *National Australia Bank v Victoria* [2010] FCA 1230.

²¹⁹ *National Australia Bank v New South Wales* (2009) 182 FCR 52 at [3]; *National Australia Bank v Victoria* [2010] FCA 1230 at [3].

²²⁰ In *Re Real Investments Pty Ltd* [2000] 2 Qd R 555 Chesterman J described the operation of the section as follows at 563-564 [29]-[30]: "Section 568B(3) demands a comparison between the position of the person who will lose if the disclaimer is not set aside and that of the other person who will lose if it is. Only if the prejudice to the former is 'grossly out of proportion' to the prejudice of the latter will the court be authorised to set the disclaimer aside. 'Prejudice' is a wide term, no doubt chosen deliberately. In most, if not all, cases one would expect prejudice to manifest itself in financial disadvantage. In fact two sets of comparisons are called for. The first is an examination of the relative positions of [the Growers] and the creditors, on the supposition that the agreement is ended by disclaimer. The second is the same examination on the supposition that the agreement remains in force. The contrast in position between those comparisons allows the court to make the assessment described by the section."

L APPROPRIATENESS OF GIVING DIRECTIONS IN THE PRESENT CASE

98 The orders sought are appropriate and justified to facilitate the winding up of WFL and to deliver the best available financial outcome for Growers. The Sale Contracts have been executed in the context of a robust and competitive sale process. The sale proceeds have been allocated and apportioned having regard to the sale price, the opinions of the independent experts, the relevant legal issues and the commercial reality of having to obtain the Receivers' consent. In so doing, the Liquidators have adopted a careful, considered and transparent approach and their actions have intended to effect a fair and equitable distribution to each Grower. After the effluxion of seven months since the making of the Orders by Dodds-Streeton J, it is not appropriate that this fair and equitable distribution is stymied by inchoate proposals that certain of the schemes may yet be recapitalised.²²¹ As in *Re Timbercorp Securities Limited*, "a bird in the hand is worth two in the bush".²²²

Dated: 18 January 2012

PAUL ANASTASSIOU S.C.

ROBERT G CRAIG



ARNOLD BLOCH LEIBLER

²²¹ Affidavit of Mark Bland affirmed on 15 December 2011 at [55]-[56], [Vol A1, CB 612 to CB 613]. See also, affidavit of Mark James Hoddinott affirmed 9 January 2012 at [93], [Vol A2, CB 838].

²²² *Re Timbercorp Securities Limited* (2009) 74 ACSR 626 at [64].

SCHEDULE 1 - SCHEDULE OF PARTIES

**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 INVESTMENTS SCHEMES LISTED IN SCHEDULE 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 3**

First Plaintiff

and

**CRAIG DAVID CROSBIE
IN HIS CAPACITY AS LIQUIDATOR OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)**

Second Plaintiff

and

**IAN MENZIES CARSON
IN HIS CAPACITY AS LIQUIDATOR OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)**

Third Plaintiff

SCHEDULE 2 - REGISTERED MANAGED INVESTMENT SCHEMES

- 1 Willmott Forests 1989 - 1991 Project (ARSN 092 516 651)
- 2 Willmott Forests Project (ARSN 089 379 975)
- 3 BioForest Dual Income Project 2006 (ARSN 119 153 623)
- 4 BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
- 5 Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- 6 Willmott Forests Premium Forestry Blend Project - 2010 Project (ARSN 142 722 585)
- 7 Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

SCHEDULE 3 - UNREGISTERED MANAGED INVESTMENT SCHEMES: PROFESSIONAL INVESTOR SCHEMES

- 1 Willmott Forests - Professional Investor - 2001 Project - 2001 Information Memorandum
- 2 Willmott Forests - Professional Investor - 2002 Project - 2002 Information Memorandum
- 3 Willmott Forests - Professional Investor - 2003 Project - 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004)
- 4 Willmott Forests - Professional Investor - 2004 Project - 2004 Information Memorandum and 2004 Information Memorandum (2005)
- 5 2005 BioForest Wholesale Project No. 2 - 2005 Wholesale Forestry Memorandum (Bioforest)
- 6 Willmott Forests - Professional Investor - 2006 Project - 2006 Information Memorandum

SCHEDULE 4 - UNREGISTERED MANAGED INVESTMENT SCHEMES: CONTRACTUAL SCHEMES AND PARTNERSHIP SCHEMES**Contractual Schemes**

- 1 1983 (No Project)
- 2 1984 (No Project)
- 3 1985 (No Project)
- 4 1986 (No Project)
- 5 1987 (No Project)
- 6 1989 (No Project)
- 7 1990 (No Project) Interest Only Offer
- 8 1991 (No Project)
- 9 Sharp/Reed Plantation Project -1998 Information Memorandum
- 10 2001 (No Project)

Partnership Schemes

- 11 McKenzie & Partners - Forestry Partnership No.1 (1993)
- 12 Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (1994)
- 13 Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994)
- 14 Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (1994)
- 15 McKenzie & Partners - Forestry Partnership No. 2 (1994)

ANNEXURE 1 - REVIEW OF WILLMOTT SCHEMES
WILLMOTT FORESTS 1989 - 1991 PROJECT (ARSN 092 516 651)

1989 Prospectus ("First Prospectus 1989")

Type of scheme	Registered MIS
Number of investors	10
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment deed dated 6 February 1989, as amended by the Supplemental Deed dated 22 February 2000 and the Second Amendment Deed dated 12 July 2011. • Establishment and Maintenance Agreements • Lease Agreements • Plantation Development Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Establishment and Maintenance Agreements, Growers are obliged to pay a one-off upfront payment of \$2,960/Ha in consideration of the Manager undertaking establishment, ongoing maintenance works and insurance in respect of the Grower's leased land; • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • \$250/Ha annually in advance for the first four years of the term of the lease; • \$62.50/Ha annually in advance for the remaining term of the lease, in consideration for the rights granted to the Grower as lessee under the lease; • Under the Plantation Development Agreements, Growers are obliged to pay a one-off upfront payment of \$4,320/Ha in respect of the Manager carrying out plantation services on the Grower's leased land
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager may arrange for thinning or clear fell of the Grower's Trees, and negotiate a price for the Grower's Trees with the consent and approval of the Grower: Constitution clause 13.1.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the net proceeds of sale in payment of the Manager's fee of 7.5% of the net proceeds of sale and the balance to the Grower in respect of the relevant Hectare: Constitution clause 13.4.</p>

Rights of the Growers	References to “the Grower’s Trees” and “Trees belonging to Growers”: see eg, Constitution clause 13.1 (and other references throughout Constitution)
Pooling	No references in the project documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, “makes commercial sense to be maintained by way of additional voluntary grower contributions.”</p> <p>However would require a Grower contribution of \$5,021 per hectare held by that Grower to continue the scheme.</p>

1990 Prospectus (“Second Prospectus 1990”)

Type of scheme	Registered MIS
Number of investors	13
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment deed dated 6 February 1989, as amended by the Supplemental Deed dated 22 February 2000 and the Second Amendment Deed dated 12 July 2011. • Establishment and Maintenance Agreements • Lease Agreements • Plantation Development Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Establishment and Maintenance Agreements, Growers are obliged to pay 7.5% out of the net proceeds of each harvesting and sale of the Trees in consideration for the Manager undertaking establishment, ongoing maintenance works and insurance in respect of the Grower’s leased land; • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • \$120/Ha annually in advance for the term of the lease, indexed annually to any CPI increase; or • \$1,500/Ha one-off upfront payment, in consideration for the rights granted to the Grower as lessee under the lease; • Under the Plantation Development Agreements, Growers are obliged to pay a one-off upfront payment of \$4,320/Ha in respect of the Manager carrying out plantation services on the Grower’s leased land.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager may arrange for thinning or clear fell of the Grower’s Trees, and negotiate a price for the Grower’s Trees with the consent</p>

	<p>and approval of the Grower: Constitution clause 13.1.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the net proceeds of sale in payment of the Manager's fee of 7.5% of the net proceeds of sale and the balance to the Grower in respect of the relevant Hectare: Constitution clause 13.4.</p>
Rights of the Growers	References to "the Grower's Trees" and "Trees belonging to Growers": see eg, Constitution clause 13.1 (and other references throughout Constitution)
Pooling	No references in the project documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,526 per hectare held by that Grower to continue the scheme.</p>

1990 Information Memorandum ("Second Prospectus 1990 (1991) [Interest Only Offer]")

Type of scheme	Registered MIS
Number of investors	3
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment deed dated 6 February 1989, as amended by the Supplemental Deed dated 22 February 2000 and the Second Amendment Deed dated 12 July 2011. • Establishment and Maintenance Agreements • Lease Agreements • Plantation Development Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Establishment and Maintenance Agreements, Growers are obliged to pay 7.5% out of the net proceeds of each harvesting and sale of the Trees in consideration for the Manager undertaking establishment, ongoing maintenance works and insurance in respect of the Grower's leased land; • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • \$120/Ha annually in advance for the term of the lease, indexed annually to any CPI increase; or • \$1,500/Ha one-off upfront payment, <p>in consideration for the rights granted to the Grower as lessee under the lease;</p> • Under the Plantation Development Agreements, Growers are

	obliged to pay a one-off upfront payment of \$4,320/Ha in respect of the Manager carrying out plantation services on the Grower's leased land.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager may arrange for thinning or clear fell of the Grower's Trees, and negotiate a price for the Grower's Trees with the consent and approval of the Grower: Constitution clause 13.1.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the net proceeds of sale in payment of the Manager's fee of 7.5% of the net proceeds of sale and the balance to the Grower in respect of the relevant Hectare: Constitution clause 13.4.</p>
Rights of the Growers	References to "the Grower's Trees" and "Trees belonging to Growers": see eg, Constitution clause 13.1 (and other references throughout Constitution)
Pooling	No references in the project documents.
Poyry viability analysis	<p>Non-Viable*: 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.</p> <p>Would require a Grower contribution of \$5,256 per hectare held by that Grower to continue the scheme.</p>

1991 Prospectus ("Third Prospectus 1991")

Type of scheme	Registered MIS
Number of investors	59
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment deed dated 6 February 1989, as amended by the Supplemental Deed dated 22 February 2000 and the Second Amendment Deed dated 12 July 2011. • Establishment and Maintenance Agreements • Lease Agreements • Plantation Development Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Establishment and Maintenance Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • \$100/Ha/pa for the term of the agreement, indexed annually to any CPI increase; or • \$4,000/Ha one-off upfront payment, <p>in consideration for the Manager undertaking establishment, ongoing maintenance works and insurance in respect of the</p>

	<p>Grower's leased land;</p> <ul style="list-style-type: none"> • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • \$75/Ha/pa for the term of the lease, indexed annually to any CPI increase; or • \$3,300/Ha one-off upfront payment, <p>in consideration for the rights granted to the Grower as lessee under the lease;</p> • Under the Plantation Development Agreements, Growers are obliged to pay a one-off upfront payment of \$4,950/Ha in respect of the Manager carrying out plantation services on the Grower's leased land.
<p>Harvesting and distribution of harvest proceeds</p>	<p><u>Harvesting</u></p> <p>The Manager may arrange for thinning or clear fell of the Grower's Trees, and negotiate a price for the Grower's Trees with the consent and approval of the Grower: Constitution clause 13.1.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the net proceeds of sale in payment of the Manager's fee of 7.5% of the net proceeds of sale and the balance to the Grower in respect of the relevant Hectare: Constitution clause 13.4.</p>
<p>Rights of the Growers</p>	<p>References to "the Grower's Trees" and "Trees belonging to Growers": see eg, Constitution clause 13.1 (and other references throughout Constitution)</p>
<p>Pooling</p>	<p>No references in the project documents.</p>
<p>Poyry viability analysis</p>	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,598 per hectare held by that Grower to continue the scheme.</p>

WILLMOTT FORESTS PROJECT (ARSN 089 379 975)

1999 Prospectus (20/10/1999)

Type of scheme	Registered MIS
Number of investors	11
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote¹ • Forestry Management Agreements • Pre-Lease Agreements • Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off upfront payment of \$5,500/Ha in consideration for the Manager undertaking preparation and planting works; • \$110/Ha quarterly in arrears from the second to the eleventh year in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land; and • 5% deducted from gross timber proceeds received from thinning and clear fell of trees; • Under the Lease Agreements, Growers are obliged to pay rental quarterly in arrears of \$220/Ha/pa for the first ten years of the lease, and thereafter the rental indexed annually to any CPI increase, in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>No provisions in the scheme documents.</p> <p><u>Distribution of proceeds</u></p>

¹ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.
Rights of the Growers	References to "the Grower's Trees" throughout the Constitution. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No provisions in the scheme documents.
Poyry viability analysis	<p>Viable*: At the time of the Poyry report, this project had a positive net present value, however a decrease in yield/price/log grade of 25% or more would make it non-viable.</p> <p>Would require a Grower contribution of \$2,808 per hectare to continue.</p>

2000 Prospectus No. 1

Type of scheme	Registered MIS
Number of investors	36
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote² • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off upfront payment of \$5,000/Ha in consideration for the Manager undertaking preparation and planting works; • \$110/Ha quarterly in arrears from the second to the eleventh year in consideration for the Manager undertaking establishment, maintenance works and

² As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<p>insurance in respect of the Grower's leased land; and</p> <ul style="list-style-type: none"> • 5% deducted from gross timber proceeds received from thinning and clear fell of trees; • Under the Lease Agreements, Growers are obliged to pay quarterly in arrears: <ul style="list-style-type: none"> • \$215/Ha for the first year; and • \$220/Ha/pa for the subsequent nine years; and thereafter the rental indexed annually to any CPI increase for the rest of the term of the lease, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower may engage the Manager to carry out marketing/sale of timber: Prospectus pg 14.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Constitution. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No provisions in the scheme documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,011 per hectare held by that Grower to continue the scheme.</p>

2000 Prospectus No. 2

Type of scheme	Registered MIS
Number of investors	28
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote³

³ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);

	<ul style="list-style-type: none"> • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay <ul style="list-style-type: none"> • a one-off payment of \$5,000/Ha in consideration for the Manager undertaking preparation and planting works; • \$110/Ha quarterly in arrears from the second to the eleventh year in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land; and • 5% fees plus GST 10% deducted from gross timber proceeds received from thinning and clear fell of trees; • Under the Lease Agreements, Growers are obliged to pay quarterly in arrears: <ul style="list-style-type: none"> • \$33.33 for 1 May 2000 - 30 June 2000; • \$220/Ha/pa for 1 July 2000 - 30 June 2010; and • thereafter the rental indexed annually to any CPI increase for the rest of the term of the lease, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower may engage the Manager to carry out marketing/sale of timber: Prospectus pg 13.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Constitution. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No provisions in the scheme documents.

- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, “makes commercial sense to be maintained by way of additional voluntary grower contributions.”</p> <p>However would require a Grower contribution of \$2,011 per hectare held by that Grower to continue the scheme.</p>
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2001 Prospectus

Type of scheme	Registered MIS
Number of investors	131
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁴ • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$4,125/Woodlot in consideration for the Manager undertaking preparation and planting works; and • the lesser of: <ul style="list-style-type: none"> • 7% deducted from gross timber proceeds received from thinning and clear fell of trees; and • \$3,251, <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower’s leased land</p> • Under the Lease Agreements, Growers are obliged to pay the

⁴ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<p>lesser of:</p> <ul style="list-style-type: none"> • 2% of the gross timber proceeds received from thinning and clear fell of trees; or • \$929, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower may engage the Manager to carry out marketing/sale of timber: Prospectus pg 13.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Constitution. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No provisions in the scheme documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,065 per hectare held by that Grower to continue the scheme.</p>

2002 Prospectus

Type of scheme	Registered MIS
Number of investors	9
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁵ • Forestry Management Agreements

⁵ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<ul style="list-style-type: none"> • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$3,850/Woodlot in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of trees, <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay 2% of the gross timber proceeds received from thinning and clear fell of trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower may engage the Manager to carry out marketing/sale of timber: Prospectus pg 14.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to the "Grower's Trees" throughout the Constitution and Prospectus. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No provisions in the scheme documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,958 per hectare held by that Grower to continue the scheme.</p>

2003 Prospectus

Type of scheme	Registered MIS
Number of investors	28
Location of plantation(s)	Bombala

Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁶ • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$3,850/Woodlot in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of trees; <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay 2% of the gross timber proceeds received from thinning and clear fell of trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower may engage the Manager to carry out marketing/sale of timber: Prospectus pg 16.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to the "Grower's Trees" throughout the Constitution and Prospectus.
Pooling	No provisions in the scheme documents.
Poyry viability analysis	Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary

⁶ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	grower contributions.” However would require a Grower contribution of \$1,903 per hectare held by that Grower to continue the scheme.
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2004 PDS

Type of scheme	Registered MIS
Number of investors	421
Location of plantation(s)	<ul style="list-style-type: none"> • Bombala • Murray Valley
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁷ • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$3,850/Woodlot in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of trees; or • 7% insurance proceeds received in respect of damage/destruction of Grower’s trees, <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower’s leased land;</p> • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • 2% of the gross timber proceeds received from thinning and clear fell of trees; or

⁷ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<ul style="list-style-type: none"> 2% of the insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Grower is taken to have engaged Manager to carry out harvesting unless Manager notified otherwise: Constitution clause 14.1; Prospectus pg 5.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to the "Grower's Trees" throughout the Constitution, PDS and Forestry Management Agreement.
Pooling	No provisions in the scheme documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,976 per hectare held by that Grower to continue the scheme.</p>

2006 PDS

Type of scheme	Registered MIS
Number of investors	908
Location of plantation(s)	<ul style="list-style-type: none"> Bombala Murray Valley HVP Land
Key project documents	<ul style="list-style-type: none"> Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁸ Forestry Management Agreements

⁸ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<ul style="list-style-type: none"> • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$3,850/Woodlot in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of trees; or • 7% insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • 2% of the gross timber proceeds received from thinning and clear fell of trees; or • 2% of the insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Grower is taken to have engaged Manager to carry out harvesting unless Manager notified otherwise: Constitution clause 14.1; Prospectus pg 8.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to the "Grower's Trees" throughout the Constitution, PDS and Forestry Management Agreement.
Pooling	The Manager will organise the marketing and harvesting for the Growers Trees on a financial year by financial year basis so that the proceeds from the sale of timber harvested from Woodlots planted in a particular financial year are to be pooled. ... Pooling does not apply to Growers who opt-out of the harvesting arrangements. (p 6, PDS)
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,262 per hectare</p>

	held by that Grower to continue the scheme.
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2007 PDS

Type of scheme	Registered MIS
Number of investors	527
Location of plantation(s)	<ul style="list-style-type: none"> • Bombala • Murray Valley • North Coast • HVP Land • FNSW Land
Key project documents	<ul style="list-style-type: none"> • Constitution dated 2 September 1999 as amended by the deeds listed in the footnote⁹ • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$4,290/Woodlot in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of trees; or • 7% insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the Manager undertaking establishment, maintenance works and insurance in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay:

⁹ As amended by the following supplemental deeds:

- supplemental deed dated 20 March 2000 (WFL.500.001.0390);
- supplemental deed dated 17 August 2000 (WFL.500.001.0391);
- supplemental deed dated 1 July 2002 (WFL.500.001.0397);
- supplemental deed dated 13 August 2002 (WFL.500.001.0394);
- supplemental deed dated 12 September 2003 (WFL.500.001.0393);
- supplemental deed dated 29 January 2004 (WFL.500.001.0396);
- supplemental deed dated 14 February 2005 (WFL.500.001.0395);
- supplemental deed dated 11 July 2006 (WFL.500.001.0392); and
- ninth amendment deed dated 12 July 2011 (see exhibit CDC-4 to the affidavit of Craig David Crosbie dated 13 December 2011).

	<ul style="list-style-type: none"> • 2% of the gross timber proceeds received from thinning and clear fell of trees; or • 2% of the insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Grower is taken to have engaged Manager to carry out harvesting unless Manager notified otherwise: Constitution clause 14.1; Prospectus pg 8.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager shall apply the gross proceeds of sale of Trees in payment of the Manager's Harvesting Fee of 1% of the gross proceeds of sale of Trees and the balance to the Growers based on their proportionate entitlement: Constitution clause 14.2.</p>
Rights of the Growers	References to the "Grower's Trees" throughout the Constitution, PDS and Forestry Management Agreement.
Pooling	Whilst you are allocated an identifiable Woodlot ..., unless you opt out of the marketing and harvesting arrangements the proceeds received in any financial year will be pooled together with Trees that were initially planted in the same financial year. Following harvesting, you will then be paid your proportional share of the relevant proceeds. (p 23, PDS)
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,556 per hectare held by that Grower to continue the scheme.</p>

BIOFOREST DUAL INCOME PROJECT 2006 (ARSN 119 153 623)

Type of scheme	Registered MIS
Number of investors	40
Location of plantation(s)	North Coast
Key project documents	<ul style="list-style-type: none"> • Constitution made in 2006 as amended by the Amendment Deed dated 12 July 2011 • Land Sourcing and Management Agreements • Lease Agreements <p>[We note that WFL took over as the RE of this scheme on 8 September 2008.]</p>
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Land Sourcing and Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$5,500/Woodlot in consideration for the Manager undertaking establishment works; and • 10% deducted from Net Proceeds of sale of the forest produce; <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay \$175/Timberlot/pa (plus GST) for the term of the lease, with the rent reviewed annually on 1 July to be indexed to CPI in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Grower is deemed to have engaged Manager to carry out harvesting: PDS pg 49.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager pools all proceeds and distributes to Growers in their respective proportions after deducting costs of processing, sale and felling: Constitution clause 30.1; Land Sourcing and Management Agreement clause 10(a).</p>
Rights of the Growers	During the term of the Land Sourcing and Management Agreement and Lease Agreement, "growers will own the trees in their Timberlot until they are thinned, harvested or sold": PDS pg 18.
Pooling	<ul style="list-style-type: none"> • CI 3.3, Constitution: The Responsible Entity shall create separate funds for the Project, being: (i) the Application Fund; and (ii) a Proceeds Fund in respect of the Growers' Timberlots. • CI 3.4, Constitution: An Applicant shall have an interest in the Application Fund equal to his Proportional Interest but shall not

	<p>have any interest in any particular part of the Application Fund or in any Investment, but only such interest in the Application Fund as a whole as is conferred on an Applicant under the provisions contained in this Constitution.</p> <ul style="list-style-type: none"> • CI 3.5, Constitution: Each Grower shall have an interest in the Proceeds Fund equal to his Proportional Interest until his Agreement is terminated, subject to the terms of the Agreements. Each Grower shall be absolutely and beneficially entitled to his Proportional Interest in the Proceeds Fund but shall not have any interest in any particular part of that Proceeds Fund or in any Investment, but only such interest in that Proceeds Fund as is conferred on the Grower under the provisions contained in this Constitution. • CI 30.1, Constitution: Subject to clauses 30.4, 30.5, 31 and 36.5 of this Constitution, the Responsible Entity shall pool all produce from within the Project and on or before each Distribution Date distribute, in relation to the last Accounting Period, each Grower's Proportional Interest in the Proceeds Fund among the Growers who were Growers on the last day of the previous Accounting Period. There will be no pooling of the Project's produce with produce from outside of the Project. • CI 30.2, Constitution: The Responsible Entity may, at any time, distribute amongst Growers any capital profits which have arisen in relation to any sale of any Investment of the Proceeds Fund in the same manner as distributions may be effected pursuant to clause 30.1. • CI 30.3, Constitution: Any amounts (whether income, profits or otherwise) to be distributed among Growers shall be distributed among the Growers according to their Proportional Interests.
Poyry viability analysis	<p>Viable*: At the time of the Poyry report, this project had a positive net present value, however a decrease in yield/price/log grade of 25% or more would make it non-viable.</p> <p>Would require a Grower contribution of \$2,359 per hectare to continue.</p>

**BIOFOREST SUSTAINABLE TIMBER AND BIOFUEL PROJECT 2007
(ARSN 124 135 535)**

Type of scheme	Registered MIS
Number of investors	68
Location of plantation(s)	North Coast
Key project documents	<ul style="list-style-type: none"> • Constitution dated 8 March 2007, as amended by the Supplemental Deed dated 29 August 2007 and the Second Amendment Deed dated 12 July 2011 • Land Sourcing and Management Agreements • Lease Agreements between Willmott Forests Limited
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Land Sourcing and Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$5,500/Woodlot in consideration for the Manager undertaking establishment works; and • 10% deducted from Net Proceeds of sale of the forest produce; <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • 25% of the Gross Proceeds of any She-Oak Harvest (plus GST); and • 7% of the Gross Proceeds of any Silky Oak Harvest (plus GST); or • in the event of the destruction of any Timberlots, \$250/Timberlot/pa (plus GST) with the rent reviewed annually on 1 July to be indexed to CPI, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Grower is deemed to have engaged Manager to carry out harvesting: PDS pg 69.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager pools all proceeds and distributes to Growers in their respective proportions after deducting costs of processing, sale and felling: Constitution clause 30.1; Land Sourcing and Management Agreement clause 10(a).</p>

Rights of the Growers	During the term of the Land Sourcing and Management Agreement and Lease Agreement, "growers will own the trees in their Timberlot until they are thinned, harvested or sold": PDS pg 25.
Pooling	<ul style="list-style-type: none"> • CI 3.3, Constitution: The Responsible Entity shall create separate funds for the Project, being: (i) the Application Fund; and (ii) a Proceeds Fund in respect of the Growers' Timberlots. • CI 3.4, Constitution: An Applicant shall have an interest in the Application Fund equal to his Proportional Interest but shall not have any interest in any particular part of the Application Fund or in any Investment, but only such interest in the Application Fund as a whole as is conferred on an Applicant under the provisions contained in this Constitution. • CI 3.5, Constitution: Each Grower shall have an interest in the Proceeds Fund equal to his Proportional Interest until his Agreement is terminated, subject to the terms of the Agreements. Each Grower shall be absolutely and beneficially entitled to his Proportional Interest in the Proceeds Fund but shall not have any interest in any particular part of that Proceeds Fund or in any Investment, but only such interest in that Proceeds Fund as is conferred on the Grower under the provisions contained in this Constitution. • CI 30.1, Constitution: Subject to clauses 30.4, 30.5, 31 and 36.5 of this Constitution, the Responsible Entity shall pool all produce from within the Project and on or before each Distribution Date distribute, in relation to the last Accounting Period, each Grower's Proportional Interest in the Proceeds Fund among the Growers who were Growers on the last day of the previous Accounting Period. There will be no pooling of the Project's produce with produce from outside of the Project. • CI 30.2, Constitution: The Responsible Entity may, at any time, distribute amongst Growers any capital profits which have arisen in relation to any sale of any Investment of the Proceeds Fund in the same manner as distributions may be effected pursuant to clause 30.1. • CI 30.3, Constitution: Any amounts (whether income, profits or otherwise) to be distributed among Growers shall be distributed among the Growers according to their Proportional Interests.
Poyry viability analysis	<p>Non-Viable*: 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.</p> <p>Would require a Grower contribution of \$2,328 per hectare held by that Grower to continue the scheme.</p>

**WILLMOTT FORESTS PREMIUM FORESTRY BLEND PROJECT (ARSN
131 549 589)**

Type of scheme	Registered MIS
Number of investors	928
Location of plantation(s)	<ul style="list-style-type: none"> • HVP • FNSW • North Coast
Key project documents	<ul style="list-style-type: none"> • Constitution dated 11 June 2008 as amended, including the amendments pursuant to the Amendment Deed dated 12 July 2011 • Land Sourcing and Management Agreements • Land Tenure Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Land Sourcing and Management Agreements, Growers are obliged to pay 4% deducted from the aggregate of the proceeds of harvesting the Trees in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land; • Under the Land Tenure Agreements, Growers are obliged to pay, in respect of a Pool, 5% deducted from the aggregate of the proceeds of harvesting the Trees in consideration for the rights granted to the Grower as lessee under the lease; and • According to the PDS, Growers are obliged to pay, in respect of a Pool, 1% deducted from the aggregate of the proceeds of harvesting the Trees in consideration for the Manager arranging harvesting and selling the Trees.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>Manager will carry out all harvesting of Grower's Woodlots: Constitution clause 14.1.</p> <p><u>Distribution of proceeds</u></p> <p>The Manager will deduct rental, maintenance and marketing fees before distributing proceeds to Growers in their respective proportions: Constitution clause 14.4.</p>
Rights of the Growers	According to the Product Disclosure statement, "under the Forestry Right, WFIM will hold the Trees on the relevant land for Growers": PDS pg 5.
Pooling	<ul style="list-style-type: none"> • Cl 4.17, Constitution: A Pool is established in respect of each Financial Year in which a Woodlot is issued. Each Woodlot issued during a Financial Year forms part of the Pool in respect of that Financial Year. • p 4 (section 2.4), PDS: The net proceeds from the sale of all She-oak, Radiata pine and Silky Oak timber from the Plantations, in respect of a Pool, will be pooled and distributed by the

	<p>Responsible Entity to Growers whose Woodlots are referable to that Pool. Pooling of the net proceeds reduces the risk that the performance of a Grower's specific trees is below the performance of other trees planted in respect of the relevant Pool.</p> <ul style="list-style-type: none"> • pp 29 - 30 (section 9.6), PDS: ... the proceeds received from the sale of timber from Trees on Woodlots in respect of a Pool will be pooled together with the proceeds from the sale of timber from Trees on all Woodlots in respect of that Pool. Following sale of timber from Trees on Woodlots in respect of a Pool you will then be paid a share of the proceeds based on the proportion that the number of Woodlots held by you in respect of the Pool bears to the total number of Woodlots referable to the Pool.
Poyry viability analysis	<p>Non-viable: This project is "clearly unviable in the long term" and "on the face of it, there is no commercial merit in maintaining". The project has a negative net present value, and would require an increase of more than 25% to net proceeds in order to generate a positive net present value to growers.</p> <p>Would require a Grower contribution of \$2,897 per hectare held by that Grower to continue the scheme.</p>

**WILLMOTT FORESTS PREMIUM FORESTRY BLEND PROJECT - 2010
PROJECT (ARSN 142 722 585)**

Type of scheme	Registered MIS
Number of investors	408
Location of plantation(s)	Not planted
Key project documents	<ul style="list-style-type: none"> • Constitution dated 11 March 2010, as amended by the Supplemental Deeds dated 15 April 2010 and 3 June 2010, and the Third Amendment Deed dated 12 July 2011 • Land Sourcing and Forestry Services Agreement • Sub-Land Sourcing and Forestry Services Agreement
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • According to the PDS, Growers must pay: <ul style="list-style-type: none"> • \$5,500/Forestry Interest in consideration for the Responsible Entity procuring land and establishing plantations; • 11% of Gross Timber Proceeds (\$5,500 for every \$50,000 of Gross Timber Proceeds) in consideration for forestry management services; and • \$2.2% of Gross Timber Proceeds (\$1,100 for every \$50,000 of Gross Timber Proceeds) for rent.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Responsible Entity will carry out the harvesting and sale of Trees: Constitution clause 12.1(f), clause 13.</p> <p><u>Distribution of proceeds</u></p> <p>The Growers are entitled to their respective proportions of the Gross Timber Proceeds less any fees and expenses payable to the Responsible Entity: Constitution clause 9.1.</p>
Rights of the Growers	The Product Disclosure Statement provides that Growers are issued with "Forestry Interests", with each Forestry Interest representing a share in the beneficial interest in the "Project Property". The Project Property includes "the trees established for the purposes of the Project and the income derived from the harvesting and sale of the Trees": PDS pg 8.
Pooling	No references to pooling in the project documents.
Poyry viability analysis	Non-viable: This project is "clearly unviable in the long term" and "on the face of it, there is no commercial merit in maintaining". The project has a negative net present value, and would require an increase of more than 25% to net proceeds in order to generate a positive net present value to growers.

**WILLMOTT FORESTS PREMIUM TIMBERLAND FUND NO. 1 (ARSN 136
768 520)**

Type of scheme	Registered MIS
Number of investors	
Location of plantation(s)	Not planted/No land allocated
Key project documents	Constitution dated 23 April 2009, as amended by the Amendment Deed dated 12 July 2011
Disclaimer vs surrender	Surrender
Grower payments	<p>According to the PDS (section 7.0 "Fees") Growers must pay:</p> <ul style="list-style-type: none"> • 20% of Gross Timber Proceeds in consideration for the Responsible Entity's management fee; and • 50% of net proceeds from dealing in Carbon Credits in consideration for the Responsible Entity's dealing in carbon credits.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Responsible Entity will carry out the harvesting and sale of Trees: Constitution clause 15.</p> <p><u>Distribution of proceeds</u></p> <p>Proceeds are distributed to Growers in their respective proportions: Constitution clause 8.5.</p>
Rights of the Growers	The PDS describes Growers as "subscrib[ing] for Units in the Fund which are used to acquire an interest in African mahogany trees and prime Rural Land. ... The Fund will invest in African mahogany trees under an agreement with Willmott Forests Limited": PDS pg 44.
Pooling	No references to pooling in the project documents.
Poyry viability analysis	<p>Non-viable: This project is "clearly unviable in the long term" and "on the face of it, there is no commercial merit in maintaining". The project has a negative net present value, and would require an increase of more than 25% to net proceeds in order to generate a positive net present value to growers.</p> <p>Would require a Grower contribution of \$38,215 per hectare held by that Grower to continue the scheme.</p>

**WILLMOTT FORESTS - PROFESSIONAL INVESTOR - 2001 PROJECT -
2001 INFORMATION MEMORANDUM**

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	5
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment Deed dated 12 June 2001 as amended by the Amendment Deed dated 12 July 2011 • Forestry Management Agreements • Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$8,250/Hectare in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of the trees, <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay 2% deducted from the Gross Timber Proceeds received from thinning and clear fell of the trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower will carry out harvesting and sale unless otherwise agreed with the Manager: Investment Deed clause 13.</p> <p><u>Distribution of Proceeds</u></p> <p>If Manager is engaged to carry out harvesting/sale, the Manager will forward Timber Proceeds to Growers: Information Memorandum pg 11.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Information Memorandum, Forestry Management Agreement and Investment Deed. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No references to pooling in the project documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,016 per hectare</p>

	held by that Grower to continue the scheme.
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**WILLMOTT FORESTS - PROFESSIONAL INVESTOR - 2002 PROJECT -
2002 INFORMATION MEMORANDUM**

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	4
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment Deed dated 5 April 2002 as amended by the Amendment Deed dated 12 July 2011 • Forestry Management Agreements • Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$7,700/Hectare in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of the trees, in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land; • Under the Lease Agreements, Growers are obliged to pay 2% deducted from the Gross Timber Proceeds received from thinning and clear fell of the trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower will carry out harvesting and sale unless otherwise agreed with the Manager: Investment Deed clause 14.</p> <p><u>Distribution of Proceeds</u></p> <p>If Manager is engaged to carry out harvesting/sale, the Manager will forward Timber Proceeds to Growers: Information Memorandum pg 19.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Information Memorandum and Investment Deed. In the Lease Agreement, the property in the trees is vested in the Lessor where the Lessor re-enters the land: Covenant 12(b).
Pooling	No references to pooling in the project documents.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,038 per hectare held by that Grower to continue the scheme.</p>

**WILLMOTT FORESTS - PROFESSIONAL INVESTOR - 2003 PROJECT -
2003 INFORMATION MEMORANDUM (2003) AND 2003 INFORMATION
MEMORANDUM (2004)**

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	29
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Investment Deed dated 28 August 2002 as amended by the Amendment Deed dated 12 July 2011 • Forestry Management Agreements • Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$7,700/Hectare in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of the trees, <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay 2% deducted from the Gross Timber Proceeds received from thinning and clear fell of the trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower will carry out harvesting and sale unless otherwise agreed with the Manager: Investment Deed clause 14.</p> <p><u>Distribution of Proceeds</u></p> <p>If Manager is engaged to carry out harvesting/sale, the Manager will forward Timber Proceeds to Growers: Information Memorandum pg 15.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Information Memorandum and Investment Deed.
Pooling	No references to pooling in the project documents
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,890 per hectare held by that Grower to continue the scheme.</p>

**WILLMOTT FORESTS - PROFESSIONAL INVESTOR - 2004 PROJECT -
2004 INFORMATION MEMORANDUM AND 2004 INFORMATION
MEMORANDUM (2005)**

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	74
Location of plantation(s)	<ul style="list-style-type: none"> • Bombala • Murray Valley • HVP Land
Key project documents	<ul style="list-style-type: none"> • Investment Deed • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$7,700/Hectare in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of the trees; or • 7% insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay 2% deducted from the Gross Timber Proceeds received from thinning and clear fell of the trees in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager will carry out all harvesting and sale of the Grower's Trees unless notified otherwise: Investment Deed clause 14.1.</p> <p><u>Distribution of Proceeds</u></p> <p>The Manager will deduct the Harvesting Fee from the Gross Timber Proceeds and pay the balance to Growers in their respective proportions: Investment Deed clause 14.2.</p>
Rights of the Growers	References to "the Grower's Trees" throughout the Information Memorandum, Forestry Management Agreement and Investment Deed.

Pooling	<ul style="list-style-type: none"> • Proceeds of harvest will be pooled (p 6, IM) • The default position is that the Manager will harvest trees. However, the Grower is able to opt-out and make own arrangement to carry out harvesting and sale (p 5, IM) • The distribution of harvest proceeds is proportionate to the percentage of the number of hectares held by that Grower compared to the total number of hectares planted in respect of the project in that financial year
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, “makes commercial sense to be maintained by way of additional voluntary grower contributions.”</p> <p>However would require a Grower contribution of \$2,324 per hectare held by that Grower to continue the scheme.</p>

2005 BIOFOREST WHOLESALE PROJECT NO. 2 - 2005 WHOLESALE FORESTRY MEMORANDUM (BIOFOREST)

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	10
Location of plantation(s)	North Coast
Key project documents	<ul style="list-style-type: none"> • Constitution made in 2004 • Land Sourcing and Management Agreements between Bioforest Limited • Lease Agreements/Licence Agreements between Bioforest Limited
Disclaimer vs surrender	Surrender
Grower payments	<p>According to the Information Memorandum pg 17, for each Timberlot subscribed, Growers must pay:</p> <ul style="list-style-type: none"> • a plantation establishment fee of \$2,850 (plus \$285 GST) payable upon application; and • fees over the life of the Project comprising expenses for management services totalling between \$5,900 (plus \$590 GST) and \$6,300 (plus \$630 GST) depending on the entry date into the Project.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager will carry out all harvesting and sale of the Grower's Trees: Constitution Recital C.</p> <p><u>Distribution of Proceeds</u></p> <p>The Manager will deduct any amounts due to them under the agreements from the proceeds of the Project and pay the balance to Growers in their respective proportions: Constitution clause 30.1.</p>
Rights of the Growers	The Information Memorandum states that during the term of the lease "Growers will own the trees" (page 18).
Pooling	<ul style="list-style-type: none"> • Pooling of all produce within the project (cl 30, Constitution): <ul style="list-style-type: none"> ○ Cl 30.1: Subject to clauses 30.4, 30.5, 31 and 36.5 of this Constitution, the Manager shall pool all produce from within the Project and on or before each Distribution Date distribute, in relation to the last Accounting Period, each Grower's Proportional Interest in the Proceeds Fund among the Growers who were Growers on the last day of the previous Accounting Period. There will be no pooling of the Project's produce with produce from outside of the Project. • On termination, distribution of proceeds to Grower will be done proportionately to the Growers' interests

Poyry viability analysis	<p>Viable*: At the time of the Poyry report, this project had a positive net present value, however a decrease in yield/price/log grade of 25% or more would make it non-viable.</p> <p>Would require a Grower contribution of \$2,128 per hectare to continue.</p>
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**WILLMOTT FORESTS - PROFESSIONAL INVESTOR - 2006 PROJECT -
2006 INFORMATION MEMORANDUM**

Type of scheme	Unregistered MIS - Professional Investor Scheme
Number of investors	14
Location of plantation(s)	<ul style="list-style-type: none"> • Murray Valley • HVP Land
Key project documents	<ul style="list-style-type: none"> • Investment Deed dated 8 February 2006 • Forestry Management Agreements • Lease Agreements • Pre-Lease Agreements
Disclaimer vs surrender	Surrender
Grower payments	<ul style="list-style-type: none"> • Under the Forestry Management Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • a one-off payment of \$7,700/Hectare in consideration for the Manager undertaking preparation and planting works; and • 7% deducted from gross timber proceeds received from thinning and clear fell of the trees; or • 7% insurance proceeds received in respect of damage/destruction of Grower's trees, <p>in consideration for the Manager undertaking management and maintenance services in respect of the Grower's leased land;</p> • Under the Lease Agreements, Growers are obliged to pay: <ul style="list-style-type: none"> • 2% deducted from the Gross Timber Proceeds received from thinning and clear fell of the trees; or • 2% insurance proceeds received in respect of damage/destruction of Grower's trees. <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Manager will carry out all harvesting and sale of the Grower's Trees unless notified otherwise: Investment Deed clause 14.1.</p> <p><u>Distribution of Proceeds</u></p> <p>The Manager will deduct the Harvesting Fee from the Gross Timber Proceeds and pay the balance to Growers in their respective proportions: Investment Deed clause 14.2.</p>

Rights of the Growers	References to “the Grower’s Trees” throughout the Information Memorandum, Forestry Management Agreement and Investment Deed.
Pooling	<ul style="list-style-type: none"> • Proceeds from hectares in each financial year will be pooled (pp 6 and 24, IM) • The default position is that the Manager will harvest trees. However, the Grower is able to opt-out and make own arrangement to carry out harvesting and sale (p 10, IM) • The distribution of harvest proceeds is proportionate to the percentage of the number of hectares held by that Grower compared to the total number of hectares planted in respect of the project in that financial year
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, “makes commercial sense to be maintained by way of additional voluntary grower contributions.”</p> <p>However would require a Grower contribution of \$2,628 per hectare held by that Grower to continue the scheme.</p>

1983 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	73
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Lease Agreements • Contracts for Works and Services
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$1,750/acre in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$90/acre for the first four years and \$12/acre/pa thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,028 per hectare held by that Grower to continue the scheme.</p>

1984 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	24
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • General Contracts for Works and Services • Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$2,025/acre in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$100/acre for the first four years and \$25/acre/pa indexed to CPI thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,915 per hectare held by that Grower to continue the scheme.</p>

1985 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	22
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Contract for Works and Services • Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$2,250/acre in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$100/acre for the first four years and \$25/acre/pa indexed to CPI thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,175 per hectare held by that Grower to continue the scheme.</p>

1986 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	43
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Contract for Works and Services • Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$2,500/acre in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$100/acre for the first four years and \$25/acre/pa indexed to CPI thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,082 per hectare held by that Grower to continue the scheme.</p>

1987 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	31
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Contract for Works and Services • Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$7,280/Ha in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$250/Hectare for the first four years and \$62.50/Hectare/pa indexed to CPI thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,297 per hectare held by that Grower to continue the scheme.</p>

1989 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	4
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Contract for Works and Services • Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Contracts for Works and Services, Growers must pay \$4,320/Ha in consideration for plantation and maintenance works; • Under the Lease Agreements, Growers must pay annually in advance, \$250/Hectare for the first four years and \$62.50/Hectare/pa indexed to CPI thereafter for the rest of the term of the lease in consideration for the rights granted to the Grower as lessee under the lease.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,430 per hectare held by that Grower to continue the scheme.</p>

1990 (NO PROJECT) INTEREST ONLY OFFER

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	1
Location of plantation(s)	Bombala
Key project documents	No documents have been provided to the liquidators in respect of this project
Disclaimer vs surrender	Disclaim
Grower payments	N/A due to incomplete documentation
Harvesting and distribution of harvest proceeds	N/A due to incomplete documentation
Rights of the Growers	N/A due to incomplete documentation
Pooling	N/A due to incomplete documentation
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,038 per hectare held by that Grower to continue the scheme.</p>

1991 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	3
Location of plantation(s)	Bombala
Key project documents	Lease Agreements
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay: <ul style="list-style-type: none"> • \$3,000/Hectare once-off upfront; or • \$75/Hectare/pa for the term of the lease annually indexed to CPI, <p>in consideration for the rights granted to the Grower as lessee under the lease.</p>
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	According to the Lease Agreements, Willdana Forests Contracting Services Pty Ltd was the "owner" of pinus Radiata trees situated on the land and sold the trees to Growers for cash consideration.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Non-Viable*: 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.</p> <p>Would require a Grower contribution of \$7,868 per hectare held by that Grower to continue the scheme.</p>

SHARP/REED PLANTATION PROJECT - 1998 INFORMATION MEMORANDUM

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	2
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Lease Agreements • Maintenance Agreement • Preparation and Planting Agreement
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Maintenance Agreements, Growers must pay \$3,500/Ha in consideration for establishment and maintenance works; • Under the Preparation and Planting Agreements, Growers must pay \$6,000/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	<p><u>Harvesting</u></p> <p>The Grower agrees to engage the Manager to harvest and sell the timber: Information Memorandum pg 9.</p> <p><u>Distribution of proceeds</u></p> <p>Timber proceeds will be collected and then distributed by the Manager to Growers: Information Memorandum pg 6.</p>
Rights of the Growers	No references in the project documents to rights of Growers to the trees.
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,422 per hectare held by that Grower to continue the scheme.</p>

2001 (NO PROJECT)

Type of scheme	Unregistered MIS - Contractual "scheme"
Number of investors	2
Location of plantation(s)	Bombala
Key project documents	No documents have been provided to the liquidators in respect of this project
Disclaimer vs surrender	Disclaim
Grower payments	N/A due to incomplete documentation
Harvesting and distribution of harvest proceeds	N/A due to incomplete documentation
Rights of the Growers	N/A due to incomplete documentation
Pooling	N/A due to incomplete documentation
Poyry viability analysis	Non-viable: This project is "clearly unviable in the long term" and "on the face of it, there is no commercial merit in maintaining". The project has a negative net present value, and would require an increase of more than 25% to net proceeds in order to generate a positive net present value to growers.

MCKENZIE & PARTNERS - FORESTRY PARTNERSHIP NO.1 (1993)

Type of scheme	Unregistered MIS - Partnership Scheme
Number of investors	16
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Partnership agreement dated 30 June 1993 • Deed of covenant dated 30 June 1993 • Deed of trust dated 20 June 1993 • Lease agreement dated 30 June 1993 • Plantation development agreement dated 30 June 1993 • Establishment and maintenance agreement dated 30 June 1993
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Establishment and Maintenance Agreements, Growers must pay \$3,000/Ha in consideration for establishment and maintenance works; • Under the Preparation Development Agreements, Growers must pay \$4,950/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	The Loan Agreement refers to a Grower assigning their "equity" in their "plantation (being trees...)"
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,292 per hectare held by that Grower to continue the scheme.</p>

**GRIMSEY & ASSOCIATES PTY LTD - FORESTRY PARTNERSHIP NO. 1
(1994)**

Type of scheme	Unregistered MIS - Partnership Scheme
Number of investors	19
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Partnership agreement dated 30 June 1994 • Deed of covenant dated 30 June 1994 • Deed of trust dated 30 June 1994 • Lease agreement dated 30 June 1994 • Plantation development agreement dated 30 June 1994 • Establishment and maintenance agreement dated 30 June 1994
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Establishment and Maintenance Agreements, Growers must pay \$3,000/Ha in consideration for establishment and maintenance works; • Under the Preparation Development Agreements, Growers must pay \$4,950/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	The Loan Agreement refers to a Grower assigning their "equity" in their "plantation (being trees...)"
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,869 per hectare held by that Grower to continue the scheme.</p>

**GRIMSEY & ASSOCIATES PTY LTD - FORESTRY PARTNERSHIP NO. 2
(1994)**

Type of scheme	Unregistered MIS - Partnership Scheme
Number of investors	17
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Partnership agreement dated 30 June 1994 • Deed of covenant dated 30 June 1994 • Deed of trust dated 30 June 1994 • Lease agreement dated 30 June 1994 • Plantation development agreement dated 30 June 1994 • Establishment and maintenance agreement dated 30 June 1994
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Establishment and Maintenance Agreements, Growers must pay \$3,000/Ha in consideration for establishment and maintenance works; • Under the Preparation Development Agreements, Growers must pay \$4,950/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	The Loan Agreement refers to a Grower assigning their "equity" in their "plantation (being trees...)"
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$1,878 per hectare held by that Grower to continue the scheme.</p>

**GRIMSEY & ASSOCIATES PTY LTD - FORESTRY PARTNERSHIP NO. 3
(1994)**

Type of scheme	Unregistered MIS - Partnership Scheme
Number of investors	18
Location of plantation(s)	Bombala
Key project documents	<ul style="list-style-type: none"> • Partnership agreement dated 30 June 1994 • Deed of covenant dated 30 June 1994 • Deed of trust dated 30 June 1994 • Lease agreement dated 30 June 1994 • Establishment and maintenance agreement dated 30 June 1994 • Plantation and development agreement dated 30 June 1994
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Establishment and Maintenance Agreements, Growers must pay \$3,000/Ha in consideration for establishment and maintenance works; • Under the Preparation Development Agreements, Growers must pay \$4,950/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	The Loan Agreement refers to a Grower assigning their "equity" in their "plantation (being trees...)"
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable: Has a positive net present value and, on the face of it, "makes commercial sense to be maintained by way of additional voluntary grower contributions."</p> <p>However would require a Grower contribution of \$2,111 per hectare held by that Grower to continue the scheme.</p>

MCKENZIE & PARTNERS - FORESTRY PARTNERSHIP NO. 2 (1994)

Type of scheme	Unregistered MIS - Partnership Scheme
Number of investors	12
Location of plantation(s)	Bombala (specifically Delegate 4)
Key project documents	<ul style="list-style-type: none"> • Plantation development agreement dated 30 June 1994 • Partnership agreement dated 30 June 1994 • Deed of covenant dated 30 June 1994 • Deed of trust dated 30 June 1994 • Establishment and maintenance agreement dated 30 June 1994 • Lease dated 30 June 1994
Disclaimer vs surrender	Disclaim
Grower payments	<ul style="list-style-type: none"> • Under the Lease Agreements, Growers must pay \$4,000/Hectare once-off in advance in consideration for the rights granted to the Grower as lessee under the lease; • Under the Establishment and Maintenance Agreements, Growers must pay \$3,000/Ha in consideration for establishment and maintenance works; • Under the Preparation Development Agreements, Growers must pay \$4,950/Ha in consideration for site preparation and development works.
Harvesting and distribution of harvest proceeds	No references in the project documents to harvesting and distribution of harvest proceeds.
Rights of the Growers	The Loan Agreement refers to a Grower assigning their "equity" in their "plantation (being trees...)"
Pooling	No references in the project documents to pooling.
Poyry viability analysis	<p>Viable*: At the time of the Poyry report, this project had a positive net present value, however a decrease in yield/price/log grade of 25% or more would make it non-viable.</p> <p>To continue, it would require a Grower contribution of \$2,850 per hectare held by that Grower.</p>