

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 SCHEDULE 3 AND SCHEDULE 4
AND ORS ACCORDING TO SCHEDULE 1

Plaintiffs

OUTLINE OF SUBMISSIONS OF THE RECEIVERS AND MANAGERS:
PROPOSED SALE TO GLOBAL FORESTS PARTNERS

Date of document: 18 January 2012

Filed on behalf of: the Receivers

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A. Introduction

1. Messrs Webster, Korda and Mentha (the **Receivers**) are the receivers and managers of certain assets of Willmott Forests Limited (receivers and managers appointed) (in liquidation) (**WFL**).
2. WFL is the responsible entity (**RE**) of a number of registered managed investment schemes and the manager of a number of unregistered managed investment schemes that are listed in the Schedules to the originating process and these submissions (the **Schemes**). The Schemes forming part of the present application comprise:
 - (a) 8 managed investment schemes registered under Part 5C of the Corporations Act 2001 (the **Act**), which are listed in Schedule 2 to the Originating Process (the **Registered Schemes**);

- (b) 6 unregistered 'professional investor' managed investment schemes, which are listed in Schedule 3 to the Originating Process (the **Professional Investor Schemes**);
 - (c) 11 unregistered contractual schemes and 5 unregistered partnership schemes, which are listed in Schedule 4 to the Originating Process (the **Contractual and Partnership Schemes**).
3. In June 2011, the liquidators of WFL (**Liquidators**) sought and obtained directions from Dodds-Streeton J of the Federal Court that they were justified:
- (a) in amending the constitutions of the Registered Schemes and the investment deeds of the Professional Investor Schemes to confer on the RE or manager a power to terminate Growers' rights in respect of the Schemes, on condition that Court approval is obtained before exercising such power; and
 - (b) in disclaiming the Project Documents of the Contractual and Partnership Schemes as onerous, on the condition that the Liquidators will seek the Court's consent before disclaiming: exhibit CDC-3 to the affidavit of Craig David Crosbie sworn 13 December 2011 (the **Crosbie GFP Affidavit**).

Those directions were sought against the background of the collapse in insolvency of WFL, in order to enable the Liquidators and Receivers to market the freehold and leasehold land on which the Schemes are conducted on the basis that, subject to the Court granting the directions now sought, the purchasers of those properties would obtain clear title, unencumbered by the Schemes.¹ In the meantime, those directions did not prevent any party from advancing, or putting to a meeting of Growers, any proposal to restructure a Scheme and/or to appoint a replacement RE.²

4. Following the directions given by Dodds-Streeton J and the sale process described in section C below, the Receivers and Liquidators have entered into sale contracts (the **GFP Sale Contracts**) with Snowy Mountains Forests Pty Limited (**SMF**), a wholly-owned subsidiary of Global Forests Partners LP (**GFP**), for the sale of land, trees and certain other assets of WFL used in connection with the Schemes (the **Sale Assets**). The Sale Contracts provide that the Sale Assets are to be transferred to SMF unencumbered by the

¹ [2011] FCA 1517 at [6], [117].

² [2011] FCA 1517 at [85], [118].

rights of Growers under the Schemes.³ There are conditions precedent to completion of the sale that, on or before 31 January 2012, the Liquidators obtain:

- (a) orders authorising the Liquidators to exercise its powers to terminate, relinquish or surrender the project documents of the Registered Schemes and the Professional Investor Schemes; and
- (b) orders authorising the Liquidators to disclaim the project documents of the Contractual and Partnership Schemes as onerous pursuant to section 568(1) of the *Corporations Act*.⁴

5. The Receivers make these submissions in support of the Liquidators' application for orders and directions in satisfaction of those conditions precedent. They rely on the affidavit of Bryan Webster affirmed on 15 December 2011 (the **1st Webster GFP Affidavit**), the affidavit of Bryan Webster affirmed on 18 January 2012 (the **2nd Webster GFP Affidavit**), and the Crosbie GFP Affidavit.

B. The appointment of the Receivers

6. On 6 September 2010, the Receivers were appointed as the joint and several receivers and managers of the assets charged by WFL under Deeds of Charge dated 17 March 2009.⁵
7. By Deeds of Partial Termination executed in September 2010 and October 2010,⁶ the Receivers' appointment to WFL's rights, title and interest in, and rights and obligations arising under any agreement, deed or document appointing WFL as RE or manager of the Schemes was terminated (the **RE/Manager Function**). The RE/Manager Function was thereby excluded from scope of the Receivers' appointment.⁷ The Deeds of Partial Termination expressly preserved the Receivers' appointment over WFL's rights and interests as lessee or licensee of land (regardless of whether WFL entered into such leases or licenses in its personal or RE capacity).
8. As a result, the assets of WFL over which the Receivers are appointed presently **include**:
- (a) WFL's freehold land located in the Murray Valley and North Coast regions of New South Wales;

³ Special Condition 56.2 to the GFP Sale Contracts (Bombala NSW; Murray Valley NSW; North Coast NSW); Special Condition 57.2 (Bombala Vic; Murray Valley Vic); Special Condition 61.2 (North Coast Qld): exhibit Confidential CDC-19.

⁴ Special Condition 59.1 to the GFP Sale Contracts (Bombala NSW; Murray Valley NSW; North Coast NSW); Special Condition 60.1 (Bombala Vic; Murray Valley Vic); Special Condition 64.1 (North Coast Qld): exhibit Confidential CDC-19.

⁵ Exhibit BW-9 to the 2nd Webster GFP Affidavit.

⁶ Exhibit BW-10 to the 2nd Webster GFP Affidavit.

⁷ Affidavit of Bryan Webster made on 17 June 2011, [10] (exhibit BW-1 to the 1st Webster GFP Affidavit).

- (b) WFL's freehold land located in the Katherine region in the Northern Territory (which does not form part of this application);
- (c) WFL's rights and interests as lessee of land located in Victoria and New South Wales, in particular of:
 - (i) land leased from Forests New South Wales (**FNSW**) (which is part of this application); and
 - (ii) land leased from Hancock Victorian Plantations Pty Limited and Grand Ridge Plantations Pty Ltd (which does not form part of this application, but is the subject of proceeding S CI 2011 6762); and
- (d) WFL's interests in farming equipment and inventories; and
- (e) interests held by WFL in its own right (i.e. as a Grower) in the Schemes,

but **exclude**:

- (f) any land located within a radius of approximately 150 kilometres around the township of Bombala, New South Wales (the **Bombala Land**);
- (g) any 'Excluded Trust Property', being:
 - (i) any application monies received by WFL in its capacity as trustee or custodian in respect of a Scheme;
 - (ii) any money or property which, in respect of a Scheme, is scheme property for the purposes of the Corporations Act including, without limitation:
 - (A) insurance claim proceeds in respect of a Scheme;
 - (B) proceeds of:
 - (1) harvesting or divestment of trees referable to a Scheme;
 - (2) carbon sequestration rights in respect of trees referable to a Scheme, which in each case are held in a separate identified bank account in the name of the WFL in its capacity as trustee or responsible entity of a Scheme, or in the name of an agent of the WFL in such capacity;
 - (iii) forestry rights held by WFL in its capacity as trustee or custodian in respect of a Scheme; and

- (iv) any other property held by WFL in its capacity as trustee or custodian and notified to the Security Trustee from time to time and consented to by the Security Trustee; and
- (h) the RE/Manager Function (following the partial termination of the Receivers' appointment referred to in paragraph 7 above).

C. The Sale Process

9. The marketing and sale of the Sale Assets was conducted jointly by the Liquidators and the Receivers, having regard to the fact that:

- (a) the Receivers are not appointed in respect of the Bombala freehold land; and
- (b) the Receivers are appointed in respect of the Murray Valley and North Coast freehold and the FNSW leases: Crosbie GFP Affidavit, [81]-[82]; 1st Webster GFP Affidavit, [15].

10. In negotiating the sales of the Sale Assets which form part of their appointment, the Receivers had and have duties under section 420A of the Act to

"take all reasonable care to sell the property for:

- (a) *if, when it is sold, it has a market value - not less than the market value;*
- (b) *otherwise - the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold."*

11. When considering compliance with the obligations imposed by section 420A, the primary consideration will be the adequacy and robustness of the sale process. In *Florgale Uniforms Pty Ltd v Orders*, Dodds-Streeton J observed:⁸

"The expert evidence establishes that the exercise of all reasonable care by a receiver would entail a process of selecting the method of realising the highest net return, by considering the different available means of sale and weighing the prices likely to be achieved against the likely costs and expenses entailed and the relative risks of the various methods in all the circumstances. The process is informed by the objective of securing the best possible return for the secured creditor, subject to the obligations imposed by general law doctrines and s 420A. It necessarily involves the exercise of judgment, taking into account all the relevant variables and circumstances of the particular case. It does not depend on matters of price or revenue alone, or any single factor in isolation.

... All will depend on the circumstances of the individual case, including the scale of the receivership, the value and nature of the property involved, the receiver's expertise in relation to the type of property, relevant expert advice, the advice or input of proprietors and staff, the trading history and marketing of the company, including during the receivership, and other relevant variables in a realistic commercial context."

⁸ (2004) 11 VR 54, at 82, [442]-[443]. Quoted with approval in *Re Timbercorp Securities Ltd (in liq)* [2011] VSC 83 at [25] (Judd J).

12. The sale process jointly undertaken by the Liquidators and Receivers is set out in paragraphs 76 to 120 of the Crosbie GFP Affidavit and paragraphs 11 to 23 of the 1st Webster GFP Affidavit. The key aspects of the sale process are summarised briefly below.
- (a) Between 11 and 22 July 2011, the Sale Assets were advertised for sale in 17 international, national and regional publications: Crosbie GFP Affidavit, [85].
 - (b) The Sale Assets were offered for sale on the basis that parties could either purchase the Sale Assets unencumbered by the Schemes, or purchase the Sale Assets encumbered by the Schemes with the ability to take over as responsible entity and manager of the Schemes: Crosbie GFP Affidavit, [88]; 1st Webster GFP Affidavit, [19].
 - (c) Potential purchasers were also identified by the Liquidators and Receivers based on their networks and similar previous transactions. In addition to the published advertisements, 364 parties were specifically contacted by email to notify them of the sale of the Sale Assets: Crosbie GFP Affidavit, [86]-[87]; exhibit CDC-12.
 - (d) 227 parties expressed an interest in participating in the sale process, of whom 179 completed a confidentiality deed. None of those 179 parties expressed an interest in purchasing any of the Sale Assets on an encumbered basis and taking over as responsible entity and manager of any of the Schemes:⁹ Crosbie GFP Affidavit, [89]-[90]; 1st Webster GFP Affidavit, [19].
 - (e) Following phase 1 due diligence, 92 parties submitted indicative non-binding offers. The indicative non-binding offers received by the Liquidators and Receivers ranged from offers to purchase a single plantation to offers for all of the Sale Assets. All 92 parties were invited to participate in the next stage of the due diligence and were also invited to participate in site visits: Crosbie GFP Affidavit, [92]-[99]; 1st Webster GFP Affidavit, [18].
 - (f) Following phase 2 due diligence, 54 binding offers were received. These also ranged from offers to purchase a single plantation to offers for all of the Sale Assets: Crosbie GFP Affidavit, [100]-[101]; 1st Webster GFP Affidavit, [21].
 - (g) Having assessed the binding offers, the Liquidators and Receivers agreed that the best price for the Sale Assets would be achieved by selling all of the Sale Assets to a single party or on a regional basis. The bids received on a property-by-property basis were, in general, substantially below the bids received from the parties

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Except for the WGG Proposal for the Willmott Forests 1995-99 Project, which is referred to in section E below.

interested in an entire region or all of the Sale Assets. In addition, if the Liquidators and Receivers accepted bids for single properties, they would have been left with a substantial portion of the Sale Assets unsold: Crosbie GFP Affidavit, [102]-[105].

- (h) 5 parties were selected as preferred bidders, 2 of whom offered to purchase all the Sale Assets. In the period 11 to 31 October 2011, negotiations were held with each of the 5 preferred bidders with a view to increasing the offers received and negotiating the terms of sale contracts with the parties: Crosbie GFP Affidavit, [106]-[107]; 1st Webster GFP Affidavit, [22].
 - (i) Of the 2 offers received for all of the Sale Assets, the Liquidators had serious concerns about the financial capability of the highest bidder (**Bidder 1**) to fund the purchase of the Sale Assets and their ability to complete the sale. Bidder 1 was requested to provide further evidence of funding arrangements but it did not provide sufficient evidence was not provided to allay the Liquidators' concerns: Crosbie GFP Affidavit, [108]-[109].
 - (j) The second highest offer was received from GFP. GFP was advised that it was not the highest bidder and that it would need to increase its offer. On 7 October 2011, the Liquidators received a revised offer from GFP which increased the initial offer by an aggregate of \$1.5 million (the **Revised GFP Offer**): Crosbie GFP Affidavit, [110]-[113].
13. In addition to comparing favourably in terms of amount with the bids made by other interested parties, the Receivers consider that the proposed sale to GFP gives rise to the lowest completion risk, as GFP is a large timber investment management organisation with investments in forestry all over the world including Australia and has a history of completing similar transactions, having recently purchased forestry plantations from Timbercorp. Moreover, GFP has available cash to fund the acquisition of the WFL plantations: 1st Webster GFP Affidavit, [23]; Crosbie GFP Affidavit, [110]-[111].
14. Under the Revised GFP Offer, following the Liquidators' reapportionment of the amounts ascribed by GFP to the Bombala trees and the Bombala land (described in the Crosbie GFP Affidavit at [116]):
- (a) the total amount offered by GFP for all of the Sale Assets was the second highest offer (behind Bidder 1);
 - (b) the amount apportioned to the Bombala Land was the second highest offer (behind Bidder 1);
 - (c) the amount ascribed by GFP to the Murray Valley land was the highest offer;

- (d) the amount ascribed by GFP to the North Coast land was the second highest offer (behind Bidder 1);
 - (e) the total amount apportioned to the Trees was the second highest offer (behind Bidder 1);
 - (f) the amount ascribed by GFP to the trees on the Murray Valley land was the second highest offer (behind Bidder 1); and
 - (g) the amount apportioned to the trees on Bombala Land was the third highest offer (behind Bidder 1 and a third bidder who only offered to purchase the Bombala Land and trees on the Bombala Land, and whose offer for the Bombala Land was substantially below the Revised GFP Offer for the Bombala Land): Crosbie GFP Affidavit, [116].
15. The Liquidators and the Receivers have together conducted a robust sale process for the Sale Assets and have attracted a financially able purchaser for all of the Sale Assets. They consider that the Revised GFP Offer is the best price reasonably attainable for the Sale Assets in the circumstances: 1st Webster GFP Affidavit, [23]; Crosbie GFP Affidavit, [117].

D. The 1995 – 99 Scheme

16. At the time of the hearing before Dodds-Streton J in June 2011, the Willmott Growers Group (**WGG**) had advanced a proposal (the **WGG Proposal**) to restructure and appoint a new RE to the Willmott Forests 1995-1999 Project (the **1995-99 Scheme**).¹⁰ As her Honour indicated, the orders that she made did not prevent or impede the pursuit of this or any other proposal to restructure any of the Schemes.¹¹
17. Following the issue of this proceeding, on 21 December 2011, a meeting of Growers in the 1995-99 Scheme was held, in which the Growers approved a reformulated version of the WGG Proposal, and resolved to remove WFL as RE of the 1995-99 Scheme and to appoint Primary Securities Limited as the replacement RE.
18. As WFL is no longer the RE of the 1995-99 Scheme, it is unable to exercise the RE's power under the constitution of the 1995-99 Scheme to terminate or surrender any Project Documents (including the Growers' leases) or otherwise surrender the Growers' rights in the trees in order to permit the sale of the plantations used in connection with the 1995-99 Scheme on an unencumbered basis. As a result, the Liquidators would be unable to give effect to the orders sought in respect of the 1995-99 Scheme. The Receivers no longer press for orders to be made in relation to the 1995-99 Scheme in this proceeding.

¹⁰ [2011] FCA 1517, [96]-[103].

¹¹ [2011] FCA 1517, [118].

19. If the Court does not make orders with respect to the land used in connection with the 1995-99 Scheme and the plantations on that land, this will not prevent the completion of the sale since there are provisions in the relevant sale contracts which expressly contemplate the exclusion of this land from the sale: 1st Webster GFP Affidavit, [39]-[40].¹²

E. No other restructure proposals have been advanced

20. Apart from the WGG proposal for the 1995-99 Scheme, no proposal has been advanced to restructure and/or appoint a new RE to any of the Schemes: Crosbie GFP Affidavit, [124]; 1st Webster GFP Affidavit, [19].
21. Prior to the hearing before Dodds-Streeton J in June 2011, Mark Bland, solicitor for WGG, deposed that WGG was “developing” a proposal in relation to 6 unregistered Schemes on Bombala Land (referred to as the **WGG Unregistered Schemes**), which would involve the replacement of WFL as manager of those Schemes.¹³ As at 15 December 2011, Bland deposed that WGG was “undertaking key investigations” in relation to the WGG Unregistered Schemes to determine whether it would seek to pursue a proposal for the continuation of those Schemes: affidavit of Mark Bland made on 15 December 2011 (**Bland Affidavit**), [55]-[56]. WGG had evidently made no progress in developing a proposal for the restructuring of the WGG Unregistered Schemes in the intervening 6 months.
22. Prior to the hearing before Dodds-Streeton J in June 2011, Marie Bermingham of WAG deposed to a number of meetings between March and May 2011 with entities whom she described as being interested in assuming the role of RE or forestry manager for the Schemes,¹⁴ and referred to confidential proposals that Plantation Capital Limited and/or One Investment Group Pty Ltd be appointed as replacement REs for certain Schemes.¹⁵ As of 16 January 2012, some 7 months later, WAG was supposedly continuing negotiations with Primary Securities Limited for a proposal regarding certain unregistered Schemes, and is continuing to explore potential proposals for one of two prospective parties to be appointed as replacement REs of certain of the Registered Schemes, which negotiations are even “less advanced” than the negotiations with Primary regarding the unregistered Schemes: Affidavit of Mark James Hoddinott made on 16 January 2012 (**2nd Hoddinott Affidavit**), [11]-[16].

¹² See, eg, Bombala NSW Sale Contract, special condition 71: exhibit Confidential CDC-19 to the Crosbie GFP Affidavit.

¹³ Affidavit of Mark Bland, 3 June 2011, filed in Federal Court proceeding no. 386 of 2011, [29].

¹⁴ Affidavit of Marie Bermingham, 22 June 2011, filed in Federal Court proceeding no. 386 of 2011, [36]-[43].

¹⁵ Affidavit of Marie Bermingham, 22 June 2011, filed in Federal Court proceeding no. 386 of 2011, [51]-[52].

23. Given this evident lack of progress through the second six months of 2011, as matters presently stand, there is no credible prospect that any of these mooted further proposals will be imminently capable of being put to the Growers, let alone that they will eventually offer a more advantageous return to Growers than is offered now by the apportionment of the proceeds of the GFP Sale Contracts. The vague prospect of some concrete proposal, which might or might not gain Grower approval, materialising in the future should not be allowed to defeat the currently proposed sale.

F. The Schemes are not viable in their present form

24. Absent any concrete alternative proposals, the question whether any of the Schemes might be viable in some restructured form remains entirely hypothetical.
25. In January 2011, the Liquidators obtained a viability analysis of the Schemes from Pöyry Management Consulting (Australia) Pty Ltd (the *January 2011 Pöyry Report*). The January 2011 Pöyry Report concluded that the Schemes had varying prospects of (un-)viability utilising discount rates between 11% and 15%.¹⁶ The analysis set out in the January 2011 Pöyry Report was expressly premised on the assumption that Growers in each Scheme would pay upfront contributions totalling \$123.2 million during 2011 in order to fund the required maintenance work over the remaining life of the Schemes: Crosbie GFP Affidavit, [48]-[49].¹⁷
26. However, the schemes are presently structured on the basis that Grower contributions (rental, and planting and maintenance fees) are to be made by way of up-front levies, with minimal or no ongoing costs prior to harvesting and marketing fees paid from the eventual proceeds of harvest of the Trees: Crosbie GFP Affidavit, [41]. The consequences of this are not only that WFL as RE/Manager is left without any cashflow to maintain the schemes through to their eventual harvest, but also that any restructuring of any one or more schemes under a new RE or Manager will require a fundamental reworking of the Growers' financial obligations. There is no evidence that the Growers would be willing to provide the substantial upfront contributions required to keep the schemes going. Accordingly, absent a proposal to restructure the Schemes being approved by the Growers, the Schemes are plainly insolvent and unviable in their present form: Crosbie GFP Affidavit, [50]-[52].
27. In the present circumstances, Hoddinott's criticisms¹⁸ of the January 2011 Pöyry Report are no more than academic. Moreover, the two further reports upon which Hoddinott seeks to

¹⁶ These discount rates are substantially below the rates that the Receivers consider appropriate: affidavit of Bryan Webster made on 17 June 2011 (exhibit BW-1 to the 1st Webster GFP Affidavit). They also substantially lower than the discount rate that was considered appropriate in relation to the Timbercorp almond schemes: *BOSI Security Services Ltd v ANZ Banking Group Ltd* (2011) 84 ACSR 341, [2011] VSC 255 at [161].

rely— both of which were obtained by WAG prior to the hearing before Dodds-Streton J — provide no opinion as to the financial viability of the Schemes generally:

- (a) The Smith Report (exhibit MJH-26 to the 1st Hoddinott Affidavit) provides only an analysis of the silvicultural, and not the financial, viability of the Schemes. Smith is a qualified forester who was formerly employed by WFL.
- (b) The Sigley Report (exhibit MJH-27 to the 1st Hoddinott Affidavit) relates only to the North Coast plantations. Sigley was formerly employed by WFL as a manager of its North Coast operations. He gives no qualifications to substantiate any expertise to provide long-term forecasts of financial viability. And, of course, his analysis assumes the provision of substantial, presently-unsourced, funds for care and maintenance of the plantations.

G. Urgency of completion of the sale

28. Following the sale process described above, the GFP Sale Contracts¹⁹ were executed on 6 December 2011. Each contract is conditional upon the Liquidators obtaining orders from the Court by 31 January 2012 authorising them:
- (a) to exercise WFL's powers to terminate, relinquish or surrender the project documents of the Registered Schemes and the Professional Investor Schemes; and
 - (b) to disclaim the project documents of the Contractual and Partnership Schemes as onerous pursuant to section 568(1) of the *Corporations Act*.
29. The present application is being heard by the Court in the midst of fire season and the plantations presently pose a significant fire risk: Crosbie GFP Affidavit, [175]-[180]; 1st Webster GFP Affidavit, [44]-[53]; exhibit BW-2, table 5; exhibits BW-4, BW-5 & BW-7. WFL has received a number of letters from local councils and fire authorities expressing their concern about the state of the plantations on the Murray Valley land and the North Coast land, the high fire danger conditions and the fire risk posed to surrounding properties and communities: exhibits BW-6 and BW-3. Firebreak maintenance is urgently required to reduce the fuel loads and to reduce the risk of a fire outbreak.
30. Given the lack of maintenance of the plantations since the Receivers' and administrators' (now Liquidators) appointment and the fire risks involved, WFL and SMF executed an Interim Management Agreement on 6 December 2011 (the *IMA*),²⁰ under which WFL will

¹⁷ See also the Affidavit of Bryan Webster made on 17 June 2011, [25]-[28]: exhibit BW-1 to the 1st Webster GFP Affidavit.

¹⁸ Affidavit of Mark James Hoddinott made on 9 January 2012 (the 1st *Hoddinott Affidavit*), [41], [69].

¹⁹ Exhibit Confidential CDC-19 to the Crosbie GFP Affidavit.

²⁰ Exhibit Confidential CDC-25 to the Crosbie GFP Affidavit.

engage contractors to undertake limited maintenance and fire suppression activities on the plantations and SMF will reimburse WFL for the costs of the services completed by the contractors, capped at an amount of \$250,000. The IMA terminates immediately if the orders sought by the Liquidators are not granted by the Court by 31 January 2012: 1st Webster GFP Affidavit, [57]-[61].

31. Further, the plantation insurance policy maintained by WFL for Growers (who elected to take up and pay for insurance cover for their woodlots last year) ended on 30 September 2011: 1st Webster GFP Affidavit, [54]-[56]. Growers were offered the opportunity to insure their plantations after that date but the majority have chosen not to do so: exhibit MJH-15 to the 1st Hoddinott Affidavit. The lack of insurance until the completion of the sale of the Sale Assets is a serious concern for the interests of Growers given the fire risks and lack of maintenance.
 32. It is now over 16 months since the appointment of voluntary administrators and receivers to WFL, and more than 6 months since orders were made by Dodds-Streeton J that enabled the Liquidators and Receivers to commence the sale process described in section C above. In the circumstances, there is every reason to make the requested orders to enable the GFP Sale Contracts to proceed to completion. No good reason has been suggested by the Growers to further prolong the realisation of the Sale Assets, with the attendant delay and uncertainty and the likely further diminution of value that this would entail.
 33. Moreover, it is not in the interests of Growers as a whole, let alone those of WFL's other creditors, to wait indefinitely for a hypothetical restructuring proposal to emerge in circumstances where WFL has no funds to manage the Schemes and the plantations are wasting: 1st Webster GFP Affidavit, [61]; Crosbie GFP Affidavit, [51].
- H. The Growers have no valuable property interests in the Sale Assets, other than their ownership of, or rights to harvest and sell timber from, the Trees**
34. The Receivers have consistently maintained that, upon the realisation of the Sale Assets, the Growers are entitled to receive the portion of the sale proceeds that is referable to the Trees. The Trees, or more specifically, the Growers' eventual ability to harvest and sell timber, are the only asset of the Growers that potentially has any commercial value: exhibit BW-1, [130]-[133].

35. As to the land on which each Scheme is conducted, there are (relevantly) two layers of real property rights which the Growers claim are also valuable assets of the Growers:
- (a) WFL owns, leases or licences the plantations on which the Schemes are conducted. The question whether this property, or these rights, of WFL are "scheme property" in respect of any of the Registered Schemes is considered in sections I and J below.
 - (b) WFL leases, sub-leases, sub-licences, or grants profits à prendre over, woodlots to individual Growers, on which the Growers are permitted to grow and harvest the Trees (collectively, the **Grower Leases**).
36. Although the Grower Leases confer proprietary (or, under the sub-licences, contractual) rights on Growers to occupy and to maintain and harvest Trees on their respective individual woodlots, those rights are (independently of the value of the Trees) of no commercial value to the Growers. Outside the managed investment scheme framework, the Grower Leases would plainly be unmarketable: no party has suggested to the contrary.
- (a) Within each plantation, Growers' individual timberlots are allocated at random on a checkerboard-type plan, which are not visibly delineated or individually accessible by road.
 - (b) In most instances, individual timberlots are not physically or lawfully accessible without obtaining permission from other Growers to traverse the intervening lots from the nearest access route.
 - (c) It would be impracticable, if not impossible, for a Grower to harvest the timber on his or her individual lot without causing damage to the Trees on surrounding lots. It is only practicable for clear-felling to be done across larger plantation areas.
 - (d) In any event, it would be prohibitively uneconomic to thin or harvest the timber on an individual timberlot. Moreover, it is unlikely that Growers would be able to market or sell their timber on an individual basis.
 - (e) Further, it is impossible for Growers to conduct statutory fire maintenance on an individual lot-by-lot basis: Crosbie GFP Affidavit, [74].
37. Thus, the Receivers agree with the Liquidators that the rights under the Grower Leases to occupy and to maintain and harvest Trees on the Growers' respective individual woodlots are theoretical rights only, which cannot in practice be exercised on an individual, lot-by-lot basis. In reality, Growers' rights of occupation of their respective timberlots are commercially valuable only on the basis that their Trees will be maintained, clear-felled and marketed collectively with neighbouring Growers: Crosbie GFP Affidavit, [75]; Affidavit of Bryan Webster made on 17 June 2011 (exhibit BW-1), [132].

38. Accordingly, in the absence of any prospect that the Schemes are capable of being continued on an “individual woodlot” basis, no value can or should be attributed to the rights given up upon termination of the Grower Leases, over and above the value of the Trees.²¹

I. The Murray Valley and North Coast freehold is not scheme property of the Registered Schemes

39. The question whether any of the land on which the Schemes are conducted may be “scheme property” of any of the Registered Schemes (within the meaning of the *Corporations Act*) has been raised previously by the Liquidators and by the WGG in the hearing before Dodds-Streeton J. Her Honour observed that it was unnecessary for that question to be determined in the application that was before her.²²

40. The question arises in the following setting:

(a) If the freehold or leasehold Land held by WFL on which a Registered Scheme is conducted is “scheme property” of that Registered Scheme, then, by s 601FC(2) of the *Corporations Act*, WFL (as RE of the Registered Scheme) would hold the land on trust for Growers. In that event, the Growers would have a deemed beneficial proprietary interest in the Land, which would affect the manner in which the portion of the proceeds of sale that is attributable to the Land should be distributed.

(b) If the Land on which a Registered Scheme is conducted is not “scheme property” of the Registered Scheme, then the Land is owned by WFL (both legally and beneficially), and the Growers have no interest in the proceeds of sale.

41. The question arises only with respect to the Registered Schemes; the concept of “scheme property” has no application outside the context of Chapter 5C managed investment schemes. Section 9 of the Act provides the following definitions:

scheme property of a registered scheme means:

- (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*

²¹ *BOSI Security Services Ltd v ANZ Banking Group Ltd* (2011) 84 ACSR 341, [2011] VSC 255 at [137].

²² [2011] FCA 1517 at [58], [101], [118]-[119]. See also Affidavit of Craig Crosbie made on 21 May 2011, [21] (exhibit CDC-1 to the Crosbie GFP Affidavit).

- (d) *property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and*
- (e) *income and property derived, directly and indirectly, from contributions, money or property referred to in paragraphs (a), (b), (c) or (d).*

responsible entity of a registered scheme means the company named in ASIC's record of the scheme's registration as the responsible entity or temporary responsible entity of the scheme.

registered scheme means a managed investment scheme that is registered under section 601EB.

It follows from those definitions that:

- (a) "scheme property" exists only in relation to a registered scheme; and
 - (b) the deemed trust under s 601FC(2) arises only in relation to a registered scheme.
42. In the cases of unregistered schemes, s 601FC(2) has no operation, and the Growers in those schemes may establish a proprietary interest under the general law only.
43. In this section of the submissions, we address the position in relation to those Registered Schemes which are conducted in part on freehold land owned by WFL in the Murray Valley and North Coast regions, being the freehold land that is the subject of the GFP Sale and to which the Receivers are appointed. Those Registered Schemes (the ***Murray Valley/North Coast Registered Schemes***) are:
- (a) the Willmott Forests Project (ARSN 089 379 975) – 2004, 2006 and 2007 Product Disclosure Statements only;²³
 - (b) the Bioforest Dual Income Project 2006 (ARSN 119 153 623);
 - (c) the Bioforest Sustainable Timber and Biofuel Project 2007 (ARSN 124 133 535);
 - (d) the Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589); and
 - (e) the Willmott Forests Premium Timberland Fund No.1 (ARSN 136 768 520) (the ***Timberland Fund***).
44. For the reasons outlined below, except in relation to the Willmott Forests Premium Timberland Fund No 1, the Receivers agree with the Liquidators' conclusion²⁴ that the freehold land used for the Murray Valley/North Coast Registered Schemes is not scheme property.

²³ See exhibit Confidential CDC-22: columns headed "Ha per region: MV" and "Ha per region: NC".

²⁴ Crosbie GFP Affidavit, [136(a)-(i), (m)], [137].

45. It is not suggested that any Growers have contributed land in kind to any of the Murray Valley/North Coast Registered Schemes. Accordingly, the freehold land could only conceivably constitute “scheme property” under paragraphs (d) or (e) of the definition: that is, if the freehold was directly or indirectly acquired with, or derived from, Growers’ contributions to the Schemes.
46. In determining whether a particular item of property is “scheme property” of a managed investment scheme, it is necessary to consider the terms of the scheme insofar as they relate to the making of contributions by members to the collective enterprise that the scheme embodies. The issue whether something is, or is not, “scheme property” is a matter of characterisation. In *Mier v FN Management Pty Ltd*, Keane JA observed:²⁵

[T]here can be no doubt that the scheme property ... is to be identified by reference to the terms of the scheme in relation to the contribution of assets to the enterprise involved in the scheme....

[I]t is an essential feature of a managed investment scheme, as the definition contained in s. 9 of the Act makes clear, that people will contribute “money or money’s worth” to the “program or plan of action” constituted by the scheme and that this property will be pooled to produce benefits for those who made contributions. 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.

47. Not all property that is used for the purposes of a scheme will be deemed to be scheme property. The critical question is whether the property was contributed or given over by the scheme’s members to become the common property of the scheme.²⁶ To this end, it may be noted that the constitutions of the Willmott Forests Project and the Willmott Forests Premium Forestry Blend Project contain the following provision:²⁷

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.

In both these constitutions, “Land” is in turn defined as:

any land made available by the Manager for the purposes of the Project.

²⁵ *Mier v FN Management Pty Ltd* [2005] 1 Qd R 339 at 350, [26] - [27].

²⁶ *Mier v FN Management Pty Ltd* [2005] 1 Qd R 339 at 357, [37] (Keane JA); cited with approval in *Hance v FCT* (2008) 74 ATR 644 at 672, [96] (Finn, Dowsett and Edmonds JJ).

²⁷ Consolidated Constitution of the Willmott Forests Project, cl 6.7; Constitution of the Willmott Forests Premium Forestry Blend Project, cl 6.7.

For these Registered Schemes, this is a clear indication that WFL, as RE, would make land available for the purposes of the schemes without the land becoming vested beneficially in the Growers by operation of s 601FC(2).

48. Most significantly, however, the provisions of the Project Documents for the Murray Valley/North Coast Registered Schemes clearly demonstrate that, except in relation to the Willmott Forests Premium Timberland Fund No 1, none of the upfront amounts that Growers were required to pay on joining the Schemes were to be used by WFL to acquire the Land on which the Schemes were conducted:

Willmott Forests Project (2004, 2006 and 2007 PDSs);

Bioforest Dual Income Project 2006;

Bioforest Sustainable Timber and Biofuel Project 2007

- (a) In each of these three Schemes, the only amount payable upfront by Growers was an upfront component of the fee payable under the Forestry Management Agreement or Land Sourcing and Management Agreement for each scheme.²⁸ That fee was expressly referred to in the relevant PDS as a “preparation and planting fee” or an “establishment services fee”. In the Forestry Management Agreements for each Scheme, those services were described in greater detail as comprising:²⁹

- *Preparation works – ripping, mounding and/or ploughing;*
- *Pre-planting weedicide treatments as required;*
- *Supplying and planting Pinus radiata seedlings (using suitable genetic and nursery stock ...;*
- *Fertilising, where required; and*
- *Pest control;*

- (b) Aside from annual insurance premiums, all other fees payable by Growers in those Schemes, including rent for the Grower Leases, are payable in arrears out of the eventual harvest proceeds.³⁰ It goes without saying that these fees have yet to be paid and cannot have been used by WFL to acquire the Land.

²⁸ Forestry Management Agreements for the Willmott Forests Project (2004, 2006 and 2007 PDSs); Land Sourcing and Management Agreement for the Bioforest Dual Income Project 2006; Land Sourcing and Management Agreement for the Bioforest Sustainable Timber and Biofuel Project 2007.

²⁹ See, eg, Forestry Management Agreement, Willmott Forests Project (2004 PDS), Schedule, Part 1; Land Sourcing and Management Agreement, Bioforest Dual Income Project 2006, Schedule, item 3, and definition of “Establishment Services”.

³⁰ Willmott Forests Project, 2004, 2006 and 2007 PDSs, p 4; Bioforest Dual Income Project 2006, PDS, p 17; Bioforest Sustainable Timber and Biofuel Project 2007, PDS, p 23.

- (c) If any further evidence is required that the upfront fees paid by Growers under these schemes were not applied by WFL to purchase the Land on which the Scheme was conducted, it may be noted that the ATO Product Ruling for each Scheme stated the Commissioner's view that the upfront fees were not of a capital nature.³¹

Willmott Forests Premium Forestry Blend Project

- (d) In this Scheme, each Grower was required to pay an application price of \$5,000 per woodlot, the purpose of which was not expressly stated, although the apparent purpose is to secure an interest in the Scheme.³² All other fees, including rent under the Grower Leases and fees for preparation, planting and maintenance were payable in arrears out of the harvest proceeds.³³ There is no evidence whatsoever that the moneys paid by the Growers were, pursuant to the terms of the Scheme, paid for the purpose of acquiring land to be used in, and to become part of the property of, the Scheme.
- (e) Under the Land Sourcing and Forestry Management Agreement with each Grower, if WFL considered it necessary to acquire additional Land in order to grant a land tenancy to the Grower for his or her woodlots, WFL was required to use all reasonable endeavours to secure such additional Land.³⁴ No provision was made for the Growers to contribute funds for the acquisition of such land.

Willmott Forests Premium Timberland Fund No 1

- (f) By contrast with the foregoing schemes, the PDS for the Timberland Fund advised Growers that WFL had acquired land located in the Northern Territory, and that it intended to use Grower application moneys to purchase rural land in the North Coast region.³⁵ The Receivers accept that the North Coast land purchased by the Timberland Fund is "scheme property" and that the proceeds of sale attributable to the value of that Land should be distributed to Growers: 2nd Webster GFP Affidavit, [7]-[13].

49. Except in the case of the Willmott Forests Premium Timberland Fund No.1, there is no evidence that any of the upfront contributions paid by Growers in the Murray Valley/North Coast Schemes were to be, or were, applied by WFL to purchase the freehold land on

³¹ PR 2004/11, [88] (Willmott Forests Project, 2004 PDS); PR 2005/100, [97] (Willmott Forests Project, 2006 PDS); PR 2006/127, [101] (Willmott Forests Project, 2007 PDS); PR 2006/64, [93] (Bioforest Dual Income Project 2006); PR 2007/2, [84] Bioforest Sustainable Timber and Biofuel Project 2007).

³² Willmott Forests Premium Forestry Blend Project, PDS, p 2.

³³ Willmott Forests Premium Forestry Blend Project, PDS, p 2.

³⁴ Willmott Forests Premium Forestry Blend Project, Land Sourcing and Forestry Management Agreement, cl 2.3.

³⁵ Willmott Forests Premium Timberland Fund No 1, PDS, pp 4 & 5.

which those Schemes were conducted. Accordingly, there is no substance to the suggestion that the freehold land is “scheme property” within the meaning of the *Corporations Act*.

J. The FNSW leasehold is not scheme property of the Registered Schemes

50. The following Registered Schemes (the ***FNSW Registered Schemes***) have been conducted in part on FNSW leasehold land:

- (a) the Willmott Forests Project (ARSN 089 379 975) - 2007 PDS only; and
- (b) the Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589).³⁶

Each of those Schemes is also a Murray Valley/North Coast Registered Scheme.

51. For the reasons given in paragraphs 45 to 48(e) above, there is no evidence that upfront contributions paid by Growers in the FNSW Registered Schemes were, or were to be, used to by WFL to pay rent under its head leases from FNSW. While the question whether particular assets are, or are not, “scheme property” is a matter of legal characterisation by reference to the terms of a scheme rather than any tracing of the flow of funds contributed in relation to the scheme, this conclusion is also consistent with that reached by the Liquidators on the basis of their attempted tracing analysis: Crosbie GFP Affidavit, [147]-[156].

52. Accordingly, there is no basis to suggest that the FNSW leasehold land is “scheme property” within the meaning of the *Corporations Act*.

53. In relation to the FNSW leasehold Sale Assets, the Receivers have agreed to accept an apportionment of 70% of the sale proceeds (being the same proportion that they have also agreed to accept in respect of the surrender of the HVP leasehold), as against a 30% apportionment in favour of Growers. In considering the reasonableness of this apportionment, the Court should have regard to the aggregate valuation given by Pöyry to the trees standing on FNSW leasehold land (which has been calculated inclusive of land-holding costs and shows a negative value for those trees): p viii of the Pöyry report dated 6 October 2011, at exhibit Confidential CDC-20.

K. Apportionment of the proceeds of sale

54. For all of the reasons stated above, the Receivers consider that:

- (a) the Growers have a right to receive that part of the net proceeds of sale that is referable to the Trees; and

³⁶ See exhibit Confidential CDC-22: column headed “Ha per region: FNSW”.

- (b) WFL and/or its secured creditors are entitled to receive that part of the net proceeds of sale that is referable to the land and other remaining assets that comprise the balance of the Sale Assets.
55. The Receivers agree with the Liquidators' proposed basis for apportionment of the proceeds of the GFP Sale as between the Growers, on one hand, and WFL and its secured creditors, on the other hand. Addressing the four issues noted at paragraph 128 of the Crosbie GFP Affidavit:
- (a) As to the apportionment of sale proceeds between each region, and as between the land and the Trees within each region,³⁷ the Receivers:
- (i) agree that it is appropriate to approach the apportionment on a region-by-region basis: 1st Webster GFP Affidavit, [28], [34];
 - (ii) confirm that the secured creditor was prepared to release its security over the Murray Valley and North Coast land for the value ascribed by GFP under the GFP Sale Contracts to the land in those regions: 1st Webster GFP Affidavit, [29], [31];
 - (iii) confirm that the secured creditor (in its capacity as an unsecured creditor of WFL) agreed with the Liquidators' proposed reapportionment of the amounts ascribed by GFP to the Bombala trees and the Bombala land: 1st Webster GFP Affidavit, [33].
- (b) As to whether the freehold land and the FNSW Leases constitute scheme property of the Registered Schemes, the Receivers refer to sections I and J above.
- (c) The Receivers agree with the basis on which the Liquidators propose that the Liquidators' and Receivers' costs be deducted from the sale proceeds: Crosbie GFP Affidavit, [161]-[165].
- (d) The Receivers agree with the Liquidators' proposed method of distributing the Growers' portion of the proceeds of sale: Crosbie GFP Affidavit, [167]-[174].

³⁷

Explained at Crosbie GFP Affidavit, [129]-[134].

L. Orders and directions sought³⁸

56. Following the orders made by Dodds-Streeton J in June 2010, the Liquidators now seek orders or directions:

- (a) that the Liquidators are justified in procuring WFL to enter into the GFP Sale Contracts;
- (b) that the Liquidators are justified in procuring WFL, as responsible entity of the Registered Schemes and as manager of the Professional Investor Schemes, to terminate or surrender each of the Project Documents and to surrender, relinquish or release the rights of the Growers in the Trees, on the basis that the net proceeds of sale under the GFP Sale Contracts are distributed in accordance with the spreadsheets exhibited as Confidential CDC-22 and Confidential CDC-23 to the GFP Crosbie Affidavit; and
- (c) that the Court consents to the disclaimer by the Liquidators of the Project Documents of the Contractual and Partnership Schemes pursuant to section 568(1) of the Act.

57. In relation to the orders approving the extinguishment of Growers' rights under the Project Documents of the Registered Schemes and Professional Investor Schemes, the Court has made orders in like terms in relation to the insolvent Timbercorp managed investment schemes on several previous occasions.³⁹ Similar orders have also been made in the Supreme Court of Western Australia in relation to the insolvent Great Southern managed investment schemes.⁴⁰ However, unlike those earlier decisions, the present application seeks the Court's approval of the Liquidators' proposed apportionment of the proceeds of sale, rather than merely directing that the proceeds be held on trust pending a further apportionment proceeding. It is hoped that the expense and delay that would attend such an apportionment proceeding may thereby be avoided.

58. With respect to the disclaimer of the Grower Leases in the Contractual and Partnership Schemes, the Liquidators are entitled to disclaim them as leases of land, regardless of whether the leases are onerous or unprofitable: s 568(1A) of the Corporations Act. In any event, given that the Grower Leases and the forestry management agreements in the

³⁸ A similar scheme-by-scheme apportionment was approved by the Court in relation to Timbercorp forestry schemes in *Re Timbercorp Securities Limited (in liq)* [2009] VSC 608.

³⁹ *Re Timbercorp Securities Ltd (in liq) (No 3)* (2009) 74 ACSR 626 (Robson J, 8 October 2009); *Re Timbercorp Securities Ltd (in liq)* [2009] VSC 590 (Davies J, 11 December 2009); *Re Timbercorp Securities Ltd (in liq) (in its capacity as responsible entity of the 2005 Timbercorp Citrus Project)* (2010) 77 ACSR 291 (Davies J, 26 February 2010); *Re Timbercorp Securities Ltd (in liq)* [2011] VSC 24 (Davies J, 7 February 2011); *Re Timbercorp Securities Ltd (in liq)* [2011] VSC 83 (Judd J, 15 March 2011).

⁴⁰ *Re Great Southern Managers Australia Ltd (in liq)* [2010] WASC 138 (Le Miere J, 25 May 2010).

Contractual and Partnership Schemes will generate no (or no substantial) cashflow until the eventual clear-felling of each plantation, they are plainly onerous and unprofitable: Crosbie GFP Affidavit, [123].

59. As with the orders approving extinguishment of the Grower rights under the registered and Professional Investor Schemes, the consequence of the Court consenting to the Liquidators' disclaimer of the Project Documents for the Contractual and Partnership Schemes is that the Growers will receive their corresponding portion of the proceeds of sale in accordance with the Liquidators' proposed method of apportionment.
60. Finally, WAG's attempted reliance⁴¹ on the Consent Deed made on 17 March 2009 to resist the orders now sought is misplaced: the Liquidators are neither party to, nor bound by, the Consent Deed. It therefore poses no obstacle to them making the present application. Nor does it constrain the Receivers in their support for the sale to GFP. In any event, it is apparent that on its proper construction, the Consent Deed is relevantly directed towards ensuring that the secured creditor does not seek to enforce its security over assets which properly belong to the Growers. The orders presently sought involve no assertion of any interest in assets belonging to the Growers; on the contrary, they are premised on the Growers receiving a portion of the proceeds of sale that is referable to their interests in the Trees,⁴² being the only commercially valuable asset owned by the Growers.
61. Hoddinott's assertion that the Liquidators have not provided a copy of the Consent Deed to Growers is not understood: a copy of the same document was exhibited to Bermingham's affidavit made prior to the hearing before Dodds-Streeton J in June 2011.⁴³
62. Accordingly, in circumstances where:
- (a) the orders sought are essential to achieve settlement of the sale of the assets at maximum value for the benefit of the secured creditor, unsecured creditors and the Growers;
 - (b) a robust sale process has been conducted and a financially able purchaser has contracted to purchase the assets at the best price reasonably attainable;
 - (c) the plantations continue to be at risk of deteriorating further and decreasing in value further due to the lack of maintenance, the risk of fire and other uncontrollable weather events such as wind and hail damage;

⁴¹ 1st Hoddinott Affidavit, [35]-[37]; exhibit MJH-11.

⁴² And, in the case of Growers in the Timberland Fund, the value of the Land, which (as noted above) the Receivers accept constitutes scheme property.

⁴³ Affidavit of Marie Bermingham, 22 June 2011, filed in Federal Court proceeding no. 386 of 2011.

- (d) if the proposed sale is not able to be completed, it is unlikely that an improved realisation would be obtained through any alternative sale of the assets;
- (e) aside from the 1995-99 Scheme, there have been no proposals for the restructure of the Schemes nor has any party expressed interest in acquiring the land on an encumbered basis; and
- (f) the Receivers expect that, if the proposed sale of the assets is not able to be completed, it will be necessary to have the schemes wound up,

the Receivers respectfully submit that the orders sought by the Liquidators ought to be made.

18 January 2012

WENDY HARRIS

TOM CLARKE

Counsel for the Receivers

A handwritten signature in cursive script that reads "Allens Arthur Robinson". The signature is written in black ink and is positioned above a horizontal line.

ALLENS ARTHUR ROBINSON

Solicitors for the Receivers

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 AND SCHEDULE 4**

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

- (a) Willmott Forests 1989 - 1991 Project (ARSN 092 516 651)
- (b) Willmott Forests 1995 - 1999 Project (ARSN 089 598 612)
- (c) Willmott Forests Project (ARSN 089 379 975)
- (d) BioForest Dual Income Project 2006 (ARSN 119 153 623)
- (e) BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 133 535)
- (f) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- (g) Willmott Forests Premium Forestry Blend Project - 2010 Project (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

SCHEDULE 3 - UNREGISTERED MANAGED INVESTMENT SCHEMES: PROFESSIONAL INVESTOR SCHEMES

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

SCHEDULE 4 - UNREGISTERED MANAGED INVESTMENT SCHEMES: CONTRACTUAL SCHEMES AND PARTNERSHIP SCHEMES

Contractual Schemes

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

Partnership Schemes

- (l) McKenzie & Partners - Forestry Partnership No.1 (1993)
- (m) Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (1994)
- (n) Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994)
- (o) Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (1994)
- (p) McKenzie & Partners - Forestry Partnership No. 2 (1994)