

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

S CI 2011

**IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS  
APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)**

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN  
LIQUIDATION) (ACN 063 263 650) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE  
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 AND IN ITS CAPACITY AS  
MANAGER OF THE UNREGISTERED SCHEMES LISTED IN SCHEDULE 3  
AND ORS ACCORDING TO SCHEDULE 1**  
Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 13 December 2011  
Filed on behalf of: the Plaintiffs

Prepared by:  
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This is the exhibit marked "CDC-23" now produced and shown to **CRAIG DAVID CROSBIE** at the time of swearing his affidavit on 13 December 2011.

**MATTHEW GORDON JACKSON**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
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An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

Before me: 

**Exhibit "CDC-23"**  
**Constitution of the Willmott Forests Project**  
**(ARSN 089 379 975)**

Marked up to show changes proposed by 8th supp deed

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# Consolidated Constitution of the Willmott Forests Project (ARSN 089 379 975)

Responsible Entity: Willmott  
Forests Limited  
(ACN 063 263 650)

Date: 2 September 1999

This is a consolidated version of the constitution dated 2 September 1999 as amended by the supplemental deeds dated 20 March 2000 [SD1], 17 August 2000 [SD2], 1 July 2002 [SD3], 13 August 2002 [SD4], 17 September 2003 [SD5], 29 January 2004 [SD6], 14 February 2005 [SD7] and XX July 2006 [SD8].

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# Consolidated Constitution of the Willmott Forests Project

Date: 2 September 1999

## Operative provisions:

This deed poll is declared by Willmott Forests Limited to be the constitution of the Willmott Forests Project.

## 1 Name of Project

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- 1.1 The Project is called the Willmott Forests Project or by such other name as the Manager determines from time to time<sup>1</sup>.
- 1.2 If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Project to a name that does not imply an association with the former Manager or its business.

## 2 Assets held on trust

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- 2.1 The Manager must hold the Assets on trust for Growers<sup>2</sup>.
- 2.2 The Assets vest in the Manager, but must be clearly identified as property of the Project and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires<sup>3</sup>.

## 3 Application Price for Woodlots<sup>4</sup>

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A Woodlot must only be issued at an application price which is the amount payable as specified in the relevant product disclosure statement or other disclosure document and set out in the Project Documents in respect of the issue of each Woodlot.

## 4 Application procedure

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### Application form

- 4.1 An applicant for Woodlots must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

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<sup>1</sup> See Corporations Regulation 5C.1.02

<sup>2</sup> See section 601FC(2) of the Corporations Act

<sup>3</sup> See section 601FC(1)(i)

<sup>4</sup> Required to be included by Section 601GA(1)(a)

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**Payment**

- 4.2 Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application; or
  - (b) be received by or made available to the Manager within such period before or after the Manager receives the application form as the Manager determines from time to time.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.

**Manager may reject**

- 4.3 The Manager may reject an application in whole or in part without giving any reason for the rejection.

**Minimum amounts**

- 4.4 The Manager may set a minimum application amount and a minimum holding for the Project and alter those amounts at any time.

**Issue date**

- 4.5 Woodlots are taken to be issued when the Manager accepts the application.

**Uncleared funds**

- 4.6 Woodlots issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 30 days of receipt of the application.

**Procedure following issue**

- 4.7 Within 30 days of the issue of Woodlots pursuant to clause 4.5 the Manager shall notify in writing the applicant of such acceptance.
- 4.8 As soon as practicable, following the issue of Woodlots, the Manager will prepare and forward to the applicant at least 2 copies of each of:
- (a) the Land Tenancy Agreement (or, if applicable, a Pre-Lease Agreement); and
  - (b) the Forestry Management Agreement;

and the applicant will within 14 days of receipt (or such longer period as the Manager may in writing approve) lodge or cause to be lodged with the Manager each such copy signed by or on behalf of the applicant.

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**Forestry Right**

- 4.9 The Manager must use its best endeavours to create a Forestry Right (including, as required, registering that Forestry Right, or a transfer of it, under applicable legislation) in respect of the Land on which the Woodlots are located for the benefit of all Growers who have acquired Woodlots on that Land, as soon as practicable after the issue of those Woodlots. The Forestry Right may be granted to a third party as an agent or custodian for the relevant Growers.

**Pre-Lease Agreement**

- 4.10 For all Woodlots issued after 12 December 2003, if the Manager fails to grant to the Grower a Land Tenancy Agreement (and create a Forestry Rights as contemplated by clause 4.9) in respect of the Grower's Woodlots within 9 months of the issue of the Woodlots, the Manager must, within 14 days after receiving a written request from the Grower, issue to the Grower a full refund of the amount of the application monies against which the Woodlots were issued. In such circumstances, the relevant Woodlots will be taken to be void and, subject to the Corporations Act, on payment of the refund, the Manager will have no further liability to the Grower in respect of the issue of the Woodlots or otherwise.
- 4.11 Within 2 months of receipt of the documents signed by the applicant pursuant to clause 4.8, the Manager will:
- (a) Register the name of the person described in the Forestry Management Agreement as the Grower and the date of issuing the Woodlots; and
  - (b) forward to the Grower one copy of each of the Project Documents.

**Third party interests**

- 4.12 The Manager need not recognise any claim or interest in a Woodlot by any person other than the holder, even if the Manager has notice of it.
- 4.13 Except as otherwise provided in this constitution, the Manager shall recognise the Grower or the Grower's executors or administrators as the absolute owner of the Woodlots as set out in the Register and the Manager shall not except:
- (a) as otherwise provided in this constitution;
  - (b) as ordered by a Court of competent jurisdiction; or
  - (c) as required by statute,

be bound to take notice of any trust or equity (whether express implied or constructive) affecting the ownership of any Woodlot or any incidental rights and the receipt by such Grower or the Grower's executors or administrators for any moneys payable in respect of the Woodlots is be a good discharge to the Manager.

**Joint tenancy**

- 4.14 Persons Registered jointly as the holder of a Woodlot hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

**5 Payments**

- 5.1 Money payable by the Manager to a Grower may be paid in any manner the Manager decides.
- 5.2 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

**Joint Growers**

- 5.3 A payment to any one of joint Growers will discharge the Manager in respect of the payment.

**Sums owed to Manager**

- 5.4 The Manager may deduct from any amount to be paid to a Grower any money due to it by the Grower.

**Tax**

- 5.5 The Manager may deduct from any amount to be paid to a Grower, or received from a Grower, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

**6 Powers of the Manager****Powers**

- 6.1 Subject to this constitution and the Project Documents, the Manager has all the powers in respect of the Project as though it were the absolute owner of the Assets and acting in its personal capacity.

**Power of delegation<sup>5</sup>**

- 6.2 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 6.3 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 6.4 The agent or delegate may be an associate of the Manager.<sup>6</sup>

<sup>5</sup> See also Section 601FB.

<sup>6</sup> Subject to Part 5C.7

**Exercise of discretion**

- 6.5 The Manager may in its absolute discretion decide how and when to exercise its powers, except where directed by a Resolution of a majority of 75% of Growers.

**Legal Proceedings**

- 6.6 Subject to any contrary direction by a majority of the Growers, the Manager may commence, institute, carry on and prosecute all actions, suits and proceedings at law:
- (a) to procure compliance with the provisions of this constitution;
  - (b) to obtain and recover any moneys payable to it;
  - (c) to enforce the payment of any money payable to it; or
  - (d) for damages against any person arising out of any loss suffered by any Grower,

and to pursue the same to judgement, decree, order and execution or to discontinue, become non-suited in or abandon or otherwise to act as the Manager may determine and the Manager shall be indemnified out of that Grower's interest in the Project in respect of all costs, charges and expenses incurred by it in relation to any such act, suit or proceeding.

**Land Held Beneficially**

- 6.7 All Land acquired by the Manager for the purposes of the Project is held beneficially by the Manager in the course of, and in accordance with, its duties as responsible entity of the Project.

**Duties in relation to Land Tenancy Agreements**

- 6.8 The Manager must ensure that:
- (a) a Land Tenancy Agreement is not terminated other than in accordance with its terms or with the written consent of the relevant Grower; and
  - (b) a Grower's rights under a Land Tenancy Agreement are not adversely affected other than as contemplated by the terms of the Land Tenancy Agreement, as required by law or with the written consent of the relevant Grower.

**7 Rights and liabilities of Manager****Holding Woodlots**

- 7.1 The Manager and its associates may hold Woodlots in the Project in any capacity<sup>7</sup>.

<sup>7</sup> See Section 601FG, Section 253E and Part 5C.7

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**Other capacities**

- 7.2 Subject to the Corporations Act<sup>8</sup>, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as manager of the Project or in another capacity), an associate or with any Grower;
  - (b) being interested in any contract or transaction with itself (as manager of the Project or in another capacity), an associate or with any Grower or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
  - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

**Manager may rely**

- 7.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Project;
  - (b) advice, opinions, statements or information from any bankers, accountants, auditors, Consultant Foresters, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
  - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Grower of a person to act as their agent for any purpose connected with the Project; and
  - (d) any other document provided to the Manager in connection with the Project upon which it is reasonable for the Manager to rely.

The Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document, except to the extent that any loss is attributable to the Manager's own neglect or default.

- 7.4 The Manager undertakes to supply to Growers at its own expense any information in its possession or over which it has control which may be relevant to a determination of whether a particular loss is attributable to the Manager's own neglect or default.

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<sup>8</sup> Refer Part 5C.7



## **8 Limitation of liability and indemnity in favour of Manager**

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### **Limitation on Manager's liability**

- 8.1 Subject to the Corporations Act, if the Manager acts in good faith and without negligence, it is not liable in contract, tort or otherwise to Growers for any loss suffered in any way relating to the Project.
- 8.2 Subject to the Corporations Act, the liability of the Manager to any person other than a Grower in respect of the Project (including in respect of any contracts entered into as manager of the Project or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.
- 8.3 Subject to the Corporations Act, the Manager will not incur any liability to anyone in respect of performing or doing or any failure to perform or do any act or thing which by reason of any provision of:
- (a) any present or future law of the Commonwealth of Australia or any State or Territory of Australia;
  - (b) any ordinance, rule, regulation, or by-law made pursuant to such a law; or
  - (c) any decree, order or judgement of any competent Court
- the Manager is hindered, prevented or forbidden from doing or performing.

### **Indemnity in favour of Manager**

- 8.4 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Project<sup>9</sup>.
- 8.5 To the extent permitted by the Corporations Act<sup>10</sup>, the indemnity under clause 8.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 8.6 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as manager of the Project.

## **9 Liability of Growers**

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### **Liability limited**

- 9.1 Subject to this clause 9, the liability of a Grower is limited to the amount if any which remains unpaid in relation to the Grower's subscription for their Woodlots.

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<sup>9</sup> See Section 601GA(2)

<sup>10</sup> See Sections 601FB(2) and 601GA(2)

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- 9.2 A Grower need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Project unless it is obliged to do so under a separate agreement.
- 9.3 The Manager is entitled to be indemnified by a Grower to the extent that the Manager incurs any liability for Tax as a result of the Grower's action or inaction.
- 9.4 Joint Growers are jointly and severally liable in respect of all payments including payments of Tax to which clause 9.3 applies.

**Recourse**

- 9.5 In the absence of separate agreement with a Grower, the recourse of the Manager and any creditor is limited to the Assets.

**Restrictions on Growers**

- 9.6 A Grower must not interfere with any rights or powers of the Manager under this constitution.

## **10 Remuneration and expenses of the Manager**

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**Management fee**

- 10.1 The Manager is entitled to be remunerated from the Project for its services by:
- (a) the amounts payable under the Project Documents;
  - (b) a harvesting fee equal to 1% of the Gross Timber Proceeds arising from the harvesting and marketing of Trees under clause 14.1; and
  - (c) any other amounts agreed in writing with Growers.

**Waiver of fees**

- 10.2 The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.
- 10.3 The Manager is not required to effect any transaction or deal with any transfer or other instrument or with any part of the Assets or investments of the Growers for any Grower unless the Grower first pays in cash or otherwise provides to the Manager's satisfaction for all duties, taxes, governmental charges, brokerage, transfer fees, registration fees and other charges of any nature ("duties and charges") which may have become or may be payable in relation to the transaction or dealing.
- 10.4 The Manager may if it so thinks fit pay and discharge all of any of the duties and charges referred to in clause 10.3 and to retain the amount out of any moneys or property to which the Grower or representative may be or become entitled under this constitution.

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## 11 Retirement of Manager

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### Voluntary retirement

- 11.1 The Manager may retire as the responsible entity of the Project as permitted by law<sup>11</sup>.

### Compulsory retirement

- 11.2 The Manager must retire as the responsible entity of the Project when required by law<sup>12</sup>.

### New responsible entity

- 11.3 Any proposed replacement manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

### Release

- 11.4 When it retires or is removed, the Manager is released from all obligations in relation to the Project arising after the time it retires or is removed.<sup>13</sup>

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## 12 Stocking Guarantee

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- 12.1 The Manager may, in its absolute discretion, maintain or cause to be maintained, insurance in relation to a New Grower's Trees or Future Grower's Trees in accordance with Clause 13.1(a).
- 12.2 If during the Guarantee Period a New Grower's Trees or Future Grower's Trees are Materially Damaged the Manager will, at its own expense, remove the damaged or destroyed Trees, prepare the ground and acquire and plant new *pinus radiata* seedlings of a quality comparable to the original seedlings planted in accordance with the relevant Forestry Management Agreement, unless insurance has been maintained in relation to the New Grower's Trees or Future Grower's Trees in accordance with 13.1(a).

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## 13 Insurances

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- 13.1 The Manager covenants that it will:
- (a) in relation to Original Growers (and in relation to New Grower's Trees and Future Grower's Trees where the Manager has elected to maintain or cause to maintain insurance under clause 12.1) - at its expense maintain or cause to be maintained for an initial period of 10 years an insurance policy to cover the

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<sup>11</sup> See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

<sup>12</sup> See Section 601FM and 601FA.

<sup>13</sup> See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS restricts this release.

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- cost of planting new trees on the Land to replace any Trees as may be damaged or destroyed by fire; and
- (b) in relation to all Growers - during the lifetime of the Project maintain or cause to be maintained at its expense an insurance policy of public liability to the value of at least \$10,000,000 against any claim which may be made by the owner or occupier of any adjoining or neighbouring land or any other person.
- 13.2 The proceeds of any claim in respect of the damage or destruction of all or any of a Grower's Trees ("the proceeds of any claim") pursuant to the policy referred to in clause 13.1(a) will be held by the Manager in a bank account established and kept solely for that purpose, pending application of the proceeds of the claim in accordance with clause 13.3.
- 13.3 Where the Manager maintains or causes to be maintained, insurance in relation to a Grower's Trees in accordance with Clause 13.1(a), the Manager will be entitled to be paid or reimbursed for all costs, charges and expenses which may be incurred in or about the removal of the damaged or destroyed Trees, preparing the ground and acquiring and planting new Trees.
- 13.4 Upon completion of the works set out in clause 13.3, the residue (if any) will be paid to the Manager.
- 13.5 In relation to all Growers, the Manager must in good faith:
- (a) negotiate a variation of any subsisting Forestry Management Agreement relating to Trees that are damaged or destroyed to take account of any additional works and services which may be required as a result of the damage to, or destruction of, the Grower's Trees; and
- (b) negotiate an extension of the relevant Land Tenancy Agreement (and any applicable Forestry Right) to take account of the damage to, or destruction of the Grower's Trees.

## 14 Harvesting and sale of trees

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### Responsibility for harvesting

- 14.1 In respect of all Woodlots issued on or after 12 December 2003, the harvesting and sale of a Grower's Trees is to be carried out, or arranged to be carried out, by the Manager unless the Manager is otherwise notified by the Grower in accordance with the procedure set out in a New Product Disclosure Statement.

### Distribution of harvesting proceeds for Growers who engage the Manager to arrange for harvesting

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- 14.2 The total proceeds of the sale (“Gross Timber Proceeds”), from all Trees marketed and harvested by the Manager (pursuant to clause 14.1) that relate to Woodlots planted in a particular Financial Year (“Harvested Woodlots”) will be dealt with as follows:
- (a) the Harvesting Fee relating to the marketing and harvesting of the Trees (together with the amounts payable under the terms of the Project Documents) will be deducted from the Gross Timber Proceeds; and
  - (b) the balance of the Gross Timber Proceeds (“Net Timber Proceeds”) will be distributed to the Growers based on the percentage that their Harvested Woodlots in respect of a Financial Year bear to the total number of all Harvested Woodlots for that Financial Year.

## **15 Transfer and transmission of Hectares and Woodlots**

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### **Transfer of Hectares and Woodlots**

- 15.1 All or part of a Grower's interest in the Project may be transferred provided such transfer is of an entire Hectare or Woodlot (including the relevant Land Tenancy Agreement (or, if applicable, the relevant Pre-Lease Agreement), Forestry Management Agreement, if still subsisting).
- 15.2 All transfers of Hectares and Woodlots shall be effected by transfer in writing (“Instrument of Transfer”) in a form which the Manager approves and every Instrument of Transfer shall be delivered to the Manager, together with:
- (a) the Grower's part of the Forestry Management Agreement relating to the Hectare or Woodlot to be transferred (if applicable);
  - (b) the Grower's part of the Land Tenancy Agreement (or, if applicable, Pre-Lease Agreement) of the Hectare or Woodlot to be transferred;
  - (c) if there is any amount payable under the Forestry Management Agreement, a duly executed assignment of the Forestry Management Agreement (in a form acceptable to the Manager);
  - (d) a duly executed and stamped assignment of the Land Tenancy Agreement or Pre-Lease Agreement (in a form acceptable to the Manager);
  - (e) if required, a duly executed and stamped transfer or assignment of the Grower's interest in any Forestry Right relating to the relevant Hectare or Woodlot; and

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- (f) payment in full of any taxes, duties, lodging fees and any other statutory charges or fees payable in order to fully effect the transfer of the Grower's interest in the Hectare or Woodlot to the transferee.
- 15.3 The Manager may refuse to Register any transfer of a Hectare or Woodlot while there is any money due but unpaid under the terms of any relevant Project Document.
- 15.4 Subject to clause 15.3, the Manager shall within 21 days of receipt by the Manager of the documents and moneys referred to in clause 15.2:
- (a) advise the Grower and the proposed transferee that the Manager has approved of the proposed transferee; and
  - (b) Register the name of the transferee in respect of that Hectare or Woodlot.

### **Project Documents**

- 15.5 Within 1 month after entry of the name of the transferee in the Register the Manager shall deliver to the transferee:
- (a) the Grower's part of the relevant Forestry Management Agreement (if applicable);
  - (b) the transferee's part of the relevant Instrument of Transfer executed by the transferee;
  - (c) the Grower's part of the relevant Land Tenancy Agreement (or, if applicable, the Pre-Lease Agreement); and
  - (d) the transferee's part of the assignment of the Forestry Management Agreement referred to in clause 15.2(c) (if applicable);
  - (e) the transferee's part of the assignment of Land Tenancy Agreement or Pre-Lease Agreement referred to in clause 15.2(d); and
  - (f) the transferee's part of the transfer or assignment of the interest in a Forestry Right referred to in clause 15.2(e) (if applicable).
- 15.6 Within 1 month after entry of the name of the transferee in the Register the Manager shall deliver to the transferor:
- (a) the transferor's part of the relevant Instrument of Transfer;
  - (b) the transferor's part of the assignment of the Forestry Management Agreement (if applicable);
  - (c) the transferor's part of the assignment of Land Tenancy Agreement or Pre-Lease Agreement; and

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(d) the transferor's part of the transfer or assignment of the interest in a Forestry Right (if applicable).

- 15.7 The Manager shall on behalf of and as duly appointed agent and attorney of and at the cost of the transferee lodge with any governmental or other statutory authority all such documents as are necessary to fully effect the transfer of the Hectare or Woodlot to the transferee.
- 15.8 The transferor of a Hectare or Woodlot shall be deemed to remain the owner until the name of the transferee is Registered in respect of that Hectare or Woodlot.

**Death, legal disability of a Grower**

- 15.9 In case of the death of a Grower the survivor or survivors of the deceased Grower where that person was a joint holder or the executors or administrators of the deceased Grower where that person was a sole holder shall be the only persons recognised by the Manager as having any title to the interest of the Grower in the Project.
- 15.10 Any person becoming entitled to a Hectare or Woodlot in consequence of the death, liquidation or bankruptcy of a Grower may upon such evidence being produced as may from time to time be required by the Manager and subject to this constitution elect either to be Registered as the Grower or to have some person nominated by that person Registered as the transferee.
- 15.11 If the person so becoming entitled elects to be Registered that person must deliver or send to the Manager a notice in the form prescribed by the Manager confirming the election.
- 15.12 If the person so becoming entitled elects to have a nominee Registered, the person and the nominee shall confirm the election by delivering or sending to the Manager a notice in the form prescribed by the Manager stating that they so elect.
- 15.13 All the provisions of this constitution relating to the Registration of transfers of Hectares or Woodlots are applicable to any notice under clause 15.9 or 15.10 as if the death or bankruptcy of the Grower had not occurred and the notice was an Instrument of Transfer executed by such Grower.
- 15.14 A person becoming entitled to any Hectare or Woodlot in consequence of the death, bankruptcy or liquidation of a Grower shall be entitled to receive and may give a discharge for all moneys payable in respect of the Grower's interest in the Project but shall not be entitled to receive notices of or attend or vote at any meetings of Growers until being Registered.
- 15.15 Subject to the provisions of any applicable stamp duty legislation and clauses 4.12 and 4.13, any persons becoming entitled to any Hectare or Woodlot in consequence of the death, bankruptcy or liquidation of any Grower or any person becoming entitled in equity to any Hectare or

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Woodlot in consequence of any change of trusteeship in respect of any Hectare or Woodlot , upon producing evidence of entitlement as required under this clause as the Manager may think fit may:

- (a) be Registered as a Grower in respect of such Hectare or Woodlot; or
- (b) may subject to the provisions of this constitution regarding transfers, transfer such Hectare or Woodlot.

## **16 Meetings of Growers**

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### **Corporations Act**

- 16.1 The Manager may at any time convene a meeting of Growers, and must do so if required by the Corporations Act.<sup>14</sup>

### **Manager may determine**

- 16.2 Subject to this clause 16 and the Corporations Act<sup>15</sup>, the Manager may determine the time and place at which a meeting of Growers will be convened and the manner in which the meeting will be conducted.

### **Quorum**

- 16.3 The quorum for a meeting of Growers is at least 5 Growers present in person or by proxy together, unless the Project has less than 5 Growers who may vote on a Resolution, in which case the total number of Growers constitutes a quorum.

### **No quorum**

- 16.4 If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Growers - dissolved; or
  - (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Growers present in person or by proxy constitute a quorum.

### **Chairperson**

- 16.5 Subject to the Corporations Act<sup>16</sup> the Manager may appoint a person to chair a meeting of Growers.
- 16.6 The decision of the chairperson on any matter relating to the conduct of the meeting is final.

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<sup>14</sup> Refer Part 2G.4

<sup>15</sup> Refer Part 2G.4

<sup>16</sup> Refer Part 2G.4 and Section 601FC(1)



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## Adjournment

- 16.7 The chairperson has power to adjourn a meeting for any reason to such place and time as the chairperson thinks fit.

## Resolutions binding

- 16.8 A Resolution binds all Growers, whether or not they were present at the meeting.
- 16.9 No objection may be made to any vote cast unless the objection is made at the meeting.

## 17 Period of the project

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### Commencement

- 17.1 The Project commences when the first Woodlots are issued.

### Termination

- 17.2 The Project terminates on the earliest of:
- (a) the 80th anniversary of the day before the Project commenced;
  - (b) where there are no contractual obligations to be fulfilled or performed by the Manager under any Project Document, the date specified by the Manager as the date of termination of the Project in a notice given to Growers, such date being at least 3 months after the notice is given; and
  - (c) the date on which the Project terminates in accordance with another provision of this constitution or by law<sup>17</sup>.

## 18 Procedure on termination

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### Realisation of Assets

- 18.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

### Audit of winding up

- 18.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Project by a registered company auditor.

### Retention for claims

- 18.3 The Manager is entitled to retain out of any moneys in its hands full provision for and to pay out of it all costs, charges, expenses, liabilities (whether actual, prospective or contingent), claims and demands incurred, made or apprehended by the Manager in connection with the Project or arising out of the termination of the Project, including the

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<sup>17</sup> See Part 5C.9 on winding up

fees of any agents, solicitors, bankers, valuers, accountants or other persons (including the Manager) whom the Manager employs in connection with the winding up of the Project, and is entitled out of the moneys so retained to be indemnified against any of those costs, and charges, expenses, liabilities, claims and demands.

### **Distribution**

- 18.4 On the termination of the Project the Manager may, subject to any right of indemnity, distribute the whole or any part or parts of the Assets held by the Manager to the Growers in kind and may for that purpose set any value which the Manager considers fair on any property to be so distributed.
- 18.5 The Manager must on completion of any realisation of Assets, distribute the net proceeds of realisation and all other property forming part of that Project that is to be distributed in kind, to the Growers in proportion to their respective holdings of Woodlots at the time of termination of the Project.
- 18.6 If after distribution there remains in the hands of the Manager any money resulting from rounding down those payments to the next whole cent, that money accrues to the Manager.
- 18.7 The Manager is only obliged to make distributions against delivery of any receipt and discharge which it reasonably requires.
- 18.8 No further Woodlots in the Project may be issued under this constitution if:
- (a) notice to terminate the Project is given by the Manager; or
  - (b) at a meeting of Growers of the Project convened in accordance with this constitution a resolution is passed in accordance with section 1074 of the Corporations Act that the Project be wound up and the court has not made an order which does not confirm the resolution.

## **19 Notices to Growers**

- 19.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Grower must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Grower at the Grower's physical or electronic address last advised to the Manager for delivery of notices.
- 19.2 A cheque payable to a Grower may be posted to the Grower's physical address or handed to the Grower or a person authorised in writing by the Grower<sup>18</sup>.

<sup>18</sup> See Clause 7.3(c)

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- 19.3 In the case of joint Growers, the physical or electronic address of the Grower means the physical or electronic address of the Grower first named in the Register.
- 19.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law<sup>19</sup>, the Manager may determine<sup>20</sup> the time at which other forms of communication will be taken to be received.

## 20 Notices to the Manager

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- 20.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 20.2 The notice is effective only at the time of receipt.
- 20.3 The notice must bear the actual, facsimile or electronic signature of the Grower or a duly authorised officer or representative of the Grower<sup>21</sup> unless the Manager dispenses with this requirement.

## 21 Amendments to this constitution

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### Manager may amend

- 21.1 Subject to the Corporations Act<sup>22</sup>, the Manager may by deed amend this constitution.

### Statutory requirements

- 21.2 If the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC or any condition of the Manager's AFSL requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 21.1 does not apply to provisions deemed by this clause 21.2 to be incorporated in the constitution.

## 22 Compliance committee

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If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled

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<sup>19</sup> See Section 601FC(1)(d)

<sup>20</sup> See Section 252G(4)

<sup>21</sup> See Clause 7.3(c)

<sup>22</sup> See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act<sup>23</sup>.

## 23 Complaints

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- 23.1 If a Grower submits to the Manager a written complaint alleging that the Grower has been adversely affected by the Manager's conduct in its management or administration of the Project, the Manager :
- (a) must acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
  - (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
  - (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
  - (d) may in its discretion give any of the following remedies to the complainant:
    - (i) information and explanation regarding the circumstances giving rise to the complaint;
    - (ii) an apology; or
    - (iii) compensation for loss incurred by the Grower as a direct result of the breach (if any); and
  - (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
    - (i) its determination;
    - (ii) the remedies (if any) available to the Grower; and
    - (iii) information regarding any further avenue for complaint.
- 23.2 If any of the matters set out in clause 23.1 cease to be required by the Corporations Act or ASIC policy, the Manager will ensure that it has in place an adequate system to deal with Grower complaints.

## 24 Inspection of constitution

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A copy of this constitution shall at all times during usual business be made available by the Manager at its registered office in Melbourne

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<sup>23</sup> See section 601JF

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for the inspection of Growers who shall be entitled to receive from the Manager a copy of this constitution and all supplemental deeds (if any) on payment to the Manager of the sum of \$20.00 or such other reasonable sum as the Manager may from time to time prescribe.

## 25 Future maintenance account

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- 25.1 The Manager may establish a Future Maintenance Account and may invest any amount forming part of the Future Maintenance Account as it thinks fit.
- 25.2 The Manager must pay into the Future Maintenance Account the annual Maintenance Deposit Amount in respect of a Woodlot within 2 months of each anniversary of the issue of the Woodlot until and including the tenth anniversary of the issue of that Woodlot.
- 25.3 In respect of a Woodlot that has been on issue for more than 10 years the Manager may withdraw the Maintenance Withdrawal Amount from the Future Maintenance Account within 2 months of each anniversary of the issue of that Woodlot from the eleventh anniversary until the earlier of:
- (a) termination of the Project.
  - (b) harvesting of trees being completed in respect of the Woodlot; or
  - (c) the twenty-fifth anniversary of the issue of the Woodlot.
- 25.4 Any amount remaining in the Future Maintenance Account in respect of a Woodlot on:
- (a) termination of the Project;
  - (b) harvesting of trees being completed in respect of the Woodlot, or
  - (c) the twenty-fifth anniversary of the issue of the Woodlot.
- will accrue to the Manager.

## 26 Interpretation

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### Definitions

- 26.1 In the interpretation of this constitution, wherever the context shall permit:
- AFSL:** means an Australian financial services licence issued under Part 7.6 of the Corporations Act.
- ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

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**Assets:** all the property, rights and income of the Project, but not application money or property in respect of which Woodlots have not yet been issued.

**Business Day:** a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Project.

**Consultant Forester:** any person appointed by the Manager to make recommendations and reports to the Manager in respect of the Plantation and the works required to be undertaken on the Land.

**Corporations Act:** Corporations Act 2001 (Cth).

**Financial Year:**

- (a) for the last financial year, the period from 1 July before the date the Project terminates to the date of distribution on winding up of the Project; and
- (b) in all other circumstances, the 12 month period ending on 30 June in each year.

**Forestry Management Agreement:** a contract for the establishment, development and maintenance of a Grower's Trees in the form for the time being specified by the Manager.

**Forestry Right:** is an interest in the land granted by the owner of the land, or any other person entitled to grant such an interest in the land, under which the person who has the benefit of the interest is generally, among other things, entitled to enter the land to establish, maintain and harvest a crop of trees on the land. It includes (without limitation) a forestry right within the meaning of section 87A of the Conveyancing Act 1919 (NSW).

**Future Grower:** a person who is registered as the holder of Woodlot(s), pursuant to an application made under a Future Product Disclosure Statement.

**Future Maintenance Account:** any account established and administered by the Manager in accordance with clause 25.

**Future Product Disclosure Statement:** a product disclosure statement or other disclosure document in relation to the Project that:

- (a) is not an Original Prospectus or New Product Disclosure Statement; and
- (b) which is first issued in or after February 2005.

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**Grower:** the person Registered as the holder of a Woodlot, and includes persons jointly or to be deemed jointly so Registered. For the avoidance of doubt and except where the contrary intention is shown, Grower includes an Original Grower, a New Grower as well as a Future Grower.

**Guarantee Period:** in relation to a Woodlot is for:

- (a) New Growers: the period 5 years, from the date a New Grower is registered as a holder of the Woodlot; and
- (b) Future Growers: the period disclosed as the guarantee period in the Future Product Disclosure Statement under which the Woodlot is issued.

**Harvesting Fee:** means the fee charged under clause 10.1(b)

**Hectare:** an interest in one hectare of the Land and all improvements to that Land pursuant to a Project Document (and any applicable Forestry Right) or 2 Woodlots, except where the contrary intention is shown.

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

**Land Tenancy Agreement:** an agreement or other instrument under which the Manager grants to the Grower a right to enter, occupy and use Land which may include a Lease Agreement or Licence.

**Lease Agreement:** a lease or sub-lease in the form for the time being specified by the Manager.

**Liabilities:** all present liabilities of the Project including any provision which the Manager decides should be taken into account in determining the liabilities of the Project.

**Licence:** a licence, sub-licence or sub-licence in the form for the time being specified by the Manager.

**Maintenance Deposit Amount:** in respect of a Woodlot the amount as is nominated by the Manager in the product disclosure statement or other disclosure document under which the Woodlot is issued.

**Maintenance Withdrawal Amount:** in a respect of a Woodlot the total amount in the Future Maintenance Account attributable to that Woodlot divided by 15.

**Manager:** the company which is registered with the ASIC as the single responsible entity for the Project under the Corporations Act.

**Materially Damaged:** destroyed or damaged, other than by:

- (a) acts of terrorism, war, hostilities or rebellion;

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- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or waste, the combustion of nuclear fuel or nuclear weapons material; and
  - (c) any other cause of damage specified for this purpose in a New Product Disclosure Statement,

so that, in the reasonable opinion of an independent forester appointed by the Manager, there is a materially adverse impact on the value or long term viability of the relevant Trees.

**New Grower:** a person who is Registered as the holder of a Woodlot(s), pursuant to an application made under a New Product Disclosure Statement.

**New Product Disclosure Statement:** a prospectus, product disclosure statement or other disclosure document in relation to the Project that is not an Original Prospectus and which is first issued before January 2005.

**Original Grower:** a person who is Registered as the holder of a Woodlot(s), issued pursuant to an application made under an Original Prospectus. For the avoidance of doubt, a person is not an Original Grower for the purposes of Woodlots issued pursuant to a New Product Disclosure Statement.

**Original Prospectus:** A prospectus in relation to the Project, issued by the Manager on or before 16 November 2001 and any amendment or replacement of such prospectus.

**Plantation:** that part of the Land as is planted with Trees, together with such of the Land as is required for the purposes of access and firebreaks.

**Pre-Lease Agreement:** an agreement entered into between the Grower and the Manager (where the Manager considers that it is not immediately in a position to grant a Land Tenancy Agreement) under which the Manager is obliged to take all reasonable steps to grant the Grower a Lease in respect of their Woodlots within 9 months of their application for the Project being accepted by Willmott.

**Project:** the project established pursuant to this constitution and includes all the Assets and Liabilities of the Project.

**Project Document:** the current Land Tenancy Agreement (and/or, if applicable, a Pre-Lease Agreement) and Forestry Management Agreement executed by a Grower and the Manager.

**Register:** the register of Growers kept by the Manager under the Corporations Act.

**Registered:** recorded in the Register.



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**Registration:** recording in the Register.

**Resolution:**

- (a) a resolution passed at a meeting of Growers:
  - (i) on a show of hands, by the required majority of Growers present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Growers present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Growers holding the required majority of the Woodlots.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority<sup>24</sup>.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate.

**Trees:** pinus radiata trees.

**Woodlot:** an interest in half a hectare of the Land and all the improvements to the Land pursuant to the Project Documents and any relevant Forestry Right.

26.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;

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<sup>24</sup> Circumstances where an special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)), winding up by Growers, and choosing a new responsible entity.

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- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
  - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
  - (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively; and
  - (i) for the avoidance of doubt and except where the contrary intention is shown, Growers who were issued Hectares before 17 August 2000 will be taken, for the purposes of interpreting this constitution, to hold 2 Woodlots for each Hectare issued to them.

#### **Other documents**

- 26.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

#### **Constitution legally binding<sup>25</sup>**

- 26.4 This constitution binds the Manager and each present and future Grower and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

#### **Governing law**

- 26.5 This constitution is governed by the law of Victoria.

#### **Other obligations excluded**

- 26.6 Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as manager of the Project arising under any statute.

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