

# EXPLANATORY MEMORANDUM

## Growers' Meeting

### Willmott Forests 1995-1999 Project

**ARSN 089 598 612**

This Explanatory Memorandum should be read in conjunction with the Notice of Meeting dated 20 May 2011 which gives notice of a Growers' meeting at 10am on **Tuesday 14 June 2011** (or at an adjourned date) at Level 17 Rialto North Tower, 525 Collins Street, Melbourne 3000.

**If you are voting by proxy, proxies should be received by Primary Securities Ltd no later than noon WST on Thursday 9 June 2011 (or 96 hours (4 days) before the meeting or any adjournment of the meeting) so that proxies can be delivered to the current responsible entity. Proxies delivered less than 48 hours before the meeting (or adjourned meeting) will not be counted.**

### Important Notices

This Explanatory Memorandum relates to the resolutions proposed for the meeting of members (**Growers**) of the Willmott Forests 1995-1999 Project ARSN 089 598 612 (**Project**) at 10 am EST on **Tuesday 14 June 2011** or any date to which it is adjourned (**Meeting**).

The meeting was called by members under s252D of the Corporations Act 2001 with the assistance of Willmott Growers Group Inc (Reg No A0055077L) (**WGG**). This Explanatory Memorandum was prepared by WGG, the "**Preparers**".

### Accuracy of information

The Preparers of this Explanatory Memorandum have exercised due care and diligence in seeking to ensure the accuracy of its contents as at the date of this document. However, there is a risk that the information is incomplete, inaccurate and/or out of date. The Preparers cannot guarantee that there are no misstatements or omissions that are relevant to the decision that Grower members make in voting on these resolutions.

As the Preparers are not in control of the Project, they have faced considerable difficulties in obtaining and verifying the accuracy of all information relevant to the Project.

The Liquidators have provided access to many of the Project documents, but do not warrant that they are up to date or include all documents that may affect the rights and liabilities of the responsible entity of the Project. The Liquidators were not involved in the preparation of this Explanatory Memorandum and are not responsible for its contents. WGG has also obtained and reviewed some, but not all, publically available information about the Project. Information about associated risks for Growers to consider is set out in this document. Each Grower should seek their own professional financial and taxation advice.

If Primary Securities Ltd (**Primary**) becomes the responsible entity of the Project it will require the Liquidators to hand over all Project documentation. Primary reserves its right to make further amendments which are not adverse to the rights of Growers in addition to those set out in these documents and not implement any aspect of this Proposal, particularly if material information arises after it becomes responsible entity of the Project and has examined all the Project documentation. Primary's rights in this regard will be limited by its obligations as responsible entity to act in the best interests of Growers as a whole.

These documents will be posted on the WGG website [www.willmottgrowersgroup.com.au](http://www.willmottgrowersgroup.com.au) and also on the Primary Group website [www.primarysecurities.com.au](http://www.primarysecurities.com.au) under the heading Willmott Forests. If any material information arises between the date of this document and the Meeting, it will also be posted on that website.

### Procedural Matters

This Explanatory Memorandum is being sent together with the Notice of Meeting to all persons listed as a Grower on the Project Register of Growers dated 9 September 2010 which was the copy of the Register which was provided to solicitors for WGG. The Liquidators have recently confirmed that there have been no subsequent changes to the Growers listed on the Register. Included with the papers is an update form for Growers to complete and send to Primary should their details have changed.

**Overview**

**Meeting**

The Notice of Meeting contains four resolutions (**Resolutions**). The purposes of the Resolutions are as follows:

Resolution 1	Approve the WGG Proposal
Resolutions 2	Approve amendments to the Constitution
Resolutions 3 & 4	Remove WFL as responsible entity of the Project and appoint Primary Securities Ltd as responsible entity of the Project

**Why Vote?**

**Resolution 1** is an ordinary resolution.

**Resolution 2** requires a special resolution.

**Resolutions 3 and 4** require an extraordinary resolution which is very difficult to obtain. It requires at least 50% of votes that can be cast (i.e. votes representing at least 50% of Hectares). **Therefore a Grower that wants the Project to continue should vote for all four resolutions.**

**Each resolution is interdependent on the other resolutions.**

**If all resolutions are passed the Project will continue as amended** under the terms set out in this Explanatory Memorandum.

**If any resolution is rejected, the WGG Proposal will not be passed and the Project will almost inevitably be wound up.**

This will mean:

- Great uncertainty as to what return (if any) the Growers will receive.
- The Receivers of WFL will likely take steps to call in Grower loans.

In our view, the WGG Proposal offers **Growers** the following:

- The WGG Proposal is the only proposal for the continuation of the Project.
- If Growers do not approve the WGG Proposal, the Project will **likely** be wound up and the Growers’ forestry interests sold by the Liquidators together with other assets of WFL.
- If the Project is wound up, the prospect of any value being returned to Growers is uncertain.
- Primary is an experienced responsible entity, having previously taken over other distressed forestry schemes.
- Growers will retain a right to receive proceeds from the harvest of their Trees. It gives Growers an opportunity to see a return with an annual cost in the region of 2% of their original expenditure.

- if the WGG Proposal is not implemented and the Project is instead wound up by the Liquidator, it is likely the Receivers will seek to call in the Grower loans.

### **Inherent uncertainty**

Growers should note that the WGG Proposal by its very nature contains a number of uncertainties. The main uncertainties are:

- until completion of a detailed due diligence it is not possible to determine what future management costs are likely to be.
- there are expected to be dispute resolution costs associated with the reconstruction including the cost of meeting challenges from the Receivers and the Liquidators. It is not possible to accurately estimate these costs.
- it is not possible to determine with any accuracy the final value of the harvest from the plantations.

While we appreciate that it is difficult for Growers to make a decision with this level of uncertainty, Growers should also take into account the consequences of not continuing the Project. Should the Liquidators be successful in their campaign of selling the land and trees together, then:

- Growers will be entitled to a portion of the proceeds of sale. It is not possible to determine what this amount will be (if any).
- Growers will not have to make any ongoing payments in relation to the Project, but will also not be entitled to any of the proceeds from the final harvest.
- Growers who took advantage of option A(iii) of the WFL loan facility should understand that should the Project not continue, the principal of that loan may become payable. Continuing the Project may preserve the benefit of the loan deferment provided via the Deed of Deferment, Assignment and Variation, a benefit which may outweigh the costs associated with the maintenance of the Project.

In any event, the WGG Proposal includes an initial cost for growers of \$500 per hectare (being \$200 reconstruction fee plus \$300 initial management fee). The RE may issue supplementary invoices to these amounts in the event that there are insufficient funds. Growers should give consideration to the likelihood of the Net Proceeds of Sale exceeding the cost of maintaining the plantation to clearfell. Where Growers have loan agreements with WFL, these management costs should also be considered in conjunction with the loan amount which varies with the year of investment, but in all instances it is in excess of \$10,000, which may become immediately payable in the event that the Project is wound up.

Under the WGG Proposal, Growers who do not pay the initial and ongoing costs risk having their interest in the revenue of the Project diluted. After a period of time, this interest may be reduced to zero. This reduction in the Growers interest in the revenue of the Project may give rise to the ability for WFL to require repayment of the Growers loan. Growers should consider this risk in determining whether or not to pay the fees invoiced by the RE.

WFL holds in its own right a number of interests in the Project. It is unlikely that WFL will be in a position to pay the fees required by the RE and as a consequence, it is probable that its interest in the revenue account will be reduced to zero over a period of time. Accordingly, it is unlikely that WFL, the Receivers or the Liquidators of WFL, will support the WGG Proposal and they may actively seek to challenge the substance of the WGG Proposal, the calling of the meeting or any outcome of the meeting. The consequences of these possible challenges cannot be known for certain.

In summary, Growers cannot be assured of any outcome under the WGG Proposal and that the costs and benefits of the WGG Proposal will be largely dependent upon the individual circumstances of the

Grower. Accordingly, WGG considers it appropriate that Growers seek independent advice in relation to this matter.

### **Meeting**

You can vote by attending the meeting or by completing and returning the Proxy Form to Primary by noon WST on **Thursday 9 June 2011**.

Because of the insolvency of the Willmott Forests group of companies, steps may be taken by the Liquidators and / or Receivers that effect the capacity for the meeting to be held. Accordingly, if the meeting has to be adjourned and information changes:

- The business of the meeting is adjourned, accordingly any adjourned meeting is also considered to be “the meeting” for the purpose of this document.
- Updated information (including the date of any adjourned meeting) will be posted on the WGG and Primary websites but not otherwise sent to Growers.
- Proxies already lodged prior to any updated information will be valid, but Growers can also change their proxy before the meeting or adjourned meeting.

### **Explanatory Memorandum**

The Explanatory Memorandum has two parts:

Part A – The Willmott Growers Group Proposal

Part B – Proposed Amendments to Constitution

Supplementary or Replacement Explanatory Memoranda may be posted on the websites if the Preparers consider that any changes are so significant that the Preparers consider it necessary for Growers to understand the proposal.

## **PART A – WILLMOTT GROWERS GROUP PROPOSAL (WGG Proposal)**

### **1. Introductory Letter**

Dear Grower,

#### **Willmott Growers Group Proposal to Growers in the Willmott Forests 1995-1999 Project (Project)**

Willmott Growers Group (**WGG**) is pleased to sponsor a proposal, which we believe will offer Growers the best solution to the circumstances which have arisen from the insolvency of the Willmott Forest Group of companies.

It is WGG's view that, with the collapse of Willmott Forests Limited (**WFL**), the Project is no longer being adequately managed. In order to restore the Project as close as possible to its original status, it is necessary to appoint a new responsible entity and also to provide a mechanism whereby ongoing and future maintenance and management costs will be funded by Growers. Converting the Project to a contributory scheme is the basis of the WGG Proposal. In addition, there will be an initial management fee to pay for the costs of saving the Project as well as to cover any required forestry remediation costs.

Neither WGG nor any other party involved in the WGG Proposal has as yet completed a full due diligence of the Project or its viability. However, because:

- (a) all planting costs have been paid for;
- (b) there is no requirement to pay any further land lease fees (except for Growers applying pursuant to 1999 Prospectus); and
- (c) the trees have at least 10 years' growth;

the proposed new responsible entity Primary takes the view that it is reasonable to expect that the Project is viable and that there is value for Growers in the Project continuing through to final harvest. One of the first tasks for Primary will be to arrange for a forestry report on viability of all phases of the Project.

If there are any disputes with the Liquidator of WFL as to the interests of Growers and the Project, including scheme property, the Growers will be asked to fund the cost of any dispute resolution from their initial management fee and any supplementary initial management fees. Part of the initial management fee has been allocated to dispute resolution.

#### **Your vote is important**

If each resolution that forms a part of the WGG Proposal does not receive the required votes that can be cast at the meeting, the Project will most likely be terminated by the liquidator of WFL.

It is therefore vital that, if you would like to see the Project continue, you carefully consider this Explanatory Memorandum and vote in favour of the WGG Proposal.

**Submit your proxy**

The Notice of Meeting includes a Proxy Form for Growers. All valid proxies will be considered at the meeting. To be valid the proxy must be received by the current responsible entity no later than 48 hours before the meeting. To ensure that this occurs it should be delivered to **Primary Securities Ltd** no later than noon WST on Thursday 9 June 2011. If you lodged a Proxy Form for a previous meeting it is not valid and you will need to complete and submit a new Proxy Form. We apologise for this inconvenience.

We at WGG have worked hard to finalise a proposal that we believe will give the greatest prospect of maximizing the value of your investment. We now seek your support to get your trees through to a successful harvest.

A handwritten signature in black ink, appearing to read 'P. Challis', with a long, sweeping horizontal stroke extending to the right.

Paul Challis  
Willmott Growers Group

## RESOLUTION 1 – APPROVAL OF THE WILLMOTT GROWERS GROUP PROPOSAL

### Background

Willmott Forests Limited (Receivers and Managers appointed) (in Liquidation) (**WFL**) is the current responsible entity (**RE**) of the Project and a number of other registered managed investment schemes. It is also the Manager of a number of unregistered managed investment schemes.

This Project was established on the basis that Growers (except Growers applying pursuant to 1999 Prospectus) make an up-front contribution for the establishment and future maintenance of a plantation in respect of which individual Growers leased specific areas called “Hectares”. The title of this land was to be held by the Growers’ “Representative”.

Following conversion to a managed investment scheme, WFL became the RE and both held the land and managed the Project.

The Project comprises five prospectuses, one for each year from 1995 to 1999. There are in total 744 Growers farming 5,473 “Hectares”, which is the name of the units of interests that Growers took up when investing in this Project. One “Hectare” was approximately equal to one hectare (10,000 square metres) when the investment commenced.

The total amount raised pursuant to the five prospectuses was in excess of \$60,000,000.

Under the original arrangements, each Grower was to harvest their own trees, though it was contemplated that WFL would do this on their behalf for an additional fee.

The Willmott Forest Group of Companies (**Willmott**) went into external administration in September 2010. At the second creditors meeting on 21 March 2011, the Chair (representing the Administrators) exercised his casting vote to appoint Liquidators and to place Willmott into liquidation.

As a result of its insolvency, WFL has not been in a position to continue to provide management services to the Project. As RE, WFL has a duty to act in the best interests of Growers. Now that the Liquidator controls the RE, there is a conflict between the duties of the Liquidators as liquidators and the duties of WFL, the company acting as RE that they now control. Accordingly, Growers cannot rely on WFL to discharge the duty of a responsible entity and act in their best interests.

It is important to note that the Project itself is not in receivership, administration or liquidation. However, the Project is currently unfunded and the purpose of the WGG Proposal is to rectify this position.

The Liquidator has commenced an application to the Court for approval to:

- amend the Constitution to enable the Liquidator to terminate / surrender Growers’ rights to the trees; or
- disclaim the Project Documents of the Project.

While the court documents state that Growers would be compensated for their loss of rights, there is no certainty that Growers will receive any return, for example, if the Growers’ rights are considered to have zero or negative present value.

A group of Growers in the Project has authorised the calling of a meeting of Growers pursuant to section 252D of the Corporations Act 2001 to consider adopting the WGG Proposal. The WGG Proposal involves changing the RE from WFL to Primary and to make certain amendments to the constitution.

This will allow for the amendment of the structure and the operations of the Project and the appointment of a responsible entity that is solvent and independent of the financial issues associated with Willmott. This will also allow for the collection of management fees from Growers to ensure the availability of the required funds to manage and maintain the plantations that underlie the Project. The intention of the WGG Proposal is to carry the Project forward to harvest as disclosed in each original prospectus.

This meeting only applies to the Willmott Forests 1995-1999 Project ARSN 089 598 612. It is possible that meetings for the other projects that WFL operates may be called separately to this meeting.

### **Parties to and the background to the calling of the meeting**

The Grimsey Accounting and Wealth Management practice (**Grimsey**) has had dealings with WFL since 1993 and as a consequence a number of Grimsey clients have invested in Willmott Forests projects.

Upon notification of the appointment of Receivers and Managers to Willmott, Grimsey formed and incorporated the WGG to provide a mechanism for Growers' interests to be represented at the first creditors' meeting in September 2010 as well as to canvas the commercial aspects of the Growers' position.

WGG requested Paul Challis, the Managing Director of Redisland Australia Limited (**RLA**), to investigate the position of Growers and, if practical, develop commercial options for Growers to consider.

RLA is a public company which manages other MIS schemes in which Grimsey clients have invested and accordingly is associated with the principals of Grimsey. The company has experience in developing MIS projects and the commercial issues in operating such schemes. Paul Challis has gained considerable experience in representing Growers' interests in earlier administrations of distressed managed investment schemes.

Paul Challis, along with the other principals of Grimsey (who collectively are the founding members of WGG), are Growers in the Project. Grimsey and Associates Financial Services Pty Ltd, one of the companies in the Grimsey group, is also a Grower in its own right. Apart from this, neither Paul Challis, Grimsey or RLA have an interest in the outcome of this meeting other than the reimbursement of costs and time spent in preparing the proposal.

An earlier notice of meeting was issued proposing to call a meeting on 3 February 2011. This meeting was not proceeded with so as to allow for further time to develop the WGG Proposal.

A group of Growers in the Project representing in excess of 5% of all Growers' interests, authorised Grimsey and RLA to call a meeting of all Growers in the Scheme to put forward the WGG Proposal.

## The WGG Proposal

### *Principles of the WGG Proposal*

The principles of the WGG Proposal are:

- to replace the current RE to ensure that the RE overseeing the Project, protecting the interests of Growers and assessing its financial future is solvent and independent of the financial issues surrounding WFL;
- to amend the constitution to introduce a right on the part of the RE to harvest the trees on behalf of Growers and to pool the proceeds for the benefit of Growers based on the prospectus year they applied to be a Grower, and other changes including the right on behalf of Growers to claim the land; and
- otherwise to restore, as best as possible, Growers' rights in order to ensure the Project meets its objectives as intended prior to the collapse of Willmott.

### *Growers' current position*

The Growers' position can be summarised as follows:

- With the failure of WFL, Growers have lost their forest manager and any prepaid management fees, including fees allocated for future maintenance.
- The trees have been successfully planted and are aged between 10 and 15 years depending upon the year that Grower invested in the Project. However, some trees may be subject to snow damage.
- The Growers' lease agreement with WFL and the rental which was prepaid on applying for an interest in the Project (with the exception of Growers who invested pursuant to the 1999 prospectus), is still in place.

In the circumstances, it is the view of WGG that it is unlikely that anyone other than the Growers will contribute to the maintenance of their plantations through to harvest. To date, no other such party has emerged. i.e. this proposal is the only proposal to take the trees through to harvest that is available to Growers. Accordingly, there is a need for the Project to be changed to become a contributory scheme enabling Growers to make annual contributions towards ongoing maintenance through to harvest.

### *Proposed structure*

The WGG Proposal maintains the project structure as a registered managed investment scheme – although as noted above, it involves changing the RE and the amendment of the constitution of the Project. The constitution will be amended to allow the RE to invoice individual Growers an initial management fee and an annual management fee in order to cover statutory, administrative, forestry management, dispute resolution and other costs associated with the Project as well as to provide for the pooling of revenues that may arise from a future harvest.

Specifically, it is proposed:

### **Project participants**

- To have Primary Securities Ltd (**Primary**) replace WFL as RE of the Project. As RE, Primary will be responsible for the operation of the Project in accordance with the Project documents and ensuring that all statutory requirements are met.
- The RE intends to appoint an independent professional forestry manager to provide the forestry services. At the time of this Explanatory Memorandum, it is the intention of Primary to appoint Black Tree Pty Ltd (**Black Tree**) as the forestry manager.
- Prior to doing so, Primary proposes to ask an independent forestry consultant to:
  - conduct a preliminary review of data from WFL, including the viability study of the Administrators/Liquidators (if made available to Primary) and undertake site visits, and provide a report to Primary outlining the immediate remediation and maintenance work that the consultant considers is required on the estate; and
  - conduct a viability review and, within 90 days of Primary's appointment prepare a viability report to Primary.
- Additional details of Primary and Black Tree are set out in the notes on Resolution 4.

### **Revenue Sharing**

- The revenues will be pooled and Growers will share in this revenue pool according to the plantation phase (determined by the relevant prospectus under which they applied to become a Grower).
- Growers will be entitled to their proportional share of the net proceeds of sale arising from any thinning or harvesting of the trees in the Project (along with any other proceeds in respect of the plantation) according to their plantation phase.

Growers who give notice to the RE on or before 30 June 2011 that they wish to harvest their own trees will remain entitled to do so. Otherwise, the RE (through its manager Black Tree) will harvest the trees on the Growers' behalf.

### **Fees**

- Shortly after being appointed, the RE will invoice Growers an Initial Management Fee which will comprise two components:
  - A **reconstruction fee** to reimburse the costs incurred in the process of developing this proposal, transferring the role of RE from WFL to Primary and restructuring the Project. The total amount of these costs will be largely dependent upon independent legal and consulting fees associated with the process, the complexity and duration of any dispute resolution and the costs of the current RE during the period of the administration.

This fee has been set at **\$200 per hectare (inc GST)**. This is less than 2% of the cost of Growers' investment to date. At the end of the reconstruction, a reconciliation will be prepared and any difference between actual costs and the reconstruction fee

charges will be added to or deducted from future management fees. Growers who have already contributed \$200 to WGG for the purpose of facilitating the reconstruction will be regarded as having paid this fee to the RE and will receive a tax invoice marked paid.

- the **initial management fee** which will be an estimate of RE administration and forestry costs for the period to 30 June 2012 and includes an additional amount for contingencies and non-contributing Growers as well as public liability insurance and fire insurance over the trees and possible continuation of dispute resolution. This fee is expected to be **\$300 per hectare (inc GST)**. However, this may be varied prior to the meeting and also as additional information is received and assessed. After 30 June 2012, a reconciliation will be completed and any variance will be added to or deducted from the subsequent years management fees.

Under the proposed changes to the constitution, the RE will be able to issue an invoice or invoices for Supplementary Initial Management Fees where the Initial Management Fee is not adequate to cover the Reconstruction Costs and other initial and management costs which the RE incurs.

- From 1 July 2012, it is intended that the RE invoice Growers on an annual basis (probably in May or June prior to the start of the financial year) a **Management Fee**. The Management Fee will cover such costs including the RE, administration and forestry management costs for the next year and may include an additional amount to provide for contingencies and non-contributing Growers. At the end of each year, a reconciliation will be completed and any variance from budget will be added or deducted from the subsequent year's Management Fee.
- The RE is able to issue an invoice or invoices for Supplementary Management Fees if the contributions paid by Growers are not sufficient to fund the ongoing costs of the Project until 30 June of that financial year.
- The RE is entitled to be paid remuneration for being the responsible entity of the Project. In addition to its remuneration, the RE is able seek reimbursement for certain costs and expenses associated with the Project. Further information on the RE's remuneration and reimbursement is detailed in Part B of this Explanatory Memorandum.

### **Consequences of non-payment of fees**

- Growers who do not pay the Reconstruction Fee and Initial Management Fee, or any annual Management Fee (or any supplementary fee) will have their entitlement to receive Net Proceeds of Sale from the Project reduced by 1.5% percentage in respect of every \$10 invoiced but not contributed (rounded up or down as appropriate). This amount reflects an estimate of future revenues, administration costs and an interest charge to incorporate the time value of money which comprises the damage to the Project caused by the failure of a Grower to contribute the invoiced fees. A reduction in your entitlement to receive Net Proceeds of Sale will also reduce your voting entitlement at meetings and your entitlement to insurance proceeds in the event of destruction of your trees and to proceeds in the event of termination. A reduction in these entitlements could impact on your Loan Agreement (refer to the heading below "Growers' Loans with WFL").
- Over a number of years a Grower's proportional interest in Net Proceeds of Sale may be reduced to zero if contributions are not made. If a Grower's proportional interest in Net Proceeds of Sale has been reduced to zero, the RE may transfer that Grower's interest to some

other person who undertakes to pay ongoing fees, and may also remove the Grower from the Register.

### **Underwriting / Borrowing**

- Where it is in the best interests of Growers, the RE may seek to fund unpaid fees on behalf of the Participating Growers with an underwriter, financier or Participating Growers or other persons on such terms and conditions agreed between the parties in writing including by offering security over scheme assets and by alienating a percentage of Net Proceeds of Sale.
- A Participating Grower is a Grower whose entitlement to Net Proceeds of Sale from the Revenue Account is not zero.

### **Insufficient Contributions**

- In any event, should the RE not receive sufficient contributions to properly fund the operations of the Project, then the RE will consider alternative options including the sale of the forestry interests and the winding up of the Project.

### **Estimated management fees**

Prior to the invoicing of Growers for their first (annual) Management Fee, the new RE intends to ask Black Tree to complete a full due diligence of the plantations including a review of the data from WFL, the viability study of the Administrator/Liquidator and a site visit.

At the time of this Explanatory Memorandum, WGG has yet to have access to a lot of this data. Based upon this exercise, Black Tree as a professional forestry manager will be able to confirm viability and put forward a plantation management plan which will form the basis of the forestry costs to be incurred and an annual budget.

As the Management Fees will be based upon actual operating costs, it is not possible to detail the expected fees until after the due diligence process is completed. However, as an indication, Black Tree has estimated that the fees per hectare are likely to be as follows:

- Reconstruction Fee:                      \$200 once off (inc GST)
- Initial Management Fee                      \$300 once off (inc GST)
- Management Fee                              \$150 to \$250 per financial year (inc GST).

As previously detailed in this Explanatory Memorandum, any difference between actual and expected costs will be applied against the subsequent fee payable by Growers.

The RE can issue invoices for supplementary management fees.

### **Project viability**

WGG has engaged in:

- Discussions with a number of forestry managers about the likely costs and revenues associated with plantations in the Bombala region;
- A desktop review of the due diligence material available about the Willmott Projects including those supplied by independent research houses;
- A review of the annual Grower Reports provided by WFL to Growers; and

- A review of material that has become available as to the viability of the Project during the administration and liquidation period of WFL.

Furthermore, at the second creditors' meeting, in response to a question regarding the viability of the Projects, Craig Crosbie of PPB, commented that (on the proviso that the Project had secure funding to meet ongoing commitments including forest maintenance and the appropriate documentation being in place), he could not see why this Project would not be viable.

The view of Primary is that, for the reasons set out on page 5, the Project is reasonable to expect that the Project is viable. However, this view is subject to the approval of the WGG Proposal, due diligence being undertaken by Primary and completion of the detailed viability report to be prepared by Black Tree.

It should be noted that no one from WGG, Primary or Black Tree have conducted a full due diligence of the Project land and the plantations including site visits. As noted above, it is intended to complete a full due diligence following the approval of the WGG Proposal and this due diligence will also provide additional data and information concerning the likelihood of future proceeds from the plantations. In the unlikely event that the anticipated harvest proceeds are less than the budgeted costs to harvest, the RE may consider alternative options including the sale of the forestry interests or termination of the Project.

### **Changes to the Growers' Agreements**

The Project Documents comprise the Planting and Preparation Agreements, the Lease Agreements and the Maintenance Agreements.

#### *The Planting and Preparation Agreement*

The Planting and Preparation Agreements have already come to an end and do not need to be amended.

#### *The Lease Agreement*

It is not proposed to amend the Lease Agreements at this time.

However, upon Primary being appointed, Primary will attempt to resolve the question as to what rights of WFL as owner of the land (including rights as lessor under the Lease Agreements) are transferred to Primary. The Liquidators may wish to seek directions of a Court on the issue.

#### *The Maintenance Agreement*

It is not proposed to amend the Maintenance Agreements. However, changes to the constitution will result in the Project becoming a contributory scheme and this will require Growers to pay all initial, ongoing and future costs, fees and charges. To the extent that amendments to the Constitution affect the Maintenance Agreement, Primary may make consequential amendments for consistency.

### **1999 Lease and management fees for the Growers who invested in the 1999 prospectus**

Growers who invested in the 1999 prospectus are already required to pay ongoing lease and management fees. The WGG Proposal has the following impact on those arrangements:

- The rental payable under the lease agreement will remain payable in accordance with the lease conditions. We anticipate the most practical way of operating this is that payments will be made to Primary who will pass the funds to the land owner. Alternatively, the land owner may invoice the Growers directly; and

- Otherwise, instead of the previously agreed maintenance fees payable under the Maintenance Agreement, you will pay the same reconstruction fee and management fees as other Growers.

### **Growers' Loans with WFL**

We are aware that some Growers may have loans with WFL secured by their interests and that some of these Growers may have entered into a Deed of Assignment, Deferment and Variation.

This proposal does not directly impact any finance arrangements that individual Growers may have, however, on becoming RE, Primary will regard the WFL loans as part of its province of interest from the perspective of protecting the interests of Growers.

However, Growers who have loans should give consideration to the possibility that any reduction in their project interest as a consequence of not paying invoiced fees may be considered by their financier as impacting upon their security value, especially if their project interest is reduced to zero. In such circumstances, Growers may be required to immediately repay their loan principal.

### **Taxation**

If the WGG Proposal becomes effective, there will be a change of RE of the Project and a change in the fees payable to the RE by Growers, and changes to the constitution.

Neither WGG nor Primary are currently eligible to apply to the Australian Taxation Office for a product ruling as to the tax deductibility of any payment under the WGG Proposal or any other matter.

In addition, neither WGG nor Primary has obtained tax advice on the WGG Proposal or had discussions with the Australian Taxation Office in relation to the WGG Proposal.

After its appointment, Primary will apply to the Australian Taxation Office for an addendum to the current Product Ruling or such other appropriate instrument for the Project.

**Growers are advised to seek their own professional financial and taxation advice in relation to the WGG Proposal.**

### **Hectares held by Willmott Forests Limited**

The Project Register, kept by WFL, records WFL as the registered owner of a number of Hectares in the Project, particularly in the 1996 and 1999 years. Many of these Hectares were acquired from defaulting Growers in the past or where Growers' Trees were damaged and WFL acquired the Hectares from Growers.

As WFL is in liquidation, WFL is not expected to make the annual contributions in relation to these interests. As a consequence, it is expected in these years that there will be greater demand on the additional contributions of Growers and Black Tree or any underwriter if appointed.

### **Assignment**

We are aware that a large number of Growers have executed documents agreeing to assign future rights to A S Calendar Nominees (Vic) Pty Ltd (which apparently assigned its rights to WFL). As the

entities to which Growers have agreed to assign their future rights have no ownership entitlement, the Grower remains liable for all costs, fees and charges and not the relevant third party.

### **Best Practice**

It is possible that any areas of the plantations which are not viable due to poor health or prior damage may be managed differently to the balance of the plantation, that is, those parts of the plantations may not be managed in accordance with best practice but in a manner that seeks to maximize the commercial outcome for Growers. There may be other examples where best practice may not necessarily be followed. This may have the effect of reducing the contribution required by Growers but may also lead to reduced total Net Proceeds of Sale available to Growers on final harvest.

### **Insurance claims receivable**

We are aware that WFL has made insurance claims on some parts of the Plantation. We do not have the details of these claims but expect that any proceeds from these claims would be placed in the Revenue Account and be available for distribution to Participating Growers of the relevant plantation phase according to their Proportional Interest.

### **Growers' Insurance**

The current arrangement is that Growers are responsible for the insurance of their interests. This will no longer be necessary and the RE will take out fire and public liability insurance with respect to the Trees as part of the initial and subsequent annual Management Fees payable by Growers.

Growers who wish to take out additional insurance or insure their Trees for a different value, for example for an amount equal to any finance amount, should contact the RE directly to make such arrangements.

### **Implementation**

WGG anticipates the following steps for implementation of its proposal:

- 14 June 2011: Meeting of Growers to consider the resolutions.
- Within 2 business days after the Meeting: If all resolutions are passed, Primary will lodge a notice with ASIC to effect the change of RE.
- Within a week, Primary will amend the constitution.
- Within a week following the amendment of the constitution, the RE will:
  - issue invoices for the Reconstruction Fee and the Initial Management Fee; and
  - engage Black Tree to conduct and report within 30 days on immediate remediation and maintenance work required and matters referred to below.
- Within 60 days after the Meeting: Completion of the due diligence and a viability report in relation to the plantations and the development of a strategic management plan for the plantation by Black Tree.
- Within 90 days after the Meeting: The appointment of a forestry manager consistent with the strategic management plan.

Primary may apply to the Supreme Court of Victoria for directions that Primary is justified in carrying into effect the resolutions relating to the amendment of the constitution.

### **Growers' Meeting**

Where a meeting is called by Growers, the Chair must be elected by Growers present at the meeting.

The law requires the RE to determine the value of an interest in a scheme for the purpose of voting at scheme meetings. WGG has already advised the Liquidator of WFL's statutory discretion and will formally request it to exercise this discretion as soon as practicable. In the absence of notification from the Liquidators of WFL, each Hectare will be given equal value (\$1) for the purpose of voting.

A scrutineer will be appointed in relation to the proxies and on the conduct of the poll at the Meeting.

Growers are not required to attend the Meeting to cast their vote if they have completed and submitted a valid proxy.

The Notice of Meeting includes a Proxy Form for Growers. All valid proxies that are lodged will be considered at the meeting. To be effective the proxy must be received by Willmott Forests Ltd no later than 48 hours before the meeting. To ensure that this occurs it should be delivered to **Primary Securities Ltd** no later than noon WST on Thursday 9 June 2011.

If sufficient proxies have not been submitted to pass all interdependent resolutions 1 to 4, the Meeting may be adjourned to allow more time for proxies to be submitted.

### **Why should Growers support the WGG Proposal**

In our view, the WGG Proposal offers the following:

- The WGG Proposal is the only proposal for the continuation of the Project.
- If Growers do not approve the WGG Proposal, it is possible that the Project will be wound up and the Growers' forestry interests sold by the Liquidators together with other assets of WFL.
- If the Project is wound up, the prospect of any value being returned to Growers is uncertain.
- Primary is an experienced RE, having previously taken over other distressed forestry schemes.
- Growers will retain a right to receive proceeds from the harvest of their Trees. It gives Growers the best opportunity to see a return with an annual cost in the region of 2% of their original expenditure.
- If the WGG Proposal is not implemented and the project is instead wound up by the Liquidator, it is likely the Receivers will seek to call in the Growers' loans.

### **Risks**

It is important that Growers read this information carefully as there are considerable risks associated with agricultural managed investment schemes given the restructure of this Project after the insolvency of WFL and the length of time until harvest. The WGG Proposal is not expected to result in the recovery of your original investment. Rather, the WGG Proposal is designed to achieve a better return for Growers in comparison to the alternative of liquidation. Therefore, the WGG Proposal seeks to achieve the best available result in the circumstances.

In addition, the risks faced by Growers are of a similar nature as those normally associated with investments in a forestry MIS and include:

- Risk that the Project will fail to deliver expected volumes of wood produce.
- Risk that the volume of wood harvested will be detrimentally affected by damage caused by insects, termites and other pests.

- Risk that the price of the timber may decrease at harvest.
- Market and commercial risk such as reduced demand for wood, technological advances, increased costs associated with harvesting and delivery.
- Environmental risk such as drought, flood, cyclones, wind, hail, insects, pests, fire diseases.
- Risk of change to government legislation (including taxation legislation).
- Risk associated with the financial position of the RE.

There are risks specific to the WGG Proposal. These include:

- The risk that RE is unable to continue to fund the Project until harvest because of insufficient contributions from Growers and inability to obtain any alternative funding from a lender or underwriter, and the failure of the underwriter, if appointed.
- If the RE is required to borrow, the risk of granting security of scheme assets and of default.
- That as a result of further due diligence after the Meeting, additional information may become available which is detrimental to the interests of Growers.
- The risk that the information in this Explanatory Memorandum is incomplete or inaccurate because the Preparers' access to relevant information is limited (as described on page 2 under the heading "Important Information").
- The scope and quantum of the Liquidators' lien over proceeds is uncertain.
- Risks in respect of the effect of the terms and continuation of the Lease Agreements or the Forestry Rights.
- The risk that the WGG Proposal may impact on any financing arrangements (including loan agreements and/or deeds of deferment) that the Grower has with any third party.
- The risk associated with the unknown costs of resolving disputes, including litigation, in relation to the implementation of the WGG Proposal including being liable for an order for costs.
- The risk associated with a dispute with the Receivers who control the interests of WFL in the Project, either as a registered Grower or as the future assignee of a portion of the interests of Growers who have entered into financing arrangements with WFL.

### **Disadvantages**

The key aspects of the WGG Proposal that affect Growers adversely are:

- a requirement to make additional Grower Contributions.
- the reduction in and possibly full surrender of entitlements to the benefits produced by the Project if a Grower does not make the additional Grower Contributions.
- an increase in remuneration required to be paid by Growers to the RE.
- taxation and financial consequences for each Grower.

Details of each of these matters are described elsewhere in this Explanatory Memorandum.

The resolution that involves changes to the constitution is a special resolution because elements of the amendments are adverse to the existing rights of Growers under the Project. The law requires that such amendments are made by a special resolution of members of a scheme.

### **What to do next to support the WGG Proposal**

You should carefully consider the WGG Proposal and seek independent financial and taxation advice.

If you would like the WGG Proposal to proceed, you should vote in favour of all of the resolutions by:

- submitting your Proxy Form, in accordance with the instructions in the Notice of Meeting accompanying this Explanatory Memorandum and voting in favour of all of the resolutions;  
or
- attending the Meeting and voting in favour of all of the resolutions.

If you submitted a Proxy Form for a previous meeting it is not valid and you will need to complete and submit another Proxy Form.

**RESOLUTION 2 – AMENDMENTS TO THE CONSTITUTION****1. Details of the Amendments to the Constitution**

The Project is governed by a legal document known as the constitution. Growers also entered into the Preparation and Planting Agreement, the Maintenance Agreement and Lease Agreement (**Project Documents**) with the RE.

So that the WGG Proposal can be implemented, WGG are asking Growers participating in the Project to approve the key changes to the constitution. This section describes the proposed amendments and their effect in detail. The proposed amendments to the constitution are contained in Part B of the Explanatory Memorandum.

**1.1 Name of Project**

The name of the Project will remain the same. Clause 1.2 is being deleted because it requires the name of the Project to be changed.

**1.2 References**

The current constitution was executed on 16 September 1999 and will be updated to reflect the current legal regime. As the constitution was adopted prior to significant changes to the Corporations Act, the proposed changes are to references no longer used in the Corporations Act 2001 (**Corporations Act**). These references will refer to the current references used in the Corporations Act.

**1.3 Definitions**

New terms introduced in the constitutional amendments have been included in the definitions section of the constitution and other terms updated.

As the WGG Proposal provides for a contributory scheme and the appointment of a new RE, the majority of the amendments to the definitions section relate to defined terms to be used in clauses to give effect to those amendments. However, you should refer to section B of the Explanatory Memorandum for full details.

**1.4 Application Price for Hectares**

Clause 3 has been deleted. Generally, clause 3 provided that a Hectare must only be issued at an application price which is specified in the relevant prospectus and set out in the Project Document for each Hectare.

Clause 3 has been deleted because if the Responsible Entity wishes to transfer or issue Hectares to raise money for the purposes of the Project it does not want to be limited by this provision.

**1.5 Growers' appointment of Attorney & Agent**

The RE will have an irrevocable power as the Growers' agent, representative and attorney to the maximum extent permitted by law.

This includes a number of powers including:

- (a) the power to amend the Project Documents subject to the amendments not adversely affecting the rights of the Growers;
- (b) to re-allocate Hectares and/or Leases amongst Growers where in the best interests of Participating Growers;
- (c) to enter into consolidated Maintenance Agreements and/or Lease Agreements;
- (d) register any Forestry Rights;
- (e) upon the termination of the Project or earlier after the passing of a resolution at a meeting of Growers to sell the interests of the Grower in the Project or Phase (as the case may be); and
- (f) to take any action (including Court action and the registration of an instrument on the relevant title) to enforce and protect the Growers rights.

All costs properly incurred in acting as the Growers' attorney may be deducted from the Grower Contributions Account and then the Revenue Account and each Grower undertakes to ratify all things done as the Grower's attorney.

In the constitution, Primary is also appointed as the agent of the Growers to effect the necessary amendments to the Project Documents.

## **1.6 Indemnity and Liability**

Under the WGG Proposal, the RE's right of indemnity will be expanded so that the RE will be entitled to be indemnified out of the Revenue Account and the Grower Contributions Account.

The amounts recoverable under this indemnity are to be deducted from the Revenue Account affecting the Net Proceeds of Sale or the Grower Contributions Account and so any entitlement to an indemnity exercised by the Responsible Entity will affect the final return to Growers.

The expanded indemnity would cover items such as costs incurred by the RE in dealing with any dispute resolution that relates to the Project, including Primary defending any legal action against it relating to any prior RE.

The RE indemnifies itself from the Grower Contributions Account and Revenue Accounts.

## **1.7 Fees**

### **(a) Initial Management Fees and Reconstruction Fees**

The WGG Proposal requires:

- (a) management fees from all Growers to fund initial management costs until 30 June 2012 (**Initial Management Fees**); and
- (b) reconstruction fees from Growers to fund the reconstruction of the Project (**Reconstruction Fee**).

The Initial Management Fees and the Reconstruction Fees will be payable within 30 days of the issue of an invoice by the new RE.

The RE is able to issue an invoice or invoices for Supplementary Initial Management Fees where contributions collected are not sufficient to cover actual costs and/or its initial budget is not sufficient to cover costs including the Reconstruction Fee and forecast Total Costs and Dispute Resolution Costs plus reasonable RE expenses of the Project until 30 June 2012.

For each Hectare held by the Grower, the Initial Management Fee will be \$300 (inclusive of GST) and the Reconstruction Fee will be \$200 (inclusive of GST).

In the event that there is an excess amount in the Growers Contributions Account at the end of the first financial year, any excess may be offset against any future Management Fees invoiced to Growers.

Growers who do not contribute to an Initial Management Fee, Management Fee or Reconstruction Fee will instead have their interests in the Project reduced by 1.5 percent for each \$10 (with any part thereof in excess of \$5 being rounded up and otherwise being rounded down) of any invoice for the Initial Management Fee, Reconstruction Fee, Supplementary Initial Management Fee, Management Fee or Supplementary Management Fee in respect of each Hectare in each Phase held by a Grower.

The Initial Management Fee may also be used to fund the cost of court proceedings and any other proceedings which may be required in the interests of Growers.

There can be no certainty that the estimated cost of these court proceedings will be sufficient as it is difficult to budget for dispute resolution and if the amount is not sufficient, a Supplementary Initial Management Fee may be invoiced or an increased amount may need to be invoiced in the first Management Fee.

**(b) Management Fees**

The WGG Proposal requires management fees from Growers to fund management fees for each financial year (**Management Fees**). The RE can issue invoices for Supplementary Management Fees.

For each financial year on and from 1 July 2012 until termination, the Growers will be required to pay a Management Fee for each Hectare. The Management Fees will be payable in advance for each financial year in respect of the proper performance of the RE's duties.

The level of the Management Fees will be set for each year based on the budgeted Project expenses for the next twelve months.

The RE is able to issue an invoice or invoices for Supplementary Management Fees where the contributions received are not sufficient to fund the ongoing costs of the Project until 30 June in the relevant financial year. It is anticipated that the issuing of an invoice or invoices for Supplementary Management Fees may occur where there is lack of Grower contribution or expenses exceed forecast expenses.

Growers who do not contribute to a Management Fee or Supplementary Management Fee will instead have their interests in the Project reduced by 1.5 percent for each \$10 (with any part thereof in excess of \$5 being rounded up and otherwise being rounded down) of any invoice for the Initial Management Fee, Reconstruction Fee, Supplementary Initial Management Fee,

Management Fee or Supplementary Management Fee in respect of each Hectare in each Phase held by a Grower.

Primary will undertake an historical reconciliation of estimated and actual Total Costs in relation to the Project and Dispute Resolution Costs, as well as Grower default rates in order to determine the appropriate setting of the annual Management Fee.

### **1.8 Reduction of Grower's Proportional Share to be held on trust**

If a Grower does not to pay the annual Management Fees the Grower's entitlement to the Project will become zero (0). In this case, the Grower would have no entitlement to the Revenue Account. Where a Grower's entitlement to the Revenue Account is or becomes zero (0), the RE may transfer the Grower's Hectare/s to any other person with or without consideration if that person agrees to be bound by the provisions of the constitution and relevant Project Documents (including the obligation to pay all outstanding fees as and when invoiced) and for the purpose may execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this clause. Otherwise, the RE will hold the Hectare as scheme property on trust for Growers as a whole. If the transfer is with consideration, the consideration is to be deposited into the Grower Contributions Account.

### **1.9 Separate Accounts**

Given the constitution now makes specific provision for the harvesting and sale of the Trees by the RE, provision for the collection and distribution of the revenue will also be included in the constitution.

In this regard, the constitution will provide for the creation of two accounts:

- (a) Grower Contributions Account;
- (b) Revenue Account.

The RE will pay into the Grower Contributions Account all moneys received from the issue of invoices for Initial Management Fees, Reconstruction Fees, Supplementary Initial Management Fees, annual Management Fees and Supplementary Management Fees.

The RE will pay into the Revenue Account all money received from the sale of the Forest Produce, Trees, Lease Agreements and any insurance proceeds received in relation to the Land. Money held in the Revenue Account will be distributed to Participating Grower's according to the Grower's Proportional Share.

Grower's Proportional Share means the proportion which the number of Hectares in the Phase entitled to be used by the Grower bears to the total number of Hectares held by all Growers in that Phase for the time being provided that if any of the Initial Management Fee and Reconstruction Fee or any subsequent Management Fee has not been fully paid by a Grower, then the Grower's Proportional Share will be reduced for each of (1) the Initial Management Fee and Reconstruction Fee, and (2) any subsequent Management Fee, which has not been paid.

The Grower Contributions Account is a fees account and only becomes Project property on the termination of the Project.

## Remuneration, Expenses and Costs of RE

**(a) Annual Fee**

Primary will be entitled to an annual fee of \$65,000 per annum plus \$10 per Grower (plus GST) with a minimum of 3 years. The entitlement of the RE to remuneration under the Proposal will include the Annual Fee. In addition, the RE will be entitled to reimbursement for certain costs and expenses. The Annual Fee is Indexed on an annual basis and is payable in 12 equal monthly installments.

As part of the annual fee paid to Primary, the following is a general outline of the services included:

- (a) complying with all obligations required under the AFSL.
- (b) any and all costs, expenses and obligations in respect of its employees, contractors and other service providers;
- (c) appointing (and paying for) the Compliance Officer, Compliance Assistant (if any) the Compliance Committee (if any) and holding Compliance Committee meetings (if applicable).
- (d) appointing (and paying for) Primary's board of directors and holding board meetings.
- (e) appointing (but Primary not paying for) substitute or appropriate RE's Experts whether required for the AFSL or otherwise.
- (f) holding of Project books and records including Project Documents, Head Leases, Registers, contracts and forestry maps.
- (g) archiving, storage and retention of records as required under the Corporations Act and the AFSL.
- (h) operating and updating a website for Primary.
- (i) keeping compliance systems, the Procedures Manual and the Risk Management Systems Statement for each of the Project and keeping these up-to-date.
- (j) answering inquiries from Growers in respect of the Project;
- (k) membership of an external complaints resolution scheme as may be required under the AFSL.
- (l) arranging for and liaison with scheme auditors and compliance auditors;
- (m) negotiating with professional indemnity insurance brokers, arranging professional indemnity insurance in respect of the Project;
- (n) maintaining appropriate software and reprogramming as and when required;
- (o) complying with all other statutory compliance obligations in relation to the Project.
- (p) any other work which might reasonably be the proper duty of a RE but which is not of an unusual or unexpected nature.

**(b) Reconstruction Fee**

The RE will be entitled to a Reconstruction Fee following their appointment.

The RE can claim the Reconstruction Fee from the Grower Contributions Account.

The Reconstruction Fee will include all reasonable costs and expenses incurred in respect of the reconstruction of the Project, including costs and expenses of due diligence, variation of its AFSL, attending meetings, costs not covered by the Initial Management Fee and reimbursement to Grower Groups for their costs and expenses and, if necessary, any Dispute Resolution Costs.

**(c) Dispute Resolution Costs**

Upon Primary becoming the RE, Primary may claim Dispute Resolution Costs from the Grower Contributions Account following its appointment.

Dispute Resolution Costs are defined in the new definitions section of the constitution.

**(d) Reimbursement of costs**

Primary will have its costs associated with managing the Project paid out of the Grower Contributions Account. Depending on the nature of the cost or expense, the RE is entitled to be reimbursed from the Grower Contributions Account or Revenue Account for the relevant costs.

Primary is entitled to be reimbursed from the Revenue Account for costs and expenses including the Costs of Sale, income tax or other taxes, regulatory fees and other costs, expenses or fees permitted by the constitution.

Primary is entitled to be reimbursed from the Grower Contributions Account for costs and expenses including costs associated with providing the services, Reconstruction Fee, acting in accordance with constitution and Project documents, Dispute Resolution Costs and other costs, expenses or fees permitted by the constitution.

**1.10 Payments in respect of the Project**

Except where entitled to be reimbursed, the RE is responsible for payment of all expenses in relation to the Project including but not limited to the following expenses:

- (a) complying with all obligations required under the AFSL;
- (b) any and all costs, expenses and obligations in respect of its employees, contractors and other service providers;
- (c) appointing (and paying for) Primary's board of directors;
- (d) keeping compliance systems, the Procedures Manual and the Risk Management Systems Statement for the Project and ensuring they are up to date;
- (e) all preparations for and holding of Compliance Committee meetings and board meetings;
- (f) membership of an external complaints resolution scheme required under the AFSL;

- (g) complying with all other statutory compliance obligations in respect of the Project.

### **1.11 Contributions to Willmott Growers Group**

Under the WGG Proposal, the RE may reimburse recognised Grower Groups for reasonable expenses that each group is able to justify to the RE (with supporting evidence) in respect of the reconstruction of the Project.

Any balance received by the RE from any Grower Group will be transferred to the Grower Contributions Account.

A Grower who contributed to a recognized Grower Group will have the amount of their contribution to the Grower Group credited against any reconstruction fee payable by invoice.

### **1.12 Retirement of Responsible Entity**

Clause 11 of the constitution has been deleted. The retirement of a responsible entity is provided for under the Corporations Act and the provisions set out in the previous clause 11 were superfluous.

### **1.13 Insurances**

Clause 12 of the constitution has been amended in a number of ways.

The effect of these amendments include:

- (a) rather than being required to maintain insurance, the RE covenants that it may arrange the relevant insurances if the available funds permit;
- (b) the RE at its expense will maintain or cause to be maintained an insurance policy to cover the cost of planting new trees on the Land to replace any Trees as may be damaged or destroyed by fire (previously this obligation was for the initial period of ten years, but this now applies for the duration of the Project);
- (c) The requirement for the RE to pay insurance proceeds at the direction of Growers has been amended so that this only applies to Participating Growers;
- (d) If any amount is payable to a Grower under this clause, the RE is able to deduct the amount of any fees invoices in relation to the Hectare which has not been paid (and any other amounts owing by the Grower to the RE) plus interest of 10% per annum calculated from day to day. The amount shall be paid into the Grower Contributions Account; and
- (e) If the Grower is not a Participating Grower, then the Grower is not entitled to give the RE any direction or make any election and the RE shall pay an amount which would have been payable to the Grower if they had been a Participating Grower.

### **1.14 Payments to Growers**

The constitution has been updated to take into account changes in technology and how business is now done and provision to make payments either by cheque or by electronic funds transfer.

### **1.15 Retirement of the RE**

There is an obligation on responsible entities that the constitution of any managed investment scheme managed by a RE conforms with the current legislation. The provisions in relation to the retirement of a RE have been included to reflect the current legal position in relation to the retirement of a RE.

### **1.16 Harvest and sale of trees**

Under the WGG Proposal, the harvesting and sale of the Grower's Trees may be carried out by the RE on behalf of the Grower, unless the Grower otherwise notifies the RE in writing on or before 30 June 2011 that the Grower will be harvesting and selling their own Trees or Forest Produce.

If the Grower who has given a notice that they intend to harvest their own Trees or Forest Produce, fails to harvest their Trees the Grower must pay the RE the fees for the Harvest Services and additional reasonable costs incurred by the RE in relation to the Harvest Services carried out by the RE.

### **1.17 Collect Income & Distributions**

Given that under the WGG Proposal the RE will harvest the Trees on behalf of the Growers provision for the collection and distribution of the revenue from the sale of Forest Produce had to be included in the constitution.

These amendments also provide for the distribution of amounts according to the Grower's Proportional Share, for accounts to be prepared and deductions from income and profit.

### **1.18 Meeting of Growers**

A new clause 15.10 of the constitution has been inserted. The clause provides that for the purpose of valuing the total interests that a Grower has in the Project for the reason of voting at any meeting of Growers, the RE will take into account the Grower's Proportional Share for the time being and the number of Hectare held by the Grower.

### **1.19 Termination**

The constitution did not make provision for the early termination of the Project and therefore additional provisions enabling both the RE and the Growers to terminate the Project will be included.

The RE can terminate the Project can terminate the Project:

- (a) if the RE is unable to secure security of tenure for the Lease Agreements or Forestry Rights in the Plantations, Trees and Hectares;
- (b) if the RE determines that the Initial Management Fees and Reconstruction Fees contributed by Growers, together with any monies received under any loans taken out by the RE are insufficient to fund the required actions of the RE;
- (c) in any other circumstances provided for under the Corporations Act.

If the RE proposes to wind up the Project it must first provide written electronic notice to the Growers and to ASIC explaining:

- (a) the proposal to wind up the Project;
- (b) the rights of Growers call a Growers' meeting;
- (c) if no Growers' meeting is called that the RE is permitted to wind up the Project;
- (d) that the RE is permitted to wind up the Project if it is concerned about the solvency of the RE as a consequence of the liabilities of the Project provided the RE gives 28 days notice to Growers.

The Growers may terminate the Project at any time in accordance with the Corporations Act.

### **1.20 Electronic communications to Growers and time of receipt**

Under the WGG Proposal, in order to reduce the time it takes for Growers to receive documents from the RE and the volume of documents the RE is required to post to Growers, the RE will be entitled to provide documents to Growers by email where the Grower has provided their email address.

The RE may also make documents that it is required to provide to Growers available on a website rather than posting them to Growers.

A notice given to Growers is treated as having been given and received:

- (a) If delivered to the Grower's address, on the day of delivery if a Business Day, otherwise the following Business Day;
- (b) If sent by pre-paid mail, on the third Business Day after posting;
- (c) If transmitted by fax and a correct transmission report is received, on the day of transmission if a Business Day and the transmission occurs during normal business hours, otherwise the next following Business Day if the transmission occurs outside of normal business hours; and
- (d) If transmitted by email and the transmission occurs during normal business hours, on the day of transmission if a Business Day, otherwise the next following Business Day if the transmission occurs outside normal business hours..

### **1.21 Appointment of Agents**

Under the law, the RE may appoint agents to do anything that the RE is authorised to do in connection with a scheme. This amendment confirms that the RE retains responsibility for the acts of its agents. In addition, that fees payable to any person will be payable by the RE out of its own monies but may include monies received as remuneration by way of indemnity or reimbursement under the constitution.

It is proposed that the RE appoint Black Tree to be the manager of the Project. Under such circumstances, its remuneration is payable from the RE's own monies but may include monies received as remuneration by way of indemnity or reimbursement under the constitution.

### **1.22 RE's Functions Powers and Duties**

Under the WGG Proposal, in addition to its obligations under the Maintenance Agreement, the RE will form a Growers Committee.

**1.23 Borrowings and granting of security**

The RE will have the power to borrow to fund the Initial Management Fee, Supplementary Initial Management Fee, Management Fee or Supplementary Management Fee on behalf of Participating Growers in relation to unpaid contributions by Growers who have failed to pay contributions.

The RE has the power to grant security over Assets of the Project and the Revenue Proceeds Account. The security is granted in each case on such terms as the RE reasonably determines.

**1.24 Complaints Handling and Arbitration**

Under the WGG Proposal, the RE will deal with complaints according to the procedure set out in the constitution.

If there is a Dispute, as defined by the constitution then arbitration proceedings must be instigated before court action is commenced.

**1.25 Inspection of Constitution**

As the principle place of business of the RE is in Western Australia, the provisions relating to inspection of the constitution were unworkable. The RE will now provide a copy of the constitution to any Grower upon their request.

**1.26 No obligation to carry out services without funds**

Under the WGG Proposal, the RE is not obliged to carry out any management services or pay any expenses on behalf of Growers if there are insufficient funds available to the RE to do so. In addition, if the RE is unable to procure the rights as lessor of the Lessor of the Lease Agreements or as grantor of the Forestry Rights, it may terminate the Project.

**1.27 No right to withdraw and buyback**

Under the WGG Proposal, no Grower has the right to withdraw and require the RE to realise the assets of the Project, except as provided in the constitution or Project Documents. Further, the RE is not obliged to buy back or re-purchase any Hectare or Lease Agreement from the Grower. This does not prevent the Grower from selling or transferring the Hectare to another party.

**1.28 Other Schemes**

Primary is a contract RE and manages other schemes. This clause confirms this situation.

**1.29 Precedence**

In the short term, no changes will be made to the Project Documents because all necessary changes will be included in constitution. If there are any conflicts between the other documents and the constitution the provisions in the constitution will prevail.

**1.30 Insurance**

The Initial Management Fee and the Management Fee will include provisions for insurance.

**RESOLUTION 3 – REMOVAL OF WFL AS RESPONSIBLE ENTITY**

**Removal and appointment of responsible entity**

Resolution 3 is a resolution to remove WFL as responsible entity.

WFL is in liquidation and has no capacity to continue the Project. It will commence the winding up of the Project.

If this resolution is passed and resolution 4 is not passed, the Project would automatically wind up. For this reason, all resolutions are interdependent.

## RESOLUTION 4 – APPOINTMENT OF PRIMARY SECURITIES AS RESPONSIBLE ENTITY

### 1. PRIMARY SECURITIES LTD (Primary)

#### 1.1 The Primary Group

Primary holds AFS license No. 224107. Primary is part of the Primary Group which comprises four responsible entities operating 18 managed investment schemes, the main responsible entity being Primary. Primary has issued capital of \$100,000.

In 2010, Primary and another Primary responsible entity have already replaced Great Southern Managers Australia Ltd (**GSMAL**) as responsible entity of eight other schemes (three Great Southern vineyard schemes, the four Templegate pine schemes). Primary RE Ltd (with Black Tree as manager) has replaced GSMAL as responsible entity of Great Southern Plantations 2007. Primary has also replaced the former responsible entity of the Treecorp Clearwood Project. In each case, had Primary not taken these schemes over, the Growers would have lost their entire investment. The Growers are now in a position where there is a prospect of recovering something.

The Primary Group:

- has been operating managed investment schemes since 1999
- operates 18 managed investment schemes including 12 forestry schemes
- has received conditional approval from the Australian Securities and Investments Commission to operate the Project
- has consented in writing to take on the role of responsible entity if all resolutions are passed.

#### 1.2 Directors of Primary

Details of the Board of Directors of Primary are set out below.

#### **Robert Garton Smith, LLB, B Com, GDipFinPlanning (Sec Inst), F Fin (Managing Director)**

Robert Garton Smith is the Managing Director and owner of the Primary Group and is its key person in relation to managed investments. He has degrees in law, commerce and financial planning and is a legal practitioner as well as being a Fellow of the Financial Services Institute of Australia. He is a member of the Law Society of Western Australia and the Australian Compliance Institute.

Robert is a former litigation lawyer but has worked in the area of managed investments since 1981. He has prepared and overseen dozens of managed investment schemes relating to real estate, mortgages, equity, forestry, viticulture, horticulture, manufacturing and film, and also prepared share, debenture stock and unsecured notes issues.

Robert has practiced law since 1970 and is admitted as a practitioner in Australia and in England and Wales.

**Anthony Treadgold, B Com, CPA**

Anthony Treadgold began his career in professional accounting after completing his degree at the University of Western Australia, firstly with Deloitte and later with Arthur Andersen. He specialised in business start ups and work outs and moved to London and later Hong Kong. Anthony returned to Australia after eight years overseas and joined the Bank of Boston to start up a new Merchant Bank operation in Perth. He developed expertise in tax effective financing and innovative financial solutions for business.

In recent years Anthony has developed vineyards in the south west of Western Australia and followed his love of wine into production of super premium wines on a modest commercial scale. Anthony is an executive director of companies in the Primary Group.

**Richard John Hurn FRICS**

Dick Hurn has served in the property industry for over thirty years, his scope of work encompassing Australia, the UK, Continental Europe and USA, resulting in an extensive knowledge and wide experience of property investment, development, acquisition, disposal, leasing, administration and construction within the office, retail, industrial and residential sectors, and created and directed his own companies active in the professional consultancy, investment and development areas in Australia and UK for more than twenty years.

In the UK he was Chief Executive of the Property Division of BAT Holdings, a subsidiary of BAT Industries, Britain's fifth largest trans national corporation, held Directorships with several salient retail companies, and other past employers at a high level included Royal Sun Alliance (Vero) and Hillier Parker (CBRE).

Soon after emigrating from the UK to Western Australia, he was invited to become a Director of Bankwest subsidiary companies, and to manage and develop the Bank's property and land portfolio, and to administer all facets of the Property Trust of WA.

He is a chartered surveyor, licensed real estate agent and was until recently Principal of Hurn Corporate Advisory, Property Consultants and Project Managers. He is presently a Director of Arts Radio, the Community Radio Station RTR FM, together with being engaged in other voluntary community projects.

**1.3 Management Team**

The Board of Directors is supported by an experienced and professional management team. Details of the main management team are detailed below.

**Barbara Boyd** (Company Secretary) has overall responsibility for all company secretarial, compliance and administration matters. Barbara is a Chartered Secretary and is the Group Company Secretary and Compliance Officer.

**Anna Catelli** (Legal Counsel/Complaints Officer) is legal counsel and also the Complaints Officer and property officer, ensuring compliance with agricultural scheme registration requirements.

**James McKay** (Legal Counsel) is legal counsel in relation to contract issues and litigation.

**Professor Bernard Dell** (forestry key person) is the responsible officer for forestry as named on Primary's AFS licence.

**David Wettenhall** is in the process of being appointed as Primary's second responsible officer for forestry.

#### **1.4 Substitution of Primary**

There are a number of responsible entities in the Primary Group of companies. The RE which is normally used for schemes involving Black Tree is Primary RE Ltd. For administrative reasons, Primary may at some point give notice to Growers that it wishes the RE to change to Primary RE Ltd without a meeting being held though Growers will be given an opportunity to require a meeting to approve the change.

## **2. BLACK TREE**

### **2.1 Black Tree Pty Limited**

Black Tree is a specialised management and consultancy group that is active in both the agricultural and plantation timber areas. Its executives are highly experienced in establishing and managing large scale plantations both as principals and on behalf of individual and institutional investors. Their track record covers some 20 years across all facets of the industry, ranging from plantation establishment and maintenance, project assessment and review, provision of expert reports to government agencies and reconstruction of failed forestry businesses.

#### **Tony Jack, Executive Chairman, Director and Partner**

The former CEO of Integrated Tree Cropping, one of the original and most successful of the major plantation managers in Australia. Under his stewardship ITC established over 100,000 Ha of timber plantations. As the former CEO of this major MIS timber operator Tony brings significant past MIS experience, including that of leading the team that completed one of the first reconstructions of a major forestry MIS business in insolvency (Australian Plantation Timber in 2002).

Tony currently manages an experienced forestry team within Black Tree which has recently completed 2 large scale projects integrating forestry, cropping and grazing.

He owns plantations in Western Australia and has strong relationships with Japanese paper companies and trading houses. In addition Tony has developed strong relationships with Northern Australian Aboriginal groups, assisting with their commercial and investment businesses, largely on a pro-bono basis.

#### **David Marshall, Partner**

A former senior investment banker, David has over 25 years experience in the financial sector, covering capital markets and structured finance, lending, treasury management and credit assessment. After working at Citibank for six years he was subsequently Executive Director for Treasury & Capital Markets at NZI Australia and then Executive Director, Capital Markets at National Australia Limited, the merchant banking arm of the NAB.

Upon leaving banking, he held various senior corporate management positions including as Managing Director of a joint venture with van Eyk Research - in this role David was directly responsible for assessing corporate and project risk on behalf of major institutions and financial planning networks and to that end reviewed over 300 projects in the agri-business sector, most of them operating under the MIS regime. He assisted the Senate enquiry into this sector and has provided expert reports to government agencies such as ASIC.

Over the last 15 years has been heavily involved in early stage companies with a particular focus on agri-business and the timber sector. Thus for example he co-founded Timber 2000 in the Green Triangle in the mid 90s with Harry Youngman. David has worked with Black Tree Management for the last four years on large scale (integrated) agricultural and plantation projects in southern Australia.

**Harry Youngman, Director and Partner**

A large scale and successful agri-business operator based in western Victoria with substantial farming and forestry enterprises throughout south eastern Australia. He is a leader in developing and managing integrated farming enterprises.

Harry is one of the pioneers in establishing the blue gum industry in the Green Triangle region where he co-founded Timber 2000 in the mid nineties with David Marshall. Timber 2000 initiated discussions with major Australian and Japanese wood chip buyers while concurrently generating large scale plantings by local land owners. Harry commenced planting blue gums in the mid 1990s and is now the owner of substantial pulpwood plantations. In this capacity he has successfully negotiated off-take agreements with a major Japanese pulp and paper group.

While a substantial land owner in the Green triangle region, he is also a director and shareholder of a Melbourne based property developer and manager with residential and commercial projects throughout Eastern Australia.

**Rob de Fegely, Principal Consultant**

Rob is one of the most experienced and well regarded forestry experts in both Australia and Asia with over 28 years in the forestry industry in both operations and management. This includes 10 years as head of industry leader, Jaakko Pöyry Consulting, now Pöyry Forest Industry ([www.poyry.com](http://www.poyry.com)) in Australia where he was a Principal of the Asia Pacific Management team. He is very well connected and understands the forestry and agricultural industry in Australia and internationally. Importantly he has a deep knowledge of the players and the supply and demand for hardwood woodchips in the Asia Pacific region.

He was appointed by the Federal Minister to a Special Advisory Group for the Asia Pacific Forestry Skills and Capacity Building Program run by the Department of Agriculture Fisheries and Forestry and is currently chair of a major timber group in the Pacific region.

Rob established and runs forestry estates in southern NSW which includes a eucalypt seed orchard.

**Paul Cotterill**

One of the world's leading eucalypt tree breeders, Paul has over 30 years of experience in genetic improvement of forest trees. His experience includes 17 years with CSIRO, where he was ultimately promoted to Chief of the Division of Forestry & Forest Products. Paul also worked for nine years with Stora Enso, one of the world's largest forestry products companies in Portugal and Brazil.

He currently runs Gene Technics, which consults to international forest owners on all aspects of tree breeding, and Worrolong Eucalypts, one of Australia's major producers of improved eucalypt tree seed.

**Kym Sandover**

Kym Sandover has had 15 years experience in evaluating approximately 80,000 hectares of land for suitability for forestry operations across Australia. He was a senior executive at ITC and has developed Geographical Information Systems for private and publicly listed companies. He is very experienced in working with field workers in capturing spatial data on plantations and translating it into high level maps for forestry management purposes. As an adjunct to this Kym managed the development of a fully integrated spatial data base for clients of Black Tree and is familiar with most aspects of GSL's land management systems.

Kym has also developed a new cropping system integrated with carbon tree plantings to use the advantages of auto steering systems to produce spatial data and yield maps for company's financial systems, and is highly skilled in the analysis of aerial photography for the use in land evaluation and map production.

**Margaret Good**

Formerly with ITC prior to joining Black Tree, Margaret Good has 14 years experience as Office Manager and Systems Administrator within the forestry industry.

Whilst at ITC Margaret managed the development of the Management Information Systems (MIS) to cater for a twenty-fold increase in the forestry estate under management (up to 120,000 hectares when she left) and an increase in staff numbers from 5 to 60.

She has developed MIS systems for Black Tree clients which included the introduction to and training of staff in SharePoint as the centralized information management system.

**3. Resolutions are interdependent**

Each Resolution is interdependent on each of the other Resolutions being approved by Growers. Thus, the constitutional amendments will not be made unless all resolutions are approved by Growers including the approval of the WGG Proposal and the removal and replacement of the responsible entity and vice versa.

## **PART B – RESOLUTIONS FOR THE PROPOSAL**

The business of the Meeting includes consideration of the **WGG** Proposal in relation to the Willmott Forests 1995 - 1999 Project ARSN 089 598 612 (**Project**).

Growers are asked to consider and, if thought fit, pass the following resolutions for the Proposal.

### **Resolution 1 - Approval of the WGG Proposal**

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*“That, subject to Resolutions 2, 3 and 4 being passed, the Growers approve the WGG Proposal as described in the Explanatory Memorandum, as amended, given to Growers with this Notice of Meeting (**Explanatory Memorandum**).”*

### **Resolution 2 - Amendments to Project Constitution to implement the WGG Proposal**

To consider and, if thought fit, pass the following resolution as a special resolution:

*“That, subject to Resolutions 1, 3 and 4 being passed, the Constitution of the Project be amended by PSL, immediately following its appointment as the responsible entity under section 601FJ of the Act, in accordance with the amendments set out in the Explanatory Memorandum, as amended, and any consequential amendments that may be required to give effect to the WGG Proposal.”*

### **Resolution 3 – Change of responsible entity: Removal of WFL as responsible entity of the Project**

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

*“That, subject to Resolutions 1, 2 and 4 being passed, WFL be removed as responsible entity of the Project in accordance with section 601 FM of the Act.”*

### **Resolution 4 – Change of responsible entity: Appointment of PSL as responsible entity of the Project**

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

*“That, subject to Resolutions 1, 2 and 3 being passed, PSL be appointed as the new responsible entity of the Project in accordance with section 601FM of the Act.”*

**Resolutions 1 - 4 are interdependent. If all resolutions are not passed the current responsible entity will remain the responsible entity of the Project.**

## SECTION 1: CHANGES TO THE CONSTITUTION

The full text of the changes to the constitution under Resolution 2 is set out in this Section 1.

In this Section, the definitions referred to in clause 3 below have been used. Other terms, which are capitalised, refer to terms, which already have a defined meaning in the constitution, Preparation and Planting Agreement, Maintenance Agreement or Lease Agreement.

### 1. NAME OF PROJECT

Amend the constitution by deleting clause 1.2.

### 2. REFERENCES

Throughout the constitution, replace all references to:

- (a) “Manager” with “Responsible Entity”;
- (b) “Dealers Licence” with “AFSL”; and
- (c) “Corporations Law” with “Corporations Act”.

### 3. DEFINITIONS AND INTERPRETATION

- (a) Delete the definition of “Land” in clause 25.1 of the constitution and replace it with the following definition:

“**Land:** any land acquired by the Former RE or by the Responsible Entity for the purposes of the Project.”

- (b) Amend the definition of “Project Document” in clause 25.1 of the constitution by adding at the end of the sentence the words:

“or such other document or documents deemed to be a Project Document by the Responsible Entity.”

- (c) Insert the following new definitions into clause 25.1 of the constitution in alphabetical order with existing definitions:

“**AFSL:** Australian Financial Services Licence.”

“**Annual Fee:** the fee payable in accordance with clause 10.5.”

“**Appointment:** the entry by ASIC in its register of Primary as the responsible entity of the Project.”

“**Auditor:** the auditor of the Project including each Phase.”

“**Committee of Growers:** a committee of Growers formed by the Responsible Entity in such a manner and on such terms as the Responsible Entity requires so that the Responsible Entity may have representatives of the Growers to consult in relation to the Project.”

“**Compliance Committee:** that committee required under Part 5C.5 of the Corporations Act.”

“**Compliance Officer:** that employee or other representative of the Responsible Entity who has been appointed to ensure that the Responsible Entity complies with the Compliance Plan, the Constitution and the Corporations Act in relation to the Project and “**Compliance Assistant**” means any person assisting the Compliance Officer.”

“**Compliance Plan:** the compliance plan for the Project as required by Part 5C.4 of the Corporations Act.”

“**Corporations Act:** the *Corporations Act 2001* (as amended from time to time).”

“**Costs of Reconstruction:** has the meaning set out in clause 10.7.”

“**Costs of Sale:** all the costs and expenses of sale:

(a) (from the Hectares to the point of sale) in relation to Forest Produce sold by the Responsible Entity for Growers where the Trees are harvested or have been harvested;

(b) the standing Trees where Trees are sold without being harvested;

(including but not limited to thinning, marking, felling, harvesting, transportation to the point of sale, sales agent commission, advertising, marketing, internet sales costs, costs of insurance transport delivery and shipping, costs of and related to the negotiation of sales contracts, fees paid in respect of the use of any facility or instrumentality and all taxes levies imposts and charges of any nature imposed by the Commonwealth of Australia or any State and any other cost or expenses associated with the sale.”

“**Consultant:** any consultant who is an expert with respect to the Trees or Forest Produce from the Project or any Phase, water expert, surveyor, valuer, solicitor, barrister, accountant, tax consultant, auditor or other person appointed by the Responsible Entity to give advice in relation to the Project or any Phase.”

“**Custodian:** any custodian of Assets.”

“**Date of Indexation:** 1 July 2012 and each anniversary thereafter.”

“**Dispute:** has the meaning set out in sub-clause 22.2.”

“**Dispute Resolution Costs:** the aggregate of:

(a) costs, expenses and disbursements associated with any application to a court or any decision to make an application to a court to challenge the validity of any disclaimer, any purported notice of termination or for relief against forfeiture from the termination of any Head Lease, Forestry Rights or Project Document or any associated negotiations with the Former RE or Land Owner or Lessors or their assignees regarding the security of Growers’ tenure of any Land, including costs of other parties to any application to a court;

(b) costs, expenses and disbursements associated with any application to a court or any decision to make an application to a court regarding what is scheme property or what is novated from the Former RE to the Responsible Entity

and the ownership thereof including but not limited to rights to the Land, any Head Lease or Forestry Rights or Project Documents and any other rights or entitlements;

- (c) costs, expenses and disbursements associated with any application to a court or any decision to make an application to a court regarding any claim for scheme property or the novation of any agreements from the Former RE to the Responsible Entity;
- (d) costs, expenses and disbursements associated with lodging or enforcing caveats to protect the interests of the Growers as a result of the termination of any Head Lease, Forestry Right or Project Documents;
- (e) costs associated with remedying outstanding defaults under the Head Lease, Forestry Rights or Project Documents in order to restore any terminated Head Lease, Forestry Right or Project Document;
- (f) damages payable for breach of the Head Lease, Forestry Right and Project Documents including Land Owners' or Lessors' damages claims in respect of any Head Lease, Forestry Right or Project Document, termination costs, the tenant's failure to establish plantations, the tenant's failure to remove seedlings and/or stumps from Land and loss by the Land Owner of future earnings from leases; and
- (g) consequential or associated costs, expenses and disbursements payable to any consultant, adviser, specialist, accountant, lawyer or other professional adviser engaged in connection therewith."

**"Distribution Date:** within 120 days of the end of that financial year."

**"Explanatory Memorandum:** the Explanatory Memorandum (as amended) given to Growers in relation to the Notice of Meeting dated 20 May 2011."

**"Forest Produce:** the Trees or produce derived from Trees (including tree thinning, logs, woodchips and timber) grown pursuant to the Project Documents and includes Trees Residue."

**"Forestry Right:** any forestry right in relation to the Land or any part of the Land whether held in trust for the Growers or otherwise."

**"Former RE:** Willmott Forests Ltd ACN 063 263 650 (receivers and managers appointed) (in liquidation)."

**"Gross Proceeds of Sale:** the gross amount received by the Responsible Entity from:

- (a) sale of the standing Trees or Forest Produce;
- (b) payments in consideration for termination, surrender, assignment, consent to assignment or any other dealing with respect to the Land or any other Assets;
- (c) any proceeds of insurance;
- (d) any other revenues relating to the disposal of Project Assets; and
- (e) any redistribution of value from the Deferred Management Fees received by the Responsible Entity.

Gross Proceeds of Sale does not include any borrowed monies (if any) in accordance with clause 6.8 of this constitution."

“**Grower Contributions Account:** the account so called established pursuant to clause 13A of this constitution.”

“**Grower Group:** any grower group recognised by the Responsible Entity, including Willmott Growers Group Inc (Reg No A0055077L).”

“**Grower's Proportional Share:** the proportion which the number of Hectares in the Phase held by the Grower after applying Clause 10C.1 bears to the total number of Hectares in that Phase held by all Growers after applying Clause 10C.1.”

“**Harvest Services:** includes:

- (a) preparing a harvesting plan for the Trees and managing the harvesting in accordance with that plan;
- (b) obtaining all necessary approvals for the harvesting;
- (c) arranging the harvesting and providing supervision and administration;

paying or arranging for payment, on behalf of the Grower the costs of harvesting, transporting, processing and delivering Forest Produce and any costs including auditing costs.”

“**Head Lease:** any pre-existing or future lease agreement made between the Responsible Entity and the Land Owner in which the Responsible Entity is or becomes the lessee of the Land on behalf of the Growers and thereby becomes the Sub-Lessor in relation to the Lease Agreements and includes any Forestry Rights.”

“**Independent Expert:** any person or company (other than the Responsible Entity's Expert) who is independent of the Responsible Entity and who is an expert in relation to silvicultural matters.”

“**Indexed:** adjusted on the Date of Indexation, by the aggregate percentage change in the Consumer Price Index (All Cities) for the previous FOUR (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date of Indexation (or if in the opinion of the Responsible Entity that method of calculation is no longer appropriate, such other index number as is recommended by the Auditors as fairly and reasonably taking into account inflation or deflation, and is approved by the Trustee).”

“**Initial Management Fee:** the Initial Management Fee payable by Growers in accordance with clause 10A.”

“**Land Owner:** the registered proprietor of the Land.”

“**Land Titles Office:** the official register of land ownership for the relevant state in which any Land is located.”

“**Liquidators:** Ian M Carson and Craig D Crosbie of PPB Advisory, Level 21, 181 William Street, Melbourne, Victoria or any other liquidators appointed to the Former RE from time to time.”

“**Management Agreement:** the management agreement entered into between the Manager (if any) and the Responsible Entity.”

“**Management Fee:** the Management Fee payable by Growers on an annual basis in accordance with clause 10B.”

“**Manager:** the manager for the time being appointed by the Responsible Entity.”

“**Net Proceeds of Sale:** the Gross Proceeds of Sale less the Costs of Sale less any reimbursement costs to the Responsible Entity under clause 10.9 and clause 10.10.”

“**Participating Growers:** those Growers in each Phase whose entitlement to the Revenue Proceeds Account at any time is not zero (0).”

“**Phase:** the annual plantation phase that is relevant to the plantation of Trees on the Grower’s Hectares in accordance with the applicable prospectus issued in either 1995, 1996, 1997, 1998 or 1999.”

“**Power of Attorney:** any power of attorney granted by the Applicant or Grower in favour of the Responsible Entity, including:

- (a) any existing power of attorney granted by each Applicant and Grower to the Responsible Entity or a former responsible entity;
- (b) any power of attorney granted by each assignee or successor of an Applicant or Grower; and
- (c) the power of attorney contained or to be contained in 6A.1 of the constitution.”

“**Primary:** Primary Securities Ltd ACN089 812 635, a company incorporated in Australia, holder of AFSL No: 224107, and having its registered office at 13 Nairn Street, Fremantle Western Australia.”

“**Procedures Manual:** the manual prepared by or for Responsible Entity applicable to the Project (as amended from time to time) that sets out how the obligations of the Responsible Entity under the Compliance Plan of the Project, the Constitution of the Project, the Corporations Act 2001 and the AFSL are to be met.”

“**Receivers:** Mark Korda, Bryan Webster and Mark Mentha of KordaMentha or any other receivers appointed to the Former RE from time to time.”

“**Reconstruction Fee:** the reconstruction fee determined in accordance with clause 10.7.”

“**Revenue Account:** the account established pursuant to clause 10C of this constitution.

“**Risk Management Systems Statement:** each statement so called prepared by the Responsible Entity for the Project which sets out the material risks of the Project and the systems to be put in place for dealing with those risks.”

“**Supplementary Initial Management Fee:** the Supplementary Initial Management Fee for which the Responsible Entity may invoice Growers in accordance with clause 10A.

“**Supplementary Management Fee:** the Supplementary Management Fee for which the Responsible Entity may invoice Growers in accordance with 10B.”

“**Total Management Costs:** the aggregate of:

- (a) costs of thinning, marking or other services provided if these are not recouped from the sale of Forest Produce;
- (b) fire insurance with respect to the Trees and public liability insurance;

- (c) operational costs and expenses associated with the Project and Plantations generally and, in particular, of performing the duties, obligations and functions of the Responsible Entity under any Project Documents, including costs associated with the maintenance, weeding, pest control and fire control of the Plantations, including activities for the remediation of the Plantations;
- (d) costs and expenses of the Responsible Entity associated with the proper performance of its duties and its powers in connection with the Project, including overheads, administrative costs, all costs, expenses, commissions, fees, rates, taxes (including income tax), supervision and management charges, and other charges or outgoings payable in accordance with this constitution;
- (e) land costs, which are the aggregate of all rates, taxes and outgoings paid or payable in respect of the Project and all payments in the nature of rent (inclusive of GST) paid or payable by the Responsible Entity under any Head Lease, Forestry Right or Project Document including for the avoidance of doubt, rent amounts payable to any Head Lessor or Land Owner in order to restore any terminated Head Lease, or Forestry Right or Project Document, [and any rent payable by 1999 Growers under their 1999 Lease Agreements;
- (f) lien expenses being amounts claimed by either the Receivers or the Liquidators in recognition of costs properly incurred by either the Receivers or the Liquidators for the preservation and maintenance of the Project.”

“**Trees Residue:** branches, stumps, bark, leaves or other residues from the Trees remaining on the Land after completion of harvest of the Trees.”

“**1999 Grower:** any Grower who applied pursuant to the prospectus issued in 1999 and whose Trees were planted on the Grower’s Hectare as part of the 1999 Phase.”

“**1999 Lease Agreement:** the Lease Agreement in respect of the 1999 Phase.”

“**1999 Maintenance Agreement:** the Maintenance Agreement in respect of the 1999 Phase.”

#### 4. DELETE CLAUSE

Amend the constitution by deleting clause 3.

#### 5. GROWER’S APPOINTMENT OF ATTORNEY

Immediately after clause 6.1, insert a new clause 6.1A in the constitution:

**“Responsible entity as agent, representative and attorney**

6.1A The Responsible Entity has:

- (a) to the maximum extent permitted by law, an irrevocable power as the agent, representative and attorney of the Grower and, whether in the name of the Grower or the Responsible Entity, to:
  - (i) amend any Project Document in a manner required to effect the proposal described in the Explanatory Memorandum or in any other circumstances provided that no variation or replacement contract may be entered into which the Responsible Entity reasonable considers adversely affects

- Growers' rights except pursuant to a special resolution (as defined in the Corporations Act) of Growers;
- (ii) to re-allocate Hectares and/or leases amongst Growers where this is in the best interests of Participating Growers;
  - (iii) to enter into a consolidated Maintenance Agreement being one document in which each Grower contracts severally with the Responsible Entity with the descriptions of the Grower or Hectare being described to reflect the Register or as per the original Maintenance Agreement or Lease Agreement in relation to that Grower (or the Grower's predecessor in title);
  - (iv) to enter into a consolidated Lease Agreement being one document in which each Grower contracts severally with the Responsible Entity with the descriptions of the Grower, Hectares and Lease Agreement being described to reflect the Register;
  - (v) to enter into any contracts with any person which have the effect of varying, or replacing any Project Document in order to better achieve the purposes of the Project provided that no variation or replacement contract may be entered into which the Responsible Entity reasonably considers adversely affects Growers' rights except pursuant to a special resolution (as defined in the Corporations Act) of Growers;
  - (vi) in its name or in the name of any Custodian or agent for the Responsible Entity, and as trustee for the Grower, to claim any beneficial or other rights on behalf of Grower under or in relation to any Forestry Right and to enter into a Head Lease or Forestry Right, to register the Head Lease or Forestry Right at the Land Titles Office and to exercise the powers set out in relation to the Head Lease and Forestry Right;
  - (vii) in its name or in the name of any Custodian or agent for the Responsible Entity, and as trustee for the Grower or otherwise, to become the Land Owner and to exercise the powers of the Lessor including granting rights of access to the Growers or the Responsible Entity in trust for the Growers;
  - (viii) if considered in the best interests of the Growers for the better protection of the Growers, to register upon the certificate of title of the Land at the Land Titles Office any Head Lease, Forestry Right or Project Document on behalf of the Growers which is not registered or an abbreviated or collateral form of the Head Lease, Forestry Right or other Project Document which protects the interest in the Land under the Head Lease, Forestry Right or other Project Document of all the Growers;
  - (ix) upon the termination of the Project in its entirety or the termination of an Phase, or earlier after the passing of a resolution at a meeting of Growers in terms which support the proposed sale or assignment, to sell or assign all right, title and interest of the Grower in relation to the entire Project, or Phase (as the case requires), whether for money, shares or some other consideration;
  - (x) in its capacity as a trustee to receive the Gross Proceeds of Sale and to hold the Gross Proceeds of Sale in the Revenue Account and to deal with the Gross Proceeds of Sale and other money in the Revenue Account as provided in this constitution (and in so doing, to make payment of any amount due to the Responsible Entity as the Responsible Entity may be entitled);

- (xi) apply to a court for directions or orders as to what is scheme property or what has novated from the Former RE to the Responsible Entity and as to any other question about the ownership thereof including but not limited to rights to the Land, any Head Lease or Forestry Rights or Project Documents and any other rights or entitlements;
  - (xii) take any action (including commencing proceedings) that the Responsible Entity considers necessary or desirable to claim, protect or preserve the Growers' rights in relation to the Land or to their Trees, including but not limited to lodging and withdrawing a caveat against the certificates of title in relation to the Land;
  - (xiii) take any action (including commencing proceedings) that the Responsible Entity considers necessary or desirable to claim, protect or preserve the Growers' rights or the Responsible Entity's rights (on behalf of the Growers) to scheme property, or the novation of any rights under any agreements or documents from the Former RE to the Responsible Entity;
  - (xiv) commence any other legal or arbitration proceedings to protect the interest of the Grower;
  - (xv) apply to the Australian Taxation Office for a new Product Ruling or for a private binding ruling in relation to the Project;
  - (xvi) execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this constitution; and
  - (xvii) receive, collect, pay, settle and compromise any payments, debts, obligations, judgments or settlements in relation to the Project.
- (b) Each Grower, subject to paragraph (c), to the maximum extent permitted by law irrevocably appoints the Responsible Entity from time to time, and each Director and Company Secretary of the Responsible Entity to be the agent and attorney of the Grower, in the Grower's name, on the Grower's behalf and as the Grower's act and deed, to exercise the powers and do anything and take any action set out in Annexure 1 to this constitution on the terms set out below and in that Annexure.
- (c) The Responsible Entity from time to time, may recover all costs properly incurred in exercising its powers under paragraphs 6.1A(a) or 6.1A(b) (including, without limitation, all legal and litigation costs and costs associated with the preparation of any reports for the purposes of taking the action) first from the Grower Contributions Account and then from the Revenue Account. The Responsible Entity's right of indemnity under this clause applies only in relation to the proper performance of its duties.
- (d) The Grower undertakes to ratify all that the attorney lawfully does or causes to be done under paragraphs 6.1A(a) or 6.1A(b).
- (e) The powers granted by paragraphs 6.1A(a) and 6.1A(b) are without prejudice to any power of attorney given to Willmott Forests Limited (formerly known as Timber Capital Limited) (Liquidators Appointed) by a Grower upon submitting an application for interests in the Project or upon becoming a Grower as an assignee or member by succession (Original Power) and the acts and things which the Responsible Entity may do and take under the powers granted in paragraphs 6.1A(a) and 6.1A(b) are in addition to the acts and things which the Responsible Entity from time to time is empowered to do or take pursuant to the Original Power.

- (f) The Grower acknowledges and agrees that the Original Power is a right of the Responsible Entity in relation to the Project for the purposes of section 601FS(1) of the Corporations Act and novates to a new responsible entity appointed under Division 2 of Part 5C.2 of the Corporations Act.
- (g) Each Grower acknowledges that where an Original Power continues in effect, the Responsible Entity may act under either or both the Original Power and the powers granted by paragraphs 6.1A(a) or 6.1A(b), in a manner required to effect the proposal described in the Explanatory Memorandum including in amending or entering into an Agreement in the manner provided in the Explanatory Memorandum.
- (h) In relation to any Head Lease, Forestry Right or other Project Document the Responsible Entity may in its name or in the name of any custodian or agent for the Responsible Entity assume any interest which a Grower may have had.
- (i) The Responsible Entity shall have all the powers over and in respect of the Head Lease (if any) or the Forestry Right which it could exercise if it were the absolute and beneficial holder of the Head Lease or Forestry Right including the power to vary, cancel, enter into and negotiate further leases or forestry rights, options to renew, rent reviews, renewals, options, and accept surrenders of leases or forestry rights, attend to termination of leases or forestry rights, and attend to the yielding up provisions on the expiration of either the Head Lease and the Forestry Right.”

Insert the following as new Annexure 1 to the constitution:

**Power of Attorney**

1. The Responsible Entity from time to time and each Director and Company Secretary of the Responsible Entity (herein referred to as the “Attorney”) is appointed by each Grower jointly and severally to be attorney for the Grower, in the Grower’s name, on the Grower’s behalf and as the Grower’s act and deed on the terms specified below and in clause 6.1A and to do the following things and take the following actions:
  - (a) to vary a Project Document in the manner provided in the Explanatory Memorandum and make, execute and deliver and submit for registration all deeds, agreements and other instruments as to the Attorney seem necessary or desirable to give effect to the variations;
  - (b) to vary the provisions of a Project Document from time to time, provided that the variation:
    - (i) will not in the reasonable opinion of the Attorney adversely affect the Grower’s rights in the Project Document;
    - (ii) will in the opinion of the Attorney enable the Project Document to be better administered and managed in the interests of the Project;
    - (iii) is in the opinion of the Attorney required as a matter of continuing compliance with relevant statutory requirements;
    - (iv) is in the opinion of the Responsible Entity required to correct a factual error in the Project Documents; or
    - (v) is agreed between the Grower and the Responsible Entity;
  - (c) to take any action (including Court action) necessary or desirable to protect or preserve the Grower’s right to use, occupy or access the Land to grow their Trees under the Project, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity;

- (d) to enter into and execute on the Grower’s behalf, as trustee, a Head Lease, Forestry Right or Project Document subject to clause 13.1 and clause 16 to enter into and execute on the Grower’s behalf, an agreement to sell the Land or the Trees or the Forest Produce and any other scheme property on such terms as the Responsible Entity considers appropriate;
  - (e) to make, do and sign all such acts, deed and things as may be necessary to procure the stamping of the agreement to sell with power to instruct the attorney’s solicitors to assist them in this regard;
  - (f) to vary the provision of the agreement to sell the Land or the Trees or the Forest Produce provided that the variation:
    - (i) will, in the opinion of the attorney, enable the agreement to sell to be better administered and managed in the interests of the Project;
    - (ii) is, in the opinion of the Responsible Entity, required as a matter of continuing compliance with relevant statutory requirements;
    - (iii) is, in the opinion of the Responsible Entity, required to correct a factual error in the document; or
    - (iv) is agreed between the Grower and the Responsible Entity.
2. In the case of any variation to be effected to a Project Document which, in the opinion of the Responsible Entity, may adversely affect the Grower’s interests, such variation may only be effected if it has been approved by a special resolution (as defined in the Corporations Act).
3. This Power of Attorney will be governed by and construed in accordance with the laws of Western Australia.

**6. INDEMNITY AND LIABILITY**

Amend clause 8.2 in the constitution by inserting after the word “Assets” where it last appears the following words at the end of the sentence:

“, Revenue Account and Grower Contributions Account.”

Amend clause 8.4 in the constitution by inserting after the word “Assets” the following words:

“, Revenue Account and Grower Contributions Account.”

Delete clause 8.6.

**7. FEES**

Amend clause 10.1 in the constitution by:

- (a) Deleting “and” from sub-clause (a);
- (b) Deleting “.” from sub-clause (b) and replacing it with “; and”
- (c) Inserting a new sub-clause (c) that reads:
  - “(c) any amounts payable under this constitution.”

Immediately after clause 10, insert new clauses 10A and clause 10B in the constitution:

**“10A. INITIAL MANAGEMENT FEE & RECONSTRUCTION FEE**

10A.1 The Responsible Entity will issue to each Grower one invoice which includes both the following fees:

- (a) an Initial Management Fee of \$300 (inclusive GST); and
  - (b) a Reconstruction Fee of \$200 (inclusive GST),
- per Hectare held by the Grower in each Phase.

10A.2 The Responsible Entity may issue to each Grower an invoice or invoices for Supplementary Initial Management Fees if the actual contributions paid by Growers pursuant to invoices issued under clause 10A.1 are not sufficient to fund the Cost of Reconstruction and forecast Total Management Costs plus Dispute Resolution Costs of the Project until 30 June 2012 (**Supplementary Initial Management Fee**).

10A.3 The Initial Management Fee and Reconstruction Fee or the Supplementary Initial Management Fee (if any) are payable by each Grower to the Responsible Entity under the terms of the relevant invoice or invoices issued by the Responsible Entity pursuant to clauses 10A.1 or 10A.2, unless otherwise agreed in writing with the Responsible Entity.

10A.4 The Responsible Entity shall place the Initial Management Fee and Reconstruction Fee or Supplementary Initial Management Fee into the Grower Contributions Account. If there is an excess amount in the Grower Contributions Account as at 30 June 2012, any excess may be applied in set-off against any future Management Fee invoiced to Growers of the relevant Phase.

10A.6 If the Responsible Entity permits payment of the Initial Management Fee and Reconstruction Fee or the Supplementary Initial Management Fee (if any) by instalments, the Responsible Entity may increase the amount of the Initial Management Fee and Reconstruction Fee or the Supplementary Initial Management Fee (if any) to such higher amount as, in the reasonable opinion of the Responsible Entity, will result in equality between Participating Growers having regard to the time value of money.”

**“10B. MANAGEMENT FEE**

10B.1 For each financial year commencing on and from 1 July 2012 until termination of the Project, the Responsible Entity will issue to each Grower in each Phase prior to the start of each financial year an invoice for a Management Fee to be paid in advance or as otherwise determined by the Responsible Entity.

10B.2 The Management Fee per Hectare for a financial year will be determined by the Responsible Entity in order to cover the Responsible Entity’s forecast Total Management Costs plus Dispute Resolution Costs for that financial year.

10B.3 The Responsible Entity may issue to each Grower in each Phase an invoice or invoices for Supplementary Management Fees if the actual contributions paid by Growers pursuant to invoices issued under clause 10B.1 are not sufficient to fund the ongoing costs of the Project until 30 June in the applicable financial year for the applicable Phase (Supplementary Management Fee).

- 10B.4 The Management Fee is payable by each Grower in each Phase to the Responsible Entity under the terms of the relevant invoice or invoices issued by the Responsible Entity pursuant to clauses 10B.1 and 10B.3, unless otherwise agreed in writing with the Responsible Entity.
- 10B.5 The Responsible Entity shall place the Management Fee and any Supplementary Management Fee into the Grower Contributions Account. If there is an excess amount in the Grower Contributions Account at the end of each financial year, any excess may be applied in set-off against any future Management Fee invoiced to Growers of the relevant Phase.
- 10B.7 If the Responsible Entity permits payment of the Ongoing Management Fee and any Supplementary Ongoing Management Fees by installments, the Responsible Entity may increase the amount of the Ongoing Management Fee to such higher amount as, in the reasonable opinion of the Responsible Entity, will result in equality between Participating Growers having regard to the time value of money.
- 10B.8 1999 Growers remain liable to pay rent under the Lease Agreement. For each financial year commencing on and from 1 July 2012 until termination of the Project, the Responsible Entity will invoice any rent payable under the 1999 Lease Agreement, will deposit that rent in the Grower Contributions Account so that it is pooled with all other moneys in that account and if rent has to be paid to any other person, will pay any rent payable on behalf of the Grower to that other person from the Grower Contributions Account.
- 10B.9 Otherwise, for each financial year commencing on and from 1 July 2012 until termination of the Project, the only fees payable by 1999 Growers for services are provided for in this constitution and no additional amounts are payable under the 1999 Maintenance Agreement.
- 10C.1 For each \$10 (with any part thereof in excess of \$5.00 being rounded up and otherwise being rounded down) of any invoice for the Initial Management Fee, Reconstruction Fee, Supplementary Initial Management Fee, Management Fee or Supplementary Management Fee in respect of each Hectare in each Phase held by a Grower which that Grower does not pay by the due date (or any extended time permitted by the Responsible Entity), the Grower's Proportional Share will be reduced by 1.5%, and for the purpose of calculating the Grower's Proportional Share in a Phase the total number of Hectares held by all Growers in that Phase will be deemed to be reduced by the total of all the accumulated individual Grower reductions in relation to the Phase under this clause. The Responsible Entity has the discretion to determine any matter in respect of the reduction of a Grower's Proportional Share, including whether the reduction occurs and when the reduction occurs.
- 10C.2 If the Responsible Entity is of the view that the amount of the Total Management Costs could be reduced under an agreement with any person (or a number of persons contracting jointly), or any cash flow deficit of the Project could be underwritten by an agreement with any person or for some other reason the Growers would be advantaged by an agreement with any person, the Responsible Entity may on behalf of each several Grower enter into any agreement with any person under which a percentage of the Grower's Net Proceeds of Sale (but not exceeding that proportion by which for the time being the total number of Hectares held by all Growers in the

definition of “Grower’s Proportional Share” has been reduced by the total of all the individual Grower reductions pursuant to clause 10C.1) is granted to that person.

10C.3 If a Grower’s Proportional Share has been reduced to zero, the Responsible Entity may remove that Grower from the Register, whereupon the Grower shall cease to be a Grower. The Responsible Entity may transfer that Grower’s Hectare to any other person (including pursuant to a product disclosure statement) with or without consideration if that person agrees to be bound by the provisions of this constitution and relevant Project Documents (including the obligation to pay all outstanding fees as and when invoiced). Otherwise, the Responsible Entity shall hold the Hectare formerly held by the Grower as scheme property, namely in trust for Growers as a whole. If the transfer is with consideration, the consideration is to be deposited into the Grower Contributions Account.”

**8. SEPARATE ACCOUNTS**

Immediately after clause 13 in the constitution, insert a new clause 13A in the constitution as follows:

**“13A. CREATION OF ACCOUNTS**

- 13A.1 The Responsible Entity may create any accounts in relation to the Project.
- 13A.2 The Responsible Entity shall create at least 2 separate accounts in relation to the Project in accordance with this clause, being the:
  - (a) Grower Contributions Account; and
  - (b) Revenue Account.
- 13A.3 The Responsible Entity shall lodge or cause to be lodged in a Bank account designated as the Grower Contributions Account the balance of any moneys received by the Grower Group and paid to the Responsible Entity, and the Initial Management Fee, Reconstruction Fee, Supplementary Initial Management Fee, Management Fees, Supplementary Management Fees and Rental pursuant to any Lease Agreement paid by Growers.
- 13A.4 The Responsible Entity shall lodge or cause to be lodged in a Bank account designated as the Revenue Account all moneys received by the Responsible Entity which are required to be placed in the Revenue Account pursuant to this constitution which moneys are to be held and applied by the Responsible Entity upon the trusts hereby constituted.
- 13A.5 To form any other account contemplated by clause 13A.1, the Responsible Entity shall lodge or cause to be lodged in a Bank account the moneys received by the Responsible Entity to be held by the Responsible Entity upon the trusts hereby constituted.
- 13A.6 A Grower shall have an interest in the Revenue Account equal to the Grower's Proportional Share in each applicable Phase but shall not have any interest in any particular part of the Revenue Account.

- 13A.7 In the event that upon the termination of the Project any sum remains in the Grower account, each Participating Grower in relation to each Phase which has not been terminated shall be paid the Grower's Proportional Share. For the avoidance of doubt any accretion to the Grower Contributions Account remains in the Grower Contributions Account and can be used by the Responsible Entity to pay its fees and disbursements in accordance with clause 10."

**9. REMUNERATION, EXPENSES AND COSTS OF RESPONSIBLE ENTITY**

Immediately after clause 10.1 and before clause 10A, insert a new clause 10.1A in the constitution:

"10.1A The Responsible Entity acknowledges that by virtue of Section 601GA(2)(b) of the Corporations Act the money in the Grower Contributions Account is only available to be used for the proper performance of its duties as responsible entity in accordance with the provisions of this Constitution."

Immediately after clause 10.4, insert the following new clauses:

**"Annual Fee**

- "10.5 On and from the date of the Appointment, the Responsible Entity is entitled to receive out of the Grower Contributions Account an Annual Fee of no greater than \$65,000 Indexed per annum plus \$10 Indexed per Grower (plus GST) for a minimum of 3 years payable in 12 equal monthly installments the first installment payable on the date of the Appointment.

**Cost of Reconstruction**

- 10.6 Upon Primary becoming the Responsible Entity, the Responsible Entity may claim the Cost of Reconstruction from the Grower Contributions Account following the date of the Appointment.
- 10.7 The Cost of Reconstruction will be reasonably determined by the Responsible Entity and will include all reasonable costs and expenses incurred by the Grower Group or the Responsible Entity or the Manager prior to and following any meeting of Growers including due diligence by the Grower Group, the Responsible Entity or the Manager, procuring a variation to the Responsible Entity's AFSL to include the Project, preparing any notice of meeting including amendments to this constitution, recording proxies, dealings with the Receivers and Liquidators, attending the meeting or meetings of Growers, any fees not accounted for under clause 10A and other transitional work required to become the Responsible Entity.

**Dispute Resolution Costs**

- 10.8 Upon Primary becoming the Responsible Entity, the Responsible Entity may claim the Dispute Resolution Costs from the Grower Contributions Account following the date of the Appointment.

**Reimbursement – Revenue Account**

- 10.9 The Responsible Entity shall as part of its remuneration and in addition to the remuneration referred to in clause 10.5 be reimbursed for the following costs and expenses out of the Revenue Account:

- (a) the Costs of Sale;
- (b) any income tax or other tax or duty payable under the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 or any other fiscal legislation (including, without limitation, any GST that has not previously been reimbursed) in respect of the Project or the investments;
- (c) fees payable to any regulatory authority; and
- (d) any other cost, expense or fee permitted by this constitution.

### **Reimbursement – Grower Contributions Account**

10.10 The Responsible Entity shall as part of its remuneration and in addition to the remuneration referred to in clause 10.5 be reimbursed from the Grower Contributions Account for the following:

- (a) applying for a variation of the AFSL to enable the Responsible Entity to operate the Project;
- (b) making arrangements for applying to the Court for Appointment (if required);
- (c) applying to the Court for Appointment (if required);
- (d) alternatively, holding any necessary meetings of Growers to terminate the Former RE as the responsible entity of the Project or to confirm the Responsible Entity's appointment;
- (e) undertaking due diligence in relation to the Project to identify potential problems and solutions to those problems on taking over from Former RE or becoming the responsible entity of the Project or in relation to such matters as the Responsible Entity considers necessary to properly protect the interests of the Responsible Entity, its directors and officers;
- (f) negotiating with ASIC, the Australian Taxation Office or any other regulatory authority in relation to the Project;
- (g) answering inquiries from Growers in relation to the Project related to the change of responsible entity;
- (h) communications with Growers relating to the change of responsible entity;
- (i) complying with the requirement to register the interest of Growers on relevant titles in relation to the Project (if not done);
- (j) holding any necessary meetings of Growers to confirm the Responsible Entity's appointment or to replace Former RE as the responsible entity of the Project and taking part in those meetings;
- (k) holding any necessary meetings of Growers to resolve any particular problems arising in relation to the Project and the termination of the Former RE as the responsible entity of each of the Project;
- (l) redrafting Constitutions, Compliance Plans or any other Project agreements for consistency with the other schemes of the Responsible Entity or to bring these documents into conformity with current practice in the managed investment industry;

- (m) transfer of all Head Leases and Forestry Rights into the name of the Responsible Entity and registering all transfers with the relevant Land Titles Offices;
- (n) preparation of any umbrella lease or other instrument to secure the Forestry Rights or Lease Agreements if the Lease Agreements are not otherwise secure on the relevant titles with the relevant Land Titles Offices;
- (o) applying for any variation to any Product Ruling or for any private binding ruling;
- (p) dealing with requests for information, inquiries, surveillances, audits, investigations, prosecutions or other proceedings relevant to the Project by ASIC, the Australian Taxation Office or any other regulatory authority;
- (q) dealing with Growers' representatives or committee representatives of Growers in relation to the Project;
- (r) travel to and accommodation in any place other than Perth for meetings with the Manager or with Grower representatives;
- (s) dealing with claims or demands by any other person in relation to the Project;
- (t) arbitration or litigation or other dispute resolution and negotiations in relation thereto relevant to the Project;
- (u) termination of any current manager or sub-manager;
- (v) preparation of the Management Agreement;
- (w) procuring, transporting and sorting the books and records of the Former RE;
- (x) any preliminary services of an expert appointed by the Responsible Entity relating to handover and the setting up of the Project's procedures;
- (y) any other preliminary work reasonably considered necessary by the Responsible Entity to be carried out in relation to appointment of the Responsible Entity, the handover of the Project, accounts, registers, documentation and assets, the initial review of the state of the Plantations, and the establishment of long term procedures in relation to the Project;
- (z) custodial type services (setting up the bank accounts, receiving fees, transferring funds and accounting therefor);
- (aa) setting up electronic transfer and BPay facilities if required;
- (bb) following up or proceeding against defaulting Growers;
- (cc) if required, preparing and submitting activity statements to the Australian Taxation Office in relation to the Project and pay any GST in respect thereof;
- (dd) if required, paying income tax on behalf of the Project;
- (ee) if required by the Australian Taxation Office, preparing and submitting quarterly tax file number reports;
- (ff) if required by the Australian Taxation Office, preparing and submitting annual investment income reports;
- (gg) preparing the annual report and (if required) half yearly report for the Project;
- (hh) if a Custodian with net tangible assets of \$5 million is required then the costs of such Custodian;

- (ii) keeping the Register for the Project (including mail-outs, expenses incurred in calculating distributions to Growers, payment of distributions and all other services normally provided by registry services);
- (jj) preparing statements for the purposes of s1017D and s1017F of the Corporations Act;
- (kk) registering assignments and transmissions of interests (subject to the right to charge a fee to Growers);
- (ll) conducting an upfront and once-off review of the Compliance Plan for the Project and its suitability as a result of changes relating to the Appointment;
- (mm) preparation of any replacements or amendments to the constitution and Compliance Plan of the Project;
- (nn) preparation of any replacements or amendments to the Maintenance Agreement of the Project, Head Leases and Lease Agreements under the Project;
- (oo) travel to and accommodation for the purpose of inspection of the Plantations by an expert appointed by the Responsible Entity or other officers of the Responsible Entity relevant to the activity and the Project;
- (pp) preparing any statements of advice or financial services guides;
- (qq) preparing any non-regulatory report or communication to Growers;
- (rr) payment of bank fees including credit card transaction costs and merchant facilities;
- (ss) dealing with any professional indemnity insurance claims;
- (tt) dealing with any breaches or possible breaches of this Constitution;
- (uu) dealing with requests for information, inquiries, surveillances, audits, investigations, prosecutions or other proceedings relevant to the Project by ASIC, the Australian Taxation Office or any other authority provided that the matter investigated does not relate to the neglect or default of the Responsible Entity (except where that negligent act or default results from the default of the Manager);
- (vv) dealing with claims or demands by any person other than a Grower in relation to the Project unless such claim or demand was occasioned by the neglect or default of the Responsible Entity;
- (ww) arbitration or litigation or other dispute resolution and negotiations in relation thereto relevant to the Project unless such arbitration or litigation or other dispute resolution arose through the neglect or default of the Responsible Entity;
- (xx) any work resulting from the appointment of administrators or any deed of company arrangement or other scheme of arrangement in relation to the Responsible Entity;
- (yy) dealing with Growers, Growers' representatives or committee representatives of Growers in relation to Project (except relating to issues resulting from the change of the responsible entity);
- (zz) dealing with complaints from Growers;
- (aaa) handing over on retirement of the Responsible Entity as responsible entity or winding up the Project in accordance with the constitution or the Corporations Act;

- (bbb) listing of the Project on any stock exchange;
- (ccc) all costs, expenses, commissions, fees, rates, taxes (including income tax), supervision and management charges, and other charges or outgoings payable in accordance with this constitution in respect of the Investments comprised in the Revenue Account;
- (ddd) the reasonable fees and expenses of the Auditor in connection with the audit, any inspections or inquiries provided for by clause 35 and the auditing of accounts and the preparation and lodgement of taxation returns in relation to the Project and any Phase;
- (eee) any costs or expenses reasonably and properly incurred or paid by the Responsible Entity in connection with any rearrangement of the capital structure of the Project or any Phase including any Product Disclosure Statement for the transfer or issue of Hectares;
- (fff) all costs incurred by the Responsible Entity in keeping or causing to be kept the books of accounts (in accordance with clause 35), including, without limitation, expenses in connection with the establishment and maintenance of accounting records and systems for the purposes of the Project and any Phase;
- (ggg) costs of convening and holding any meeting of Growers or Growers of any Phase;
- (hhh) any costs and disbursements reasonably and properly incurred which are payable to any Consultant properly engaged by the Responsible Entity;
- (iii) costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted by the Responsible Entity to all or any Growers in accordance with the provisions of this constitution;
- (jjj) costs of preparing and printing accounts, distribution statements, cheques and other documents required to be prepared by the Responsible Entity for dispatch to Growers;
- (kkk) costs, charges and expenses in connection with the obtaining, preparation, printing and postage of all financial and other reports which the Responsible Entity wishes to forward to all or any of the Growers and which are not covered by another paragraph of this clause;
- (lll) disbursements in connection with the acquisition, registration, custody, disposal of or other dealing with or attempted or proposed acquisition, registration, custody, disposal of or other dealing with any investment including but without limitation, stamp duty, valuation fees, agent's commission, survey fees, registration fees, insurance premiums and legal costs and disbursements;
- (mmm) costs of preparation and lodgement of returns by the Responsible Entity pursuant to the Corporations Act;
- (nnn) all reasonable costs and expenses associated with any Auditor and any Auditor required to be appointed in connection with compliance;
- (ooo) all reasonable costs and expenses associated with changing the responsible entity from Primary to a related company including any liabilities and obligations novated from the Former RE;
- (ppp) costs and liabilities, including but not limited to legal fees, whether incurred by the Responsible Entity or third parties, associated with the development of the proposal set out in the Explanatory Memorandum, Dispute Resolution Costs,

Total Management Costs and Reconstruction Fee, and costs associated with accounting, audit, ASIC fees and professional indemnity insurance; and

- (qqq) costs and liabilities associated with the provision of the services by the Responsible Entity to the Project including any reasonable future operational costs;
- (rrr) notwithstanding clause 10.11, any costs or liabilities incurred by the Responsible Entity in performing its duties and acting in accordance with this constitution and the Project Documents in connection with any liabilities incurred by a prior responsible entity which are assumed by the Responsible Entity or for which it becomes responsible, all legal and litigation costs incurred in dealing with any legal action that relates to the Project including relating to the actions of any prior responsible entity;
- (sss) cost and liabilities associated with the issue of any project disclosure statement in order to effect a reconstruction of the Project; and
- (ttt) any other costs, expense or fee permitted by this constitution.

Where the Responsible Entity is entitled to recover any amount pursuant to this clause and the total amount relates to more than one scheme for which the Responsible Entity is the responsible entity, the Responsible Entity may apportion the amount between the Project and other schemes in a manner as the Responsible Entity considers in its absolute discretion to be fair and appropriate in the circumstances.

#### **Payments in respect of the Project**

10.11 Except where the Responsible Entity is entitled to be reimbursed under clause 10.9 and clause 10.10, it shall be responsible for payment of all other expenses in relation to the Project including but not limited to the following expenses:

- (a) complying with all obligations required under the AFSL;
- (b) any and all costs, expenses and obligations in respect of its employees, contractors and other service providers;
- (c) appointing (and paying for) the Compliance Officer, Compliance Assistant the Compliance Committee;
- (d) all preparations for and holding of Compliance Committee meetings;
- (e) appointing (and paying for) Primary's board of directors;
- (f) all preparations for and holding of board meetings;
- (g) appointing (but not paying for) substitute or appropriate Independent Experts whether required for the AFSL or otherwise;
- (h) holding of scheme books and records including (but not limited to) Project Documents, head leases, registers, contracts and forestry maps;
- (i) archiving, storage and retention of records as required under the Corporations Act and the AFSL;
- (j) operating and updating a website for the Responsible Entity;

- (k) keeping compliance systems, the Procedures Manual and the Risk Management Systems Statement for the Project and ensuring they are up-to-date;
- (l) answering inquiries from Growers in respect of the Project;
- (m) membership of an external complaints resolution scheme required under the AFSL;
- (n) arranging for and liaison with scheme auditors and compliance auditors;
- (o) negotiating with professional indemnity insurance brokers, arranging professional indemnity insurance in respect of the Project;
- (p) maintaining appropriate software and reprogramming as and when required;
- (q) complying with all other statutory compliance obligations in respect of the Project;
- (r) any other work which might reasonably be the proper duty of a responsible entity but which is not of an unusual or unexpected nature.”

#### **10. CONTRIBUTIONS TO WILLMOTT GROWERS GROUP**

Amend the constitution by inserting a new clause 10.13:

##### **“Grower Contributions to Grower Group**

10.13 A Grower who contributed to Grower Group will have the amount of their contribution to Grower Group credited against any Reconstruction Fee payable by invoice issued under clause 10A.”

#### **11. RETIREMENT OF RESPONSIBLE ENTITY**

Delete clause 11 of the constitution.

#### **12. INSURANCES**

Amend the constitution as follows:

- (a) replace the word “will” at the end of the first line of clause 12.1 and insert in lieu thereof the word “may if available funds permit”.
- (b) delete in paragraph (a) of clause 12.1 the words “for an initial period of 10 years”.
- (c) add at the end of the first line of clause 12.3 the words “provided the Grower is a Participating Grower”.
- (d) add a new clause 12.6:

“From any amount payable to any Grower under this clause 12, the Responsible Entity shall deduct the amount of any fees invoiced in relation to the Hectare which were not paid (and any other amounts owing by the Grower to the Responsible Entity) plus interest thereon from the date of invoice (or when the amount became due) at the rate of 10% per annum calculated from day to day and that sum shall be paid into the Grower Contributions Account.”
- (e) add a new clause 12.7:

“If the Grower is not a Participating Grower, then the Grower is not entitled to give the Responsible Entity any direction or make any election under this clause 12 and the Responsible Entity shall pay any amount which would have been payable to the Grower if that Grower had been a Participating Grower into the Grower Contributions Account.”

### **13. HARVESTING AND SALE OF TREES**

Delete clause 13 of the constitution and insert in lieu thereof the following sub-clauses 13.1:

“13.1 The Harvest Services are to be carried out by the Responsible Entity on the Grower’s behalf unless the Grower notifies the Responsible Entity in writing on or before 30 June 2011 that the Grower will be harvesting and selling their own Trees or Forest Produce.

13.2 If a Grower who has given notice under clause 13.1 fails to harvest their Trees the Grower must pay to the Responsible Entity the fees for the Harvest Services as set out in this constitution and additional reasonable costs incurred by the Responsible Entity in relation to the Harvest Services carried out by the Responsible Entity.”

### **14. COLLECT INCOME & DISTRIBUTIONS**

Amend the constitution by inserting a new sub-clause 13B after 13A as follows:

#### **“13.B COLLECTION OF INCOME AND DISTRIBUTION**

##### **13B.1 Responsible Entity to Collect Income**

The Responsible Entity shall collect, receive and get in, to the extent it is entitled, all Gross Proceeds of the Sale of the Trees, the Forest Produce and the Land and any other scheme property to which it is entitled on behalf of all Participating Growers for each Phase, and income from the Investments from time to time relating to the Project for the relevant Phase, and pay all such income into the relevant Revenue Account of each Phase.

##### **13B.2 Distribution of Revenue Account**

Subject to clauses 13B.3, 13B.4 and 13B.5 of this constitution, the Responsible Entity shall, on or before each Distribution Date, distribute among the Participating Growers of the relevant Phase who were such Growers on the last day of the previous Accounting Period.

##### **13B.3 Proportional Share**

Any amounts (whether income, profits or otherwise) to be distributed shall be distributed among the relevant Participating Growers according to the Grower’s Proportional Share.

##### **13B.4 Accounts to be prepared**

For the purpose of ascertaining the amount (if any) to be distributed to Participating Growers of the relevant Phase pursuant to this clause, the Responsible Entity shall, before any such distribution, prepare accounts of the income and expenditure and financial position

of the Revenue Account, in accordance with generally accepted accounting practice, standards, methods and principles unless the Responsible Entity determines otherwise.

### **13B.5 Deduction from Income or Profit**

- (a) The Responsible Entity may at its discretion in reimbursement of its costs under the previous clause or in relation to amounts owed by a particular Grower, deduct from
- (i) any amounts payable to a Grower;
  - (ii) any amount due to the Responsible Entity under an Agreement;
  - (iii) the amount of any income tax, withholding tax or any other tax or duty required by law to be deducted; or
  - (iv) any other amount due to the Responsible Entity or an associated entity of the Responsible Entity, which is paid or payable to or by the Responsible Entity or out of the Revenue Account on account of or in respect of the Grower or is otherwise distributable to that Grower.
- (b) A deduction referred to in paragraph (a) may be made at any time and notwithstanding that it could have been made, but was not made, from moneys previously paid to that Grower.”

## **15. MEETINGS OF GROWERS**

Amend the constitution by inserting a new clause 15.10:

“At any meeting of Growers, for the purpose of valuing the total interests that a Grower has in the Project, and hence the number of votes any Grower has, the Responsible Entity will take into account the Grower’s Proportional Share for the time being and not the number of Hectares held by the Grower.”

## **16. TERMINATION AND PROCEDURE ON TERMINATION**

Amend the constitution by inserting new clauses 16.3, 16.4 and 16.5:

### **“16.3 Early Termination by Responsible Entity**

Subject to the notice requirements in set out clause 16.4

- (a) if the Responsible Entity is unable to secure security of tenure for the Lease Agreements or Forestry Rights with respect to the Plantations, Trees and Woodlots; or
- (b) if the Responsible Entity determines that the Initial Management Fees and Reconstruction Fees contributed by Growers, together with any monies received under any loans taken out by the Responsible Entity are insufficient to fund the required actions by the Responsible Entity; and
- (c) in any other circumstances provided for under the Corporations Act,

the Responsible Entity may wind up the Project.”

**“16.4 Notice to Growers of Winding Up**

If the Responsible Entity proposes to wind up the Project in accordance with clause 16.3 above, the Responsible Entity must first provide written electronic notice to the Growers of the Project and to ASIC, explaining:

- (a) the proposal to wind up the Project;
- (b) the rights of Growers to take action under Division 1 of Part 2G.4 of the Corporations Act for the calling of a Growers meeting to consider the proposal put forward by the Responsible Entity about the winding up of the Project and to vote on any extraordinary resolution members proposed about the winding up of the Project;
- (c) that the Responsible Entity is permitted to wind up the Project unless a meeting is called to consider the proposed winding up of the Project within 28 days of the Responsible Entity giving notice to Growers;
- (d) that the Responsible Entity is permitted to wind up the Project if it is concerned about the solvency of the Responsible Entity as a consequence of the liabilities of the Project provided the Responsible Entity gives 28 days notice to Growers; and
- (e) that if no meeting is called within that 28 day period to consider the proposed winding up, the Responsible Entity may wind up the Project.”

**“16.5 Early Termination by Growers**

The Growers may terminate the Project at any time in accordance with the Corporations Act.”

Delete clause 17.5 of the constitution and insert instead of clause 17.5:

“The Responsible Entity must on completion of any realization of Assets relating to any Phase, distribute to each Grower the Grower’s Proportional Share (for the time being) of the net proceeds of realisation and all other property forming part of the Phase that is to be distributed in kind.”

**17. ELECTRONIC COMMUNICATIONS TO GROWERS**

Immediately after clause 18.1, add a new clause 18.1A in the Constitution:

**“18.1A Electronic Communications to Growers**

Notwithstanding sub-clause 18.1 the Responsible Entity may send or deliver any document required to be sent or delivered to a Grower (or to Growers as a whole) under this constitution, other than a document where the process or method for sending that document is regulated by the Corporations Act (such as notices of meeting and Project annual reports), by making that document available on the website of the Responsible Entity for the period commencing on the date the

document is, apart from this clause, required to be sent or delivered to a Grower and ending no earlier than 6 months later.”

Delete clause 18.4 and insert in lieu thereof the following 18.4:

**“18.4 Time of Receipt**

A notice given to a Grower in accordance with this clause is treated as having been given and received:

- (a) if delivered to a Grower’s address, on the day of delivery if a Business Day, otherwise on the next following Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; and
- (c) if transmitted by facsimile to a Grower’s address and a correct and complete transmission report is received, on the day of transmission if a Business Day and the transmission occurs during normal business hours by the receiving Grower, otherwise on the next following Business Day if the transmission occurs outside normal business hours; and
- (d) if transmitted by e-mail to a Grower’s address and the transmission occurs during normal business hours by the receiving Grower, on the day of transmission if a Business Day, otherwise on the next following Business Day if the transmission occurs outside normal business hours.”

**18. APPOINTMENT OF AGENTS**

Immediately after clause 6.4 of the constitution, insert a new clause 6.4A and 6.4B in the constitution:

- “6.4A The Responsible Entity will be taken to have done (or failed to do) anything that any person appointed by the Responsible Entity has done (or failed to do) because of that appointment.
- 6.4B Fees payable to any person appointed under clause 6.4A will be payable by the Responsible Entity out of its own monies but may include monies received as remuneration of by way of indemnity or reimbursement under the constitution.”

**19. RE’S FUNCTIONS, POWERS AND DUTIES**

Amend the constitution by inserting a new clause 6.7:

**“Functions**

- 6.7 In addition to its obligations under the Maintenance Agreement the Responsible Entity shall form a Committee of Growers.”

## 20. BORROWINGS

Amend the constitution by inserting a new clause 6.8:

### “Borrowing

- 6.8 The Responsible Entity may, for the purposes of the Project:
- (a) borrow to fund any costs otherwise payable under this constitution and repay such borrowing and pay interest and costs in relation to such borrowing from the Grower Contributions Account or the Revenue Account; and
  - (b) grant security over Assets of the Project, including over the Revenue Account and any other property held on trust for Growers or the Responsible Entity in each case on such terms as the Responsible Entity reasonably determines.”

## 21. COMPLAINTS HANDLING

Amend the constitution by deleting clause 22 and inserting a new clause 22:

### “22. Complaints and Arbitration

#### Complaints Handling Methods

- 22.1 The Responsible Entity will deal with all complaints according to the following methods, the details of which are to be set out in the Responsible Entity’s compliance plan or procedures:
- (a) all complaints are to be acknowledged promptly;
  - (b) complaints that do not require investigation are to be resolved immediately or expeditiously;
  - (c) otherwise, within 21 days of the complaint being made, the Complaint is to be investigated, the complainant is to be given an opportunity to provide information, the complaint is to be properly considered, and a report is to be prepared;
  - (d) a decision is to be made and the decision communicated to the complainant with the reasons for the decision within 28 days of the complaint being made;
  - (e) if the complainant remains unsatisfied, the complainant is to be provided with information as to appropriate avenues by which the complainant can pursue the complaint including notifying the ASIC of the complaint or having the complaint resolved by an industry complaints tribunal; and
  - (f) a copy of the complaints handling procedures are to be made available to a Grower on request free of charge.

**Arbitration**

22.2 If any dispute or difference or disputed question (other than one subject to the determination or discretion of the Responsible Entity or some other person) touching or concerning:

- (a) this constitution; or
- (b) the construction, meaning, operation or effect of any of the covenants or provisions of this constitution; or
- (c) as to the rights duties or liabilities of the Responsible Entity or any Grower under this constitution,

shall arise (**Dispute**) then and in every such case the Responsible Entity may give to the other and/or to any other person as abovementioned notice in writing of such Dispute and at the expiration of seven (7) days, unless it shall have been otherwise settled between them, the matter in question shall be submitted to:

- (d) the President for the time being of the Law Society of Western Australia; or
- (e) if he or she be unwilling to act to such Senior Counsel being willing to act as the said President may select,

to be considered in accordance with and subject to the *Commercial Arbitration Act 1985*.

22.3 Upon every such reference, the award of the Arbitrator shall be final and binding on the parties. The costs of and incidental to the reference and award respectively shall be in the discretion of the Arbitrator who may determine the amount thereof, or may direct the same to be taxed as between solicitor and client or as between party and party, and who shall direct by whom and to whom and in what manner the same shall be borne and paid.

22.4 Any discussions which take place as contemplated by this clause will be without prejudice to the respective rights and obligations of the parties in relation to the subject matter of the Dispute.

22.5 Nothing in this clause prevents a party seeking urgent or interlocutory relief in an appropriate court where the urgency or circumstances reasonably require.”

**22. INSPECTION OF CONSTITUTION**

Amend the constitution by deleting clause 23 and inserting in lieu thereof the following:

“23 A copy of this constitution will be made available to Growers upon request by any Grower.”

**23. NO OBLIGATION TO CARRY OUT SERVICES WITHOUT FUNDS**

Amend the constitution by inserting a new clause 24A:

**“24A Responsible Entity Not Obligated to Carry Out Services Without Funds**

Notwithstanding any other provision in this constitution or in the Project Documents, the Responsible Entity is not obliged to carry out any management services or pay for any expenses on behalf of Growers if there are insufficient funds available to the Responsible Entity to enable it to do so. Further, if the Responsible Entity is unable to procure the rights as lessor of the Lease Agreements or as grantor of the Forestry Rights, it may terminate the Project.”

**24. NO RIGHT TO WITHDRAW AND NO BUY-BACK**

Amend the constitution by inserting a new clause 24B:

**“24B No right of Growers to withdraw and no buy-back**

- (a) No Grower shall have the right to withdraw and require the Responsible Entity to realise the assets of the Project except to the extent otherwise provided in this constitution or Project Documents.
- (b) The Responsible Entity is not obliged to buy back or re-purchase any Hectare or Lease Agreement from the Grower.”

**25. OTHER SCHEMES**

Amend the constitution by inserting a new clause 7.5:

“7.5 The Responsible Entity shall be at liberty to establish and act as responsible entity for other managed investment schemes, whether of a similar or different nature, and to manage other investments.”

**26. PRECEDENCE**

Amend the constitution by inserting new clauses 24C and 24D:

“24C The following documents shall be read in the following order of precedence:

- (a) the Constitution;
- (b) the Forestry Right;
- (c) the Lease Agreement; and
- (d) the Maintenance Agreement.

24D Where any conflict occurs between the provisions contained in those agreements, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the

document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.”

## **SECTION 2: CHANGES TO THE PROJECT DOCUMENTS**

There will be no changes to the Project Documents.

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