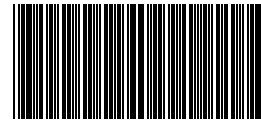




Filed: 24 August 2018 12:07 PM



D0001186L6

### Commercial List Response

#### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00076580

#### TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd
Second Plaintiff	Geoffry Underwood
First Defendant	Gunns Plantations Limited (in Liquidation)
Second Defendant	Gunns Limited (in Liquidation)(Receivers & managers Appointed)
Number of Defendants	11

#### FILING DETAILS

Filed for	Wayne Leonard Chapman, Defendant 3
Legal representative	Michael Barrett
Legal representative reference	
Telephone	0412271916

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Response (GPL - Amended Commercial List Response (Chapman) 24.08.18.pdf)

[attach.]

Form 19 (version 2)  
UCPR 21.10

## **AMENDED COMMERCIAL LIST RESPONSE OF THE THIRD DEFENDANT**

### **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/76580

### **TITLE OF PROCEEDINGS**

First Plaintiff	<b>Giabal Pty Ltd</b> ACN 009 863 807
Second Plaintiff	<b>Geoffry Edward Underwood</b>
First Defendant	<b>Gunns Plantations Ltd (in Liquidation)</b> ACN 091 232 209
Number of defendants (if more than two)	<b>11</b>

### **PREPARATION DETAILS**

Prepared for	<b>Wayne Leonard Chapman, the Third Defendant</b>
Legal representative	Michael Barrett Thomson Geer
Legal representative reference	MB:4125531
Contact name and telephone	Michael Barrett Tel: 08 8236 1130
Contact email	mbarrett@tglaw.com.au

### **A NATURE OF DISPUTE**

- 1 The Third Defendant agrees with the general description of the nature of the dispute.
- 2 To the extent that the dispute concerns allegations made by the Plaintiffs against the Third Defendant, the Third Defendant disputes the Plaintiffs' allegations in the Commercial List Statement (**CLS**) as more fully set out below in the Third Defendant's response to the Plaintiff's contentions.

**B ISSUES LIKELY TO ARISE**

- 1 The Third Defendant agrees that the issues identified by the Plaintiffs are likely to arise in the proceeding.
- 2 In addition, the Third Defendant considers the following issues are likely to arise:
  - 2.1 Whether the proceeding is statute barred as not having been commenced within the time prescribed by sections 1317K and 1325(4) of the *Corporations Act 2001* (Cth), section 24(2) of the *Limitation Act 1974* (TAS), section 48 of the *Limitation Act 1969* (NSW), section 21 of the *Limitation of Actions Act 1958* (VIC), sections 31 and 32 of the *Limitation of Actions Act 1936* (SA), section 27 of the *Limitation Act 2005* (WA), section 27 of the *Limitation of Actions Act 1974* (QLD), section 11 of the *Limitation Act 1985* (ACT) or section 33 of the *Limitation Act 1981* (NT);
  - 2.2 Whether the duties alleged by the Plaintiffs to be owed by the Third Defendant or any of the Third, Fourth, Fifth, Sixth, Seventh and Eighth Defendants (hereinafter the Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Defendant are referred to as **the GPL Directors**) were, in fact, owed to the Plaintiffs;
  - 2.3 Whether the claim against the Third Defendant is an apportionable claim within the meaning of section 43A(1) of the *Civil Liability Act 2002* (TAS) or further or alternatively section 34(1) of the *Civil Liability Act 2002* (NSW).

**C DEFENDANT'S RESPONSES TO PLAINTIFFS' CONTENTIONS****C1 THE DEFENDANTS****GPL**

- 1 The Third Defendant admits the matters alleged in paragraph 1 of the Plaintiffs' Contentions.

**Gunns Ltd**

- 2 The Third Defendant admits the matters alleged in paragraph 2 of the Plaintiffs' Contentions.
- 3 The Third Defendant admits the allegations in paragraph 3 of the Plaintiffs' Contentions.

**Directors and Officers of Gunns Ltd and GPL**

- 4 The Third Defendant admits that he was the company secretary of Gunns Plantations Limited (**GPL**) from 21 February 2000 to 11 August 2010 (**Relevant Period**).
- 5 The Third Defendant does not admit the matters alleged in paragraph 5 of the Plaintiffs' Contentions as no allegation is made against him.
- 6 The Third Defendant does not admit the matters alleged in paragraph 6 of the Plaintiffs' Contentions as no allegation is made against him.
- 7 The Third Defendant does not admit the matters alleged in paragraph 7 of the Plaintiffs' Contentions as no allegation is made against him.
- 8 The Third Defendant does not admit the matters alleged in paragraph 8 of the Plaintiffs' Contentions as no allegation is made against him.
- 9 The Third Defendant does not admit the matters alleged in paragraph 9 of the Plaintiffs' Contentions as no allegation is made against him.
- 10 The Third Defendant does not admit the matters alleged in paragraph 10 of the Plaintiffs' Contentions as no allegation is made against him.

- 11 The Third Defendant does not admit the matters alleged in paragraph 11 of the Plaintiffs' Contentions as no allegation is made against him.

## **KPMG**

- 12 The Third Defendant does not admit the matters alleged in paragraph 12 of the Plaintiffs' Contentions as no allegation is made against him.
- 13 The Third Defendant does not admit the matters alleged in paragraph 13 of the Plaintiffs' Contentions as no allegation is made against him.

## **C.2 OPERATION OF THE GUNNS WOODLOT SCHEMES**

### **Background of Woodlot Schemes**

- 14 The Third Defendant admits the matters alleged in paragraph 14 of the Plaintiffs' Contentions insofar as the particular Gunns Woodlot Schemes were established or operated during the Relevant Period.
- 15 The Third Defendant admits the matters alleged in paragraph 15 of the Plaintiffs' Contentions insofar as the particular Gunns Woodlot Schemes were established or operated during the Relevant Period.
- 16 The Third Defendant admits the matters alleged in paragraph 16 of the Plaintiffs' Contentions.
- 17 As to the matters alleged in paragraph 17 of the Plaintiffs' Contentions, the Third Defendant:
- 17.1 admits that during the Relevant Period the Gunns Woodlot Scheme in a particular year was governed by the relevant:
- (a) Product Disclosure Statement or, in respect of the 2002 Gunns Woodlot Scheme, Prospectus;
  - (b) Constitution;
  - (c) Management Agreement;
  - (d) Maintenance Services Sub-contracting Agreement;
  - (e) Forestry Right Deed;

(f) Forestry Right Lease Deed; and

(g) Compliance Plan (together, **Scheme Documents**);

17.2 otherwise does not admit the allegations contained therein.

18 As to the matters alleged in paragraph 18 of the Plaintiffs' Contentions, the Third Defendant:

18.1 does not admit the matters alleged in paragraph 18.1; and

18.2 admits the matters alleged in paragraphs 18.2 and 18.3.

19 As to the matters alleged in paragraph 19 of the Plaintiffs' Contentions, the Third Defendant:

19.1 admits the establishment of the Gunns Woodlot Schemes established or operated during the Relevant Period on the basis alleged in paragraph 19 of the Plaintiffs' Contentions;

19.2 denies that the terms and conditions on which interests in the Gunns Woodlot Schemes were offered is confined to the matters alleged in paragraph 19.

20 As to the matters alleged in paragraph 20 of the Plaintiffs' Contentions, the Third Defendant:

20.1 admits that Gunns Ltd owned some of the land on which plantations the subject of the Gunns Woodlot Schemes were located;

20.2 otherwise does not admit the matters alleged in paragraph 20 of the Plaintiffs' Contentions.

21 As to the matters alleged in paragraph 21 of the Plaintiffs' Contentions, the Third Defendant:

21.1 admits the matters alleged in paragraph 21 of the Plaintiffs' Contentions to the extent that the matters alleged relate to the Gunns Woodlot Schemes established or operated during the Relevant Period;

21.2 otherwise does not admit the matters alleged in paragraph 21 of the Plaintiffs' Contentions.

22 As to the matters alleged in paragraph 22 of the Plaintiffs' Contentions, the Third Defendant:

22.1 in respect of the 2002 Gunns Woodlot Scheme, admits that by clause 6.1 of the Forestry Right Deed, GPL was required to pay the Forestry Right Fee to the Landowner in arrears on the Payment Dates;

22.2 in respect of the 2003 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 6.1 of the Forestry Right Deed, GPL was required to pay the Forestry Right Fee for each year of the Term quarterly in arrears on each of the Payment Dates;

22.3 otherwise does not admit the matters alleged in paragraph 22 of the Plaintiffs' Contentions.

23 As to the matters alleged in paragraph 23 of the Plaintiffs' Contentions, the Third Defendant:

23.1 in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme and 2006 Gunns Woodlot Scheme:

(a) admits that by clause 3.1 of the Forestry Right Deed, the Landowner granted to GPL the following rights in relation to the Land, for the Term:

(i) the right to carry out the Permitted Activities;

(ii) all right, title and interest in the Trees; and

(iii) all right title and interest in the Carbon Rights;

(b) admits that by clause 3.2 of the Forestry Right Deed, the Landowner granted to GPL, for the Term, the right to access the Land for the purpose of carrying out the Permitted Activities;

23.2 in respect of the 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:

(a) admits that by clause 3.1 of the Forestry Right Deed, Gunns granted to GPL the following rights in relation to the Land, for the Term:

(i) the right to carry out the Permitted Activities;

(ii) all right, title and interest in the Trees; and

(iii) all right title and interest in the Carbon Rights;

(b) admits that by clause 3.2 of the Forestry Right Deed, Gunns granted to GPL, for the Term, the right to access the Land for the purpose of carrying out the Permitted Activities;

23.3 otherwise does not admit the matters alleged in paragraph 23 of the Plaintiffs' Contentions.

24 As to the matters alleged in paragraph 24 of the Plaintiffs' Contentions, the Third Defendant:

24.1 in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 11.1 of the Forestry Right Deed, a party may terminate the deed if the other party breaches a provision of the deed, and that breach is unremedied for 60 days from the date that the party gives the other party written notice of the breach;

24.2 otherwise does not admit the matters alleged in paragraph 24 of the Plaintiffs' Contentions.

25 As to the matters alleged in paragraph 25 of the Plaintiffs' Contentions, the Third Defendant:

25.1 in respect of the 2002 Gunns Woodlot Scheme and 2003 Gunns Woodlot Scheme, admits that by clause 9.2 of the Forestry Right Deed, GPL may licence or lease some or all of the rights granted to it under the deed to a third party;

25.2 in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 9.2



of the Forestry Right Deed, GPL may licence or grant some or all of the rights granted to it under the deed to a third party;

25.3 otherwise does not admit the matters alleged in paragraph 25 of the Plaintiffs' Contentions.

26 As to the matters alleged in paragraph 26 of the Plaintiffs' Contentions, the Third Defendant:

26.1 in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, admits that by clause 3 of the Forestry Right Lease Deed, the Lessor grants to the Grower and the Grower takes from the Lessor a grant of the Forestry Right for the Term;

26.2 in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 3 of the Sub-Forestry Right Deed, the Grantor granted to the Grower and the Grower takes from the Grantor a grant of the Forestry Right for the Term;

26.3 otherwise does not admit the matters alleged in paragraph 26 of the Plaintiffs' Contentions.

27 As to the matters alleged in paragraph 27 of the Plaintiffs' Contentions, the Third Defendant:

27.1 in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, admits that by clause 5.3 of the Forestry Right Lease Deed, the deed will end automatically if the Forestry Right Deed ends for any reason;

27.2 in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 5.3 of the Sub-Forestry Right Deed, the deed will end automatically if the Forestry Right Deed ends for any reason;

27.3 otherwise does not admit the matters alleged in paragraph 27 of the Plaintiffs' Contentions.

28 As to the matters alleged in paragraph 28 of the Plaintiffs' Contentions, the Third Defendant:

28.1 in respect of the 2002 Gunns Woodlot Scheme:

- (a) admits that by clause 4.1 of the Management Agreement:
  - (i) the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) all ploughing and cultivation required for the purposes of planting the Seedlings; and
    - (B) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;
- (b) admits that by clause 4.2 of the Management Agreement, the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;
- (c) admits that by clause 5 of the Management Agreement, the Manager must:
  - (i) do all things necessary to rear the Trees and maintain the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) the replanting of any Trees on a Grower's Woodlot which die for any cause during the first 2 years after the Commencement Date to 90% of the average initial planting density per Woodlot;
    - (B) the general maintenance of the Grower's Woodlots including control of vegetation and pests which may inhibit the growth of the Trees, including the spraying of herbicides or insecticides;

- (C) the maintenance in good condition and repair of all fire breaks and access roads in and around the Grower's Woodlots; and
- (D) the application of fertiliser to the Grower's Woodlots in such form and in such quantity as is necessary, in the reasonable opinion of the Manager, to maintain satisfactory growth rates;
- (ii) provide advice and assistance to the Grower generally in relation to management of the Grower's Woodlots;
- (iii) procure a written report in relation to the progress of growth of the Trees and the status of the Grower's Woodlots from the Independent Forester by 31 October in each year of the Project; and
- (iv) provide a copy of the report prepared by the Independent Forester in accordance with clause 5(c) of the Management Agreement to the Grower within 30 days of the Manager receiving the report;

28.2 in respect of the 2003 Gunns Woodlot Scheme:

- (a) admits that by clause 4.1 of the Management Agreement:
  - (i) from the commencement of the Term under the Forestry Right Deed, the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) all ploughing and cultivation required for the purposes of planting the Seedlings; and
    - (B) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;
- (b) admits that by clause 4.2 of the Management Agreement, the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;

- (c) admits that by clause 5 of the Management Agreement, the Manager must:
- (i) do all things necessary to rear the Trees and maintain the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) the replanting of:
      - (I) any Trees on a Grower's Woodlot which die for any cause during the first 2 years after the Commencement Date to 90% of the average initial planting density of the Developed Area;
      - (II) any discreet area, of one hectare or greater in size within a Developed Area, during the first 2 years after the Commencement Date, that has less than 50% of the average initial planting density to its initial planting density;
    - (B) the general maintenance of the Grower's Woodlots including control of vegetation and pests which may inhibit the growth of the Trees, including the spraying of herbicides or insecticides;
    - (C) the maintenance in good condition and repair of all fire breaks and access roads in and around the Grower's Woodlots; and
    - (D) the application of fertiliser to the Grower's Woodlots in such form and in such quantity as is necessary, in the reasonable opinion of the Manager, to maintain satisfactory growth rates;
  - (ii) provide advice and assistance to the Grower generally in relation to management of the Grower's Woodlots;

- (iii) procure a written report in relation to the progress of growth of the Trees and the status of the Grower's Woodlots from the Independent Forester by 31 October in each year of the Project; and
- (iv) provide a copy of the report prepared by the Independent Forester in accordance with clause 5(c) of the Management Agreement to the Grower within 30 days of the Manager receiving the report;

28.3 in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:

- (a) admits that by clause 4 of the Management Agreement:
  - (i) from the commencement of the Term under the Forestry Right Deed, the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) all ploughing and cultivation required for the purposes of planting the Seedlings; and
    - (B) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;
  - (ii) the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;
- (b) admits that by clause 5 of the Management Agreement, from the commencement of the Sub-Forestry Right Deed, the Manager must:
  - (i) do all things necessary to rear the Trees and maintain the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (A) the replanting of:

- (I) any Trees on a Grower's Woodlot which die for any cause during the first 2 years after the Commencement Date to 90% of the average initial planting density of the Developed Area;
  - (II) in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme and 2006 Gunns Woodlot Scheme, any discrete area, of one hectare or greater in size within a Developed Area, during the first 2 years after the Commencement Date, that has less than 50% of the average initial planting density to its initial planting density;
  - (III) in respect of the 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, any area, of one hectare or greater in size within a Developed Area, during the first 2 years after the Commencement Date, that has less than 50% of the average initial planting density to its initial planting density;
- (B) the general maintenance of the Grower's Woodlots including control of vegetation and pests which may inhibit the growth of the Trees, including the spraying of herbicides or insecticides;
  - (C) the maintenance in good condition and repair of all fire breaks and access roads in and around the Grower's Woodlots; and
  - (D) the application of fertiliser to the Grower's Woodlots in such form and in such quantity as is necessary, in the reasonable opinion of the Manager, to maintain satisfactory growth rates

- (ii) provide advice and assistance to the Grower generally in relation to management of the Grower's Woodlots;
- (iii) procure a written report in relation to the progress of growth of the Trees and the status of the Grower's Woodlots from the Independent Forester by 31 October in each year of the Project from Year 2; and
- (iv) provide a copy of the report prepared by the Independent Forester in accordance with clause 5(c) of the Management Agreement to the Grower within 30 days of the Manager receiving the report;

28.4 otherwise does not admit the matters alleged in paragraph 28 of the Plaintiffs' Contentions.

29 As to the matters alleged in paragraph 29 of the Plaintiffs' Contentions, the Third Defendant:

29.1 repeats paragraphs 28.1, 28.2 and 28.3 of this Commercial List Response;

29.2 otherwise does not admit the matters alleged in paragraph 29 of the Plaintiffs' Contentions.

30 As to the matters alleged in paragraph 30 of the Plaintiffs' Contentions, the Third Defendant:

30.1 in respect of the 2002 Gunns Woodlot Scheme, admits that by clause 4 of the Management Agreement:

- (a) the Manager must use its best endeavours to complete the Establishment Services by 30 June in the year the application was made;
- (b) for applications made before 30 June 2002, the Manager must use its best endeavours to complete the Planting Services before 30 June 2003;

- (c) for applications made after 30 June 2002, the Manager must use its best endeavours to complete the Planting Services before 30 June 2004;

30.2 in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Schemes, admits that by clause 4 of the Management Agreement, the Manager must use its best endeavours to complete the Establishment Services before the earlier of:

- (a) 12 months following the date on which:
  - (i) the Establishment Fee is paid; or
  - (ii) the Manager is first permitted under the Forestry Right Deed (in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme) or Sub-Forestry Right Deed (in respect of the 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Schemes) to access the land for the purpose of commencing to carry out the Establishment Services;

whichever is later; and

- (b) 30 June of the financial year immediately following the financial year in which the Establishment Fee is paid;

30.3 in respect of the 2009 Gunns Woodlot Scheme, admits that by clause 4 of the Management Agreement, the Manager must use its best endeavours to complete the Establishment Services within 18 months of the end of the financial year in which the Establishment Fee is paid;

30.4 otherwise denies the matters alleged in paragraph 30 of the Plaintiffs' Contentions.

31 As to the matters alleged in paragraph 31 of the Plaintiffs' Contentions, the Third Defendant:

31.1 repeats paragraph 30 of this Commercial List Response;



31.2 otherwise denies the matters alleged in paragraph 31 of the Plaintiffs' Contentions.

32 As to the matters alleged in paragraph 32 of the Plaintiffs' Contentions, the Third Defendant:

32.1 in respect of the 2002 Gunns Woodlot Scheme:

(a) admits that by clause 7(f) of the Forestry Right Deed, GPL must keep current with a reputable insurer a public risk insurance policy covering GPL's liability in respect of its interest in the Land in which:

(i) the limit of public risk will be not less than \$10,000,000;  
and

(ii) the policy will contain all provisions as are normally contained in public risk insurance policies;

(b) admits that by clause 6 of the Forestry Right Lease Deed, the Lessor is entitled to the Rental Fee. The Rental Fee will be deducted by the Custodian on behalf of the lessor from the Wood Sale Proceeds and paid to the Lessor in accordance with the Constitution;

32.2 in respect of the 2003 Gunns Woodlot Scheme:

(a) admits that by clause 7(f) of the Forestry Right Deed, GPL must keep current with a reputable insurer a public risk insurance policy covering GPL's liability in respect of its interest in the Land in which:

(i) the limit of public risk will be not less than \$10,000,000;  
and

(ii) the policy will contain all provisions as are normally contained in public risk insurance policies;

(b) admits that by clause 6 of the Forestry Right Lease Deed:

(i) the Lessor is entitled to the Rental Fee;

- (ii) subject to clause 6(c) of the Forestry Right Lease Deed, the Rental Fee will be deducted by the Custodian on behalf of the Lessor from the Wood Sale Proceeds and paid to the Lessor in accordance with the Constitution; and
- (iii) in the case of a Non-Participating Grower the Rental Fee is payable in accordance with clause 13(c)(3) of the Management Agreement;

32.3 in respect of the 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme:

- (a) admits that by clause 6 of the Forestry Right Lease Deed:
  - (i) the Lessor is entitled to the Rental Fee;
  - (ii) subject to clause 6(c) of the Forestry Right Lease Deed, the Rental Fee will be deducted by the Custodian on behalf of the Lessor from the Wood Sale Proceeds and paid to the Lessor in accordance with the Constitution; and
  - (iii) in the case of a Non-Participating Grower the Rental Fee is payable in accordance with clause 13(c)(3) of the Management Agreement;

32.4 in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:

- (a) admits that by clause 7(f) of the Forestry Right Deed, GPL must keep current with a reputable insurer a public risk insurance policy covering GPL's liability in respect of its interest in the Land in which:
  - (i) the limit of public risk will be not less than \$10,000,000; and
  - (ii) the policy will contain all provisions as are normally contained in public risk insurance policies;

- (b) admits that by clause 6 of the Sub-Forestry Right Deed:
  - (i) the Grantor is entitled to the Rental Fee;
  - (ii) subject to clause 6(c) of the Sub-Forestry Right Deed, the Rental Fee will be deducted by the Custodian on behalf of the Grantor from the Wood Sale Proceeds and paid to the Grantor in accordance with the Constitution; and
  - (iii) in the case of a Non-Participating Grower the Rental Fee is payable in accordance with clause 13(c)(3) of the Management Agreement;

32.5 otherwise does not admit the matters alleged.

33 As to the matters alleged in paragraph 33 of the Plaintiffs' Contentions, the Third Defendant:

33.1 in respect of the 2002 Gunns Woodlot Scheme and 2003 Gunns Woodlot Scheme:

- (a) admits that by clause 3.1 of the Maintenance and Planting Services Sub-contracting Agreement, GPL appoints Gunns Ltd as its sub-contractor to perform the Maintenance Services and Planting Services under each of the Management Agreements on the terms contained in the Maintenance and Planting Services Sub-contracting Agreement and Gunns Ltd accepts the appointment;
- (b) admits that by clause 3.2 of the Maintenance and Planting Services Sub-contracting Agreement, Gunns Ltd agrees to be bound by the same obligations as GPL in relation to its performance of the Maintenance Services and Planting Services under each of the Management Agreements;

33.2 in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme:

- (a) admits that by clause 3.1 of the Maintenance Services Sub-contracting Agreement, GPL appoints Gunns Ltd as its sub-contractor to perform the Maintenance Services under each of the Management Agreements on the terms contained in the Maintenance Services Sub-contracting Agreement and Gunns Ltd accepts the appointment;
- (b) admits that by clause 3.2 of the Maintenance Services Sub-contracting Agreement, Gunns Ltd agrees to be bound by the same obligations as GPL in relation to its performance of the Maintenance Services under each of the Management Agreements;

33.3 in respect of the 2009 Gunns Woodlot Scheme:

- (a) admits that by clause 3.1 of the Maintenance and Pruning Services Sub-contracting Agreement, GPL appoints Gunns Ltd as its sub-contractor to perform the Maintenance Services and Pruning Services under each of the Management Agreements on the terms contained in the Maintenance and Pruning Services Sub-contracting Agreement and Gunns Ltd accepts the appointment;
- (b) admits that by clause 3.2 of the Maintenance and Pruning Services Sub-contracting Agreement, Gunns Ltd agrees to be bound by the same obligations as GPL in relation to its performance of the Maintenance Services and Pruning Services under each of the Management Agreements;

33.4 otherwise does not admit the matters alleged.

34 As to the matters alleged in paragraph 34 of the Plaintiffs' Contentions, the Third Defendant:

34.1 in respect of the 2002 Gunns Woodlot Scheme and 2003 Gunns Woodlot Scheme, admits that by clause 4.4 of the Maintenance and Planting Services Sub-contracting Agreement, in consideration for GPL entering into the agreement Gunns Ltd agrees to assume all of GPL's

obligations to pay Forestry Rights Fees under each of the Forestry Right Deeds;

34.2 in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, admits that by clause 4.4 of the Maintenance Services Sub-contracting Agreement, in consideration for GPL entering into the agreement Gunns Ltd agrees to assume all of GPL's obligations to pay Forestry Rights Fees under each of the Forestry Right Deeds;

34.3 in respect of the 2009 Gunns Woodlot Scheme, admits that by clause 4.4 of the Maintenance Services Sub-contracting Agreement, in consideration for GPL entering into the agreement Gunns Ltd agrees to assume all of GPL's obligations to pay Forestry Rights Fees under each of the Forestry Right Deeds;

34.4 otherwise does not admit the matters alleged.

35 As to the matters alleged in paragraph 35 of the Plaintiffs' Contentions, the Third Defendant:

35.1 admits that by a bank guarantee numbered DG141693418 issued on 20 April 2012 at the request of Gunns Ltd, Australia and New Zealand Banking Group Limited (**ANZ**) undertook unconditionally to pay to GPL in its capacity as Responsible Entity on written demand an amount not exceeding AUD 4,000,000;

35.2 otherwise does not admit the matters alleged.

36 The Third Defendant does not admit the matters alleged in paragraph 36 of the Plaintiffs' Contentions.

### **RE Remuneration under the Schemes**

37 As to the matters alleged in paragraph 37 of the Plaintiffs' Contentions, the Third Defendant:

37.1 admits that by clause 11.1 of the Management Agreements, the Grower irrevocably and unconditionally appoints the Manager as sole agent to market, enter into negotiations and sell the Wood on the

Grower's behalf on substantially similar terms and conditions to those set out in the Draft Wood Sale Agreement and otherwise in accordance with the terms and conditions of the Management Agreement;

37.2 admits that by clause 11.2 of the Management Agreements, the Grower irrevocably and unconditionally appoints the Manager as sole agent to market, enter into negotiations and commercially exploit (including exploitation by sale or otherwise) the Carbon Rights on the Grower's behalf in such manner and on such terms and conditions as the Manager thinks fit. The Carbon Rights Proceeds procured or obtained by the Manager as agent for the Grower must be paid to the Custodian and be distributed in accordance with the Constitution;

37.3 otherwise does not admit the matters alleged.

38 As to the matters alleged in paragraph 38 of the Plaintiffs' Contentions, the Third Defendant, in respect of Gunns Woodlot Schemes established or in operation during the Relevant Period:

38.1 denies the matters alleged in paragraph 38.1 and says that:

(a) by clause 1.1 of the Constitution:

(i) "Application Fee":

(A) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, has the same meaning as in the Management Agreement;

(B) in respect of the 2009 Gunns Woodlot Scheme, means:

(I) for each Woodlot not chosen as part of a Blended Option, the application fee of \$6,800 per Woodlot; and

- (II) for each Blended Option, the application fee of \$25,840 per Blended Option;  
  
payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement, payable on application in accordance with clause 4.1 of the Constitution;
- (ii) "Woodlot Establishment Expenses" means the costs and expenses of performing the duties and obligations of the Responsible Entity under clause 4 of the Management Agreement;
- (b) by clause 7 of the Constitution, before authorising or instructing the release of the moneys referred to in clause 8, the Responsible Entity shall be reasonably satisfied that:
  - (i) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme:
    - (A) the Lease Agreement and Management Agreement are in the form required by this Constitution and have been duly completed and executed by all parties;
    - (B) the Responsible Entity has the capacity to grant the Forestry Right referred to in the Lease Agreement;
    - (C) all necessary consents to the grant of the Forestry Right referred to in the Lease Agreement and entry into the Lease Agreement and Management Agreement have been obtained;
    - (D) the property the subject of the lease referred to in the Lease Agreement is not subject to any

encumbrance or restriction which detrimentally affects the interests of the Member;

- (E) any other matter required to be attended to, which is necessary for the creation of the lease to be granted under the Lease Agreement and the effective vesting in the grower of the Grower's Lease Agreement and Management Agreement whether by reason of the Constitution or otherwise has been attended to; and
  - (F) there are no outstanding material breaches of any of the provisions of this Constitution which are detrimental to the interest of the Members whose Application Money is to be allocated pursuant to clause 8;
- (ii) in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:
- (A) the Sub-Forestry Right Deed and Management Agreement are in the form required by this Constitution and have been duly completed and executed by all parties;
  - (B) the Responsible Entity has the capacity to grant the Forestry Right referred to in the Sub-Forestry Right Deed;
  - (C) all necessary consents to the grant of the Forestry Right referred to in the Sub-Forestry Right Deed and entry into the Sub-Forestry Right Deed and Management Agreement have been obtained;
  - (D) the property the subject of the Forestry Right referred to in the Sub-Forestry Right Deed is not



subject to any encumbrance or restriction which detrimentally affects the interests of the Member;

- (E) any other matter required to be attended to, which is necessary for the creation of the Forestry Right to be granted under the Sub-Forestry Right Deed and the effective vesting in the grower of the Grower's Sub-Forestry Right Deed and Management Agreement whether by reason of the Constitution or otherwise has been attended to; and
  - (F) there are no outstanding material breaches of any of the provisions of this Constitution which are detrimental to the interest of the Members whose Application Money is (or, in respect of the 2009 Gunns Woodlot Scheme, Application Fees are) to be allocated pursuant to clause 8;
- (c) by clause 8 of the Constitution:
- (i) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Lease Agreement and Management Agreement, will release or instruct the Custodian to release (as the case may be), the Application Moneys in payment of the Woodlot Establishment Expenses;
  - (ii) in respect of the 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now

unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Sub-Forestry Right Deed and Management Agreement, will release or instruct the Custodian to release (as the case may be), the Application Moneys in payment of the Woodlot Establishment Expenses;

(iii) in respect of the 2009 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Sub-Forestry Right Deed and Management Agreement, will release or instruct the Custodian to release (as the case may be), the Application Fees in payment of the Woodlot Establishment Expenses;

(d) by clause 1.1 of the Management Agreement:

(i) Application Fee:

(A) in respect of the 2002 Gunns Woodlot Scheme, means the application fee of \$4,345 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Prospectus;

(B) in respect of the 2003 Gunns Woodlot Scheme, means the application fee of \$4,000 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement;

- (C) in respect of the 2004 Gunns Woodlot Scheme, means the application fee of \$4,950 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement;
  - (D) in respect of the 2005 Gunns Woodlot Scheme, means the application fee of \$6,280 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement;
  - (E) in respect of the 2006 Gunns Woodlot Scheme, means the application fee of \$6,820 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement;
  - (F) in respect of the 2008 Gunns Woodlot Scheme, means the application fee of \$6,820 (inclusive of GST) per Woodlot payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement;
  - (G) in respect of the 2009 Gunns Woodlot Scheme, has the same meaning as in the Constitution;
- (ii) Establishment Fee means the fee payable by the Grower to the Manager in consideration of the Establishment Services, to be paid in accordance with clause 10.1 of the Management Agreement;
  - (iii) Establishment Services means the services provided by the Manager to the Grower specified in clause 4 of the Management Agreement;

- (e) by clause 4 of the Management Agreement:
  - (i) in respect of the 2002 Gunns Woodlot Scheme:
    - (A) the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
      - (I) all ploughing and cultivation required for the purposes of planting the Seedlings; and
      - (II) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;
    - (B) the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;
  - (ii) in respect of the 2003 Gunns Woodlot Scheme:
    - (A) from the commencement of the Term under the Forestry Right Deed, the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
      - (I) all ploughing and cultivation required for the purposes of planting the Seedlings; and
      - (II) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;

- (B) the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;
- (iii) in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:
  - (A) from the commencement of the Term under the Forestry Right Deed, the Manager must do all things necessary for the planting of Seedlings on the Grower's Woodlots in accordance with good silvicultural practice, including:
    - (I) all ploughing and cultivation required for the purposes of planting the Seedlings; and
    - (II) procuring the supply of healthy Seedlings to an average density per hectare as stated in item 4 of schedule 1 of the Management Agreement;
  - (B) the Manager must effect the planting of all Seedlings in accordance with good silvicultural practice;
- (f) by clause 10.1 of the Management Agreement:
  - (i) in respect of the 2002 Gunns Woodlot Scheme and 2003 Gunns Woodlot Scheme:
    - (A) the Grower must pay to the Custodian, to hold on behalf of the Manager, the Establishment Fee;
    - (B) payment of the Application Fee constitutes full payment of the Establishment Fee;
  - (ii) in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme,

2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:

- (A) the Grower must pay to the:
    - (I) Custodian, to hold on behalf of the Manager; or
    - (II) to the Manager;

the Establishment Fee;
  - (B) Payment of the Application Fee constitutes full payment of the Establishment Fee.
- (g) the Woodlot Establishment Expenses were agreed by the Plaintiffs to be the same amount as the Establishment Fee and were agreed and acknowledged by the Grower to be the amount of the Application Fee per Woodlot as respectively referred to in paragraph 40 of the Plaintiffs' Contentions;

#### **Particulars**

- (i) paragraphs 1.1, 7, and 8 of the Constitution in respect of each Gunns Woodlot Scheme;
- (ii) paragraphs 1.1, 4 and 10 of the Management Agreement in respect of each Gunns Woodlot Scheme;
- (iii) pages 14, 16, 20 and 37 of the 2002 Gunns Woodlot Scheme Prospectus;
- (iv) sections 3 (Key feature – "Application Fee"), 5.2, 13, 17 and 18.6 of the 2003 Gunns Woodlot Scheme Product Disclosure Statement;
- (v) sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2004 Gunns Woodlot Scheme Product Disclosure Statement;
- (vi) sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2005 Gunns Woodlot Scheme Product Disclosure Statement;

- (vii) sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2006 Gunns Woodlot Scheme Product Disclosure Statement;
- (viii) sections 4.1, 8, 14, 18.1 and 18.2 of the 2008 Gunns Woodlot Scheme Product Disclosure Statement;
- (ix) Sections 12 and 22.7 of the 2009 Gunns Woodlot Scheme Product Disclosure Statement;

38.2 as to the matters alleged in paragraph 38.2 admits that by clause 9 of the Constitution, subject to Law, the Responsible Entity will be entitled to the income earned from the Application Portion of the fund;

38.3 as to the matters alleged in paragraph 38.3, admits that by clause 11.1 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme:
  - (i) the Responsible Entity will pay the Baseline Pruning Expenses;
  - (ii) the Responsible Entity is entitled to be reimbursed by each Grower who chooses Planting Option 2 in years 3, 5 and 6 of the Project for the Baseline Pruning Expenses paid by the Responsible Entity in relation to the proper performance of its duties in accordance with the relevant Management Agreement;
  - (iii) the Responsible Entity will ensure that the Custodian placed into the Baseline Pruning Expenses Account all proceeds received by the Custodian from Growers who choose Planting Option 2 for reimbursement to the Responsible Entity of Baseline Pruning Expenses in accordance with clause 11.1(b) of the Constitution;
- (b) in respect of the 2006 Gunns Woodlot Scheme:

- (i) the Responsible Entity will pay the Baseline Pruning Expenses;
  - (ii) the Responsible Entity is entitled to be reimbursed by each Grower who chooses Planting Option 2 in years 4, 6 and 7 of the Project for the Baseline Pruning Expenses paid by the Responsible Entity in relation to the proper performance of its duties in accordance with the relevant Management Agreement;
  - (iii) the Responsible Entity will ensure that the Custodian placed into the Baseline Pruning Expenses Account all proceeds received by the Custodian from Growers who choose Planting Option 2 for reimbursement to the Responsible Entity of Baseline Pruning Expenses in accordance with clause 11.1(b) of the Constitution;
- (c) in respect of the 2008 Gunns Woodlot Scheme:
- (i) the Responsible Entity will pay the Baseline Pruning Expenses;
  - (ii) the Responsible Entity is entitled to be reimbursed by each Grower who chooses Planting Option 2 for the Baseline Pruning Expenses paid by the Responsible Entity in relation to the proper performance of its duties in accordance with the relevant Management Agreement;
  - (iii) the Responsible Entity will ensure that the Custodian placed into the Baseline Pruning Expenses Account all proceeds received by the Custodian from Growers who choose Planting Option 2 for reimbursement to the Responsible Entity of Baseline Pruning Expenses in accordance with clause 11.1(b) of the Constitution;
- (d) in respect of the 2009 Gunns Woodlot Scheme:
- (i) the Responsible Entity will pay the Baseline Pruning Expenses;



- (ii) the Responsible Entity is entitled to be reimbursed by each Grower who chooses Planting Option 2 (including a Grower who chooses the Blended Option) for the Baseline Pruning Expenses paid by the Responsible Entity in relation to the proper performance of its duties in accordance with the relevant Management Agreement;
- (iii) the Responsible Entity will ensure that the Custodian placed into the Baseline Pruning Expenses Account all proceeds received by the Custodian from Growers who choose Planting Option 2 (including a Grower who chooses the Blended Option) for reimbursement to the Responsible Entity of Baseline Pruning Expenses in accordance with clause 11.1(b) of the Constitution;

38.4 as to the matters alleged in paragraph 38.4, says that:

- (a) in respect of the 2002 and 2003 Gunns Woodlot Schemes, GPL was entitled to the fees as alleged by the Plaintiffs;
- (b) in respect of the 2004, 2005, 2006 and 2008 Gunns Woodlot Schemes:
  - (i) the Responsible Entity was entitled to the Maintenance Fee being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.2 of the Management Agreement;
  - (ii) the Responsible Entity was entitled to the Sales Commission being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.4 of the Management Agreement;
  - (iii) the Responsible Entity was entitled to the Rental Fee being 5.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1, 6 and Schedule 1 of the Forestry Right Lease Deed;

- (iv) the quantum of the fees was 9% of the Wood Sales Proceeds;
- (c) in respect of the 2009 Gunns Woodlot Scheme:
- (i) the Responsible Entity was entitled to the Maintenance Fee being 8.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.2 of the Management Agreement;
  - (ii) the Responsible Entity was entitled to the Sales Commission being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.4 of the Management Agreement;
  - (iii) the Responsible Entity was entitled to the Rental Fee being 5.0% of the Wood Sale Proceeds pursuant to clause 6 and Schedule 1 of the document entitled "Sub-Forestry Right Deed";
  - (iv) the quantum of the fees was not limited to 12% of the Wood Sale Proceeds as that term is defined in the Scheme Documents.

38.5 as to the matters alleged in paragraph 38.5, admits that by clause 29.4 of the Constitution, the Responsible Entity is to be paid:

- (a) a Fee out of the Wood Sale Proceeds; and
- (b) 50% of the Carbon Rights Proceeds,

for the proper performance of its duties;

38.6 as to the matters alleged in paragraph 38.6, admits that by clause 28.2 of the Constitution, the Responsible Entity shall as part of its remuneration and in addition to the remuneration referred to in clause 24 of the Constitution be reimbursed for the following costs and expenses out of the relevant Section of the Wood Proceeds Portion in relation to the proper performance of its duties:

- (a) any costs incurred by the Responsible Entity performing its duties and acting in accordance with this Constitution, the Management Agreements and Lease Agreement (in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme) or Sub-Forestry Right Deed (in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme or 2009 Gunns Woodlot Scheme);
  - (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 including the cost of stamping the Power of Attorney; and
  - (c) fees payable to any regulatory authority;
- 38.7 otherwise does not admit the matters alleged;
- 38.8 says that the Responsible Entity was entitled to additional fees including but not limited to the Baseline Pruning Fee as that term is defined in clauses 1.1 and 10.3 of the Management Agreement;
- 38.9 says that by clause 36(a) of the Constitution, if the Responsible Entity acted in accordance with this Constitution and its duties as Responsible Entity, the Responsible Entity will be indemnified and reimbursed out of the Fund in respect of those matters provided in clause 28.2 of the Constitution;
- 38.10 says that pursuant to section 27(2) of the *Trustee Act 1898* (TAS) GPL as a trustee may reimburse itself, or pay or discharge out of the trust estate, all expenses incurred in or about the execution of its trusts or powers;
- 38.11 in the alternative to paragraph 38.10 of this Commercial List Response, says that pursuant to section 59(4) of the *Trustee Act 1925* (NSW) GPL as a trustee may reimburse itself, or pay or discharge out of the

trust property all expenses incurred in or about execution of the trustee's trusts or powers.

### **Growers' Interests in the Gunns Woodlot Schemes**

39 As to the matters alleged in paragraph 39 of the Plaintiffs' Contentions, the Third Defendant:

39.1 admits that by clause 1.1 of the Constitution:

(a) "Application Fee":

(i) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, has the same meaning as in the Management Agreement;

(ii) in respect of the 2009 Gunns Woodlot Scheme, means:

(A) for each Woodlot not chosen as part of a Blended Option, the application fee of \$6,800 per Woodlot; and

(B) for each Blended Option, the application fee of \$25,840 per Blended Option;

payable by an applicant seeking participation in the Project in accordance with the terms of the Product Disclosure Statement, payable on application in accordance with clause 4.1 of the Constitution;

(b) "Application Portion":

(i) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme means the part of the Fund formed under this Constitution that constitutes:

- (A) the sum paid into the relevant trust Bank account pursuant to clause 3.4(b) of the Constitution;
  - (B) any further Application Moneys received pursuant to clause 5; and
  - (C) the Investments and the proceeds of Investments representing the sums referred to in paragraphs (a) and (b) of this definition;
- (ii) in respect of the 2009 Gunns Woodlot Scheme means the part of the Fund formed under this Constitution that constitutes:
- (A) the sum paid into the relevant trust Bank account pursuant to clause 3.4(b) of the Constitution;
  - (B) any further Application Fees received pursuant to clause 5; and
  - (C) the Investments and the proceeds of Investments representing the sums referred to in paragraphs (a) and (b) of this definition;

39.2 admits that by clause 3.4 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme:
  - (i) there may be created a Fund in relation to the Project that consists of the:
    - (A) Application Portion;
    - (B) Wood Proceeds Portion; and
    - (C) Carbon Rights Proceeds Portion;

- (ii) to create an Application Portion the Responsible Entity shall lodge, or shall cause to be lodged, in a trust Bank account the Application Money received by the Custodian or Responsible Entity in respect of the Project to be held by the Responsible Entity upon trust;
- (b) in respect of the 2009 Gunns Woodlot Scheme:
- (i) there may be created a Fund in relation to the Project that consists of the:
    - (A) Application Portion;
    - (B) Wood Proceeds Portion; and
    - (C) Carbon Rights Proceeds Portion;
  - (ii) to create an Application Portion the Responsible Entity shall lodge, or shall cause to be lodged, in a trust Bank account the Application Fees received by the Custodian or Responsible Entity in respect of the Project to be held by the Responsible Entity upon trust;

39.3 admits that by clause 4.1 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, the Responsible Entity may invite persons to participate in the Project and enter into a Lease Agreement and Management Agreement at a price being the Application Fee;
- (b) in respect of the 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, the Responsible Entity may invite persons to participate in the Project and enter into a Sub-Forestry Right Deed and Management Agreement at a price being the Application Fee;

- (c) GPL may invite persons to participate in the Project and enter into a Sub-Forestry Right Deed and Management Agreement at a price being the Application Fee;

39.4 says that by clause 5 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a Lease Agreement and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Prospectus). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;
- (b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a Lease Agreement and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Product Disclosure Statement). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;
- (c) in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a Sub-Forestry Right Deed and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Product Disclosure Statement). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible

Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;

39.5 otherwise does not admit the allegations;

39.6 says that a Grower's financial contributions pursuant to the Scheme Documents were not limited to the Grower's Application Money.

40 As to the matters alleged in paragraph 40 of the Plaintiffs' Contentions, the Third Defendant:

40.1 admits that the amount of the Application Fee per Woodlot was provided for under the Management Agreements for each of the Gunns Woodlot Schemes to the extent which such Gunns Woodlot Schemes were in operation during the Relevant Period;

40.2 says that the amount of the Application Fee was also provided for in the Constitution for each of the Gunns Woodlot Schemes to the extent which such Gunns Woodlot Schemes were in operation during the Relevant Period;

40.3 otherwise does not admit the matters alleged.

41 The Third Defendant does not admit the matters alleged in paragraph 41 of the Plaintiffs' Contentions. To the extent that the First Plaintiff invested the amounts alleged in the specific Gunns Woodlot Schemes referred to in paragraph 41:

41.1 the cost of such investment being the Application Fees paid for each scheme was fully deductible in the years in which the same were paid by the First Plaintiff in accordance with Product Rulings issued by the Australian Taxation Office; and

41.2 the First Plaintiff for the purposes of its taxation affairs for each of the years referred to in paragraph 41 of the Plaintiffs' Contentions, claimed a tax deduction equal to any of the amounts paid by the First Plaintiff by way of Application Fees.

### **Particulars**



Particulars of the amounts claimed by the First Plaintiff as deductions in respect of any the Application Fees paid by the First Plaintiff, will be provided following discovery.

42 The Third Defendant does not admit the matters alleged in paragraph 42 of the Plaintiffs' Contentions. To the extent that the Second Plaintiff invested the amounts alleged in the specific Gunns Woodlot Schemes referred to in paragraph 42:

42.1 the cost of such investment being the Application Fees paid for each scheme was fully deductible in the years in which the same were paid by the Second Plaintiff in accordance with Product Rulings issued by the Australian Taxation Office; and

42.2 the Second Plaintiff for the purposes of its taxation affairs for each of the years referred to in paragraph 42 of the Plaintiffs' Contentions, claimed a tax deduction equal to any of the amounts paid by the Second Plaintiff by way of Application Fees.

### **Particulars**

Particulars of the amounts claimed by the Second Plaintiff as deductions in respect of any the Application Fees paid by the Second Plaintiff, will be provided following discovery.

43 As to the matters alleged in paragraph 43 of the Plaintiffs' Contentions, the Third Defendant:

43.1 admits that by clause 3.2 of the Constitution:

(a) in respect of the 2002 Gunns Woodlot Scheme, the Assets are vested in and held by the Responsible Entity on trust for the Applicants and Growers;

(b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, the Assets are vested in and held by GPL on trust for the Members;

43.2 admits that by clause 3.4 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme:
  - (i) there may be created a Fund in relation to the Project that consists of the:
    - (A) Application Portion;
    - (B) Wood Proceeds Portion; and
    - (C) Carbon Rights Proceeds Portion;
  - (ii) to create an Application Portion the Responsible Entity shall lodge, or shall cause to be lodged, in a trust Bank account the Application Money received by the Custodian or Responsible Entity in respect of the Project to be held by the Responsible Entity upon trust;
- (b) in respect of the 2009 Gunns Woodlot Scheme:
  - (i) there may be created a Fund in relation to the Project that consists of the:
    - (A) Application Portion;
    - (B) Wood Proceeds Portion; and
    - (C) Carbon Rights Proceeds Portion;
  - (ii) to create an Application Portion the Responsible Entity shall lodge, or shall cause to be lodged, in a trust Bank account the Application Fees received by the Custodian or Responsible Entity in respect of the Project to be held by the Responsible Entity upon trust;

43.3 admits that by clause 13.1(a) of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, the Responsible Entity shall subject to clause 3.5 of the Constitution, make arrangements for the custody of the Fund and Baseline Pruning Expenses Account (including appointing a Custodian) and hold the Fund but not the Baseline Pruning Expenses Account, as trustee for the Applicants or Growers (as the case requires) of the Project entitled thereto upon the terms of this Constitution;
- (b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, the Responsible Entity shall subject to clause 3.5 of the Constitution, make arrangements for the custody of the Fund and Baseline Pruning Expenses Account (including appointing a Custodian) and hold the Fund but not the Baseline Pruning Expenses Account, as trustee for the Members of the Project entitled thereto upon the terms of this Constitution;

43.4 admits that by clause 7 of the Constitution, before authorising or instructing the release of the moneys referred to in clause 8, the Responsible Entity shall be reasonably satisfied that:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme:
  - (i) the Lease Agreement and Management Agreement are in the form required by this Constitution and have been duly completed and executed by all parties;
  - (ii) the Responsible Entity has the capacity to grant the Forestry Right referred to in the Lease Agreement;
  - (iii) all necessary consents to the grant of the Forestry Right referred to in the Lease Agreement and entry into the Lease Agreement and Management Agreement have been obtained;

- (iv) the property the subject of the lease referred to in the Lease Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Member;
- (v) any other matter required to be attended to, which is necessary for the creation of the lease to be granted under the Lease Agreement and the effective vesting in the grower of the Grower's Lease Agreement and Management Agreement whether by reason of the Constitution or otherwise has been attended to; and
- (vi) there are no outstanding material breaches of any of the provisions of this Constitution which are detrimental to the interest of the Members whose Application Money is to be allocated pursuant to clause 8;

43.5 says that by clause 8 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Lease Agreement and Management Agreement, will release or instruct the Custodian to release (as the case may be), the Application Moneys in payment of the Woodlot Establishment Expenses;
- (b) in respect of the 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Sub-Forestry Right Deed and Management Agreement, will release or

instruct the Custodian to release (as the case may be), the Application Moneys in payment of the Woodlot Establishment Expenses;

- (c) in respect of the 2009 Gunns Woodlot Scheme, in relation to each Contract which is either expressed to be not subject to finance or (if subject to finance), that Contract is now unconditional because finance has been approved, the Responsible Entity, upon being satisfied of the matters specified in clause 7 and being in possession of a duly completed and executed Sub-Forestry Right Deed and Management Agreement, will release or instruct the Custodian to release (as the case may be), the Application Fees in payment of the Woodlot Establishment Expenses;

43.6 says that following the release of the Application Fees in the circumstances referred to in paragraphs 43.4 and 43.5 of this Commercial List Response, GPL was beneficially entitled to the Application Fees and that any trust in relation to the Application Fees under which the same had been held for the benefit of the members, was extinguished;

43.7 says that by clause 10.1 of the Management Agreement:

- (a) in respect of the 2002 Gunns Woodlot Scheme and 2003 Gunns Woodlot Scheme:
  - (i) the Grower must pay to the Custodian, to hold on behalf of the Manager, the Establishment Fee;
  - (ii) payment of the Application Fee constitutes full payment of the Establishment Fee;
- (b) in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:
  - (i) the Grower must pay to the:
    - (A) Custodian, to hold on behalf of the Manager; or

(B) to the Manager;

the Establishment Fee;

(ii) Payment of the Application Fee constitutes full payment of the Establishment Fee;

43.8 otherwise does not admit the matters alleged.

44 As to the matters alleged in paragraph 44 of the Plaintiffs' Contentions, the Third Defendant:

44.1 admits that by clause 5 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a Lease Agreement and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Prospectus). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;
- (b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a Lease Agreement and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Product Disclosure Statement). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;
- (c) in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, all Cash payable at the time of the application in order to enter into a

Sub-Forestry Right Deed and Management Agreement shall be delivered by Applicants directly to the Responsible Entity or the Custodian (as designated by the Responsible Entity in the Product Disclosure Statement). The Responsible Entity shall place, or ensure that the Custodian places (as the case may be), that money in the Application Portion until the Responsible Entity releases or instructs the Custodian to release the money in accordance with clause 8 of the Constitution;

44.2 otherwise does not admit the matters alleged.

45 As to the matters alleged in paragraph 45, the Third Defendant:

45.1 admits that by clause 3.6 of the Constitution, an Applicant shall have an interest in the Application Portion equal to its Proportional Interest but shall not have any interest in any particular part of the Application Portion or in any Investment;

45.2 says that following the release of the Application Fees in the circumstances referred to in paragraphs 43.4 and 43.5 of this Commercial List Response, GPL was beneficially entitled to the Application Fees and that any trust in relation to the Application Fees under which the same had been held for the benefit of the members, was extinguished;

45.3 otherwise does not admit the matters alleged.

46 As to the matters alleged in paragraph 46 of the Plaintiffs' Contentions, the Third Defendant:

46.1 denies the matters alleged;

46.2 says that the Plaintiffs were obliged pursuant to clause 10.1 of the Management Agreement to pay the Establishment Fee being an amount equivalent to the Application Fee;

46.3 says that upon satisfaction of the requirements of clauses 7 and 8 of the Constitution, GPL was entitled to the full amount of the Application Fee and which was paid to it in order to satisfy the obligation of the

Plaintiffs to pay the Establishment Fee pursuant to cl 10 of the Management Agreement; and

46.4 repeats paragraphs 38.1 and 43 of this Commercial List Response.

47 As to the matters alleged in paragraph 47 of the Plaintiffs' Contentions, the Third Defendant:

47.1 denies the matters alleged;

47.2 repeats paragraphs 38.1, 43, 45 and 46 of this Commercial List Response;

47.3 otherwise refers to the full terms and effect of the Scheme Documents.

48 As to the matters alleged in paragraph 48 of the Plaintiffs' Contentions, the Third Defendant:

48.1 denies the matters alleged;

48.2 says that by clause 10.1 of the Management Agreement, the payment of the Application Fee constituted full payment of the Establishment Fee and that the Application Fee was an amount equal and equivalent to the Establishment Fee.

49 As to the matters alleged in paragraph 49 of the Plaintiffs' Contentions, the Third Defendant:

49.1 denies the matters alleged and without limitation that there were any Growers Trust Funds as that term is defined in paragraph 49; and

49.2 repeats paragraphs 38.1, 43, 45, 46, 47 and 48 of this Commercial List Response.

50 As to the matters alleged in paragraph 50 of the Plaintiffs' Contentions, the Third Defendant:

50.1 denies the matters alleged;

50.2 says that by clause 12.1 of the Constitution and subject to the Constitution and the Corporations Act, the Responsible Entity may arrange for the Custodian to invest (as the case may be) all or part of



the Application Portion in an interest bearing account with a Bank nominated by the Responsible Entity but not in any other form of investment; and

50.3 says that clause 12.1(b) of the Constitution imposed no obligation of the kind alleged; and

50.4 repeats paragraphs 43, 45 and 49 of this Commercial List Response.

51 As to the matters alleged in paragraph 51 of the Plaintiffs' Contentions, the Third Defendant:

51.1 admits that in order to terminate any Woodlot Scheme, by clause 34.1(b) of the Constitution:

(a) in respect of the 2002 Gunns Woodlot Project, subject to the succeeding provisions of the clause, and subject to the Law and to any orders of any relevant court, the Responsible Entity shall as soon as practicable after it is required to terminate the Project divide the balance of the relevant Investments and property and the proceeds of such sale, calling in and conversion, less all proper costs and disbursements commissions brokerage fees and other outgoings and all proper provisions for liabilities, among the relevant Applicants or Growers (as the case requires) according to their Proportional Interests;

(b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, subject to the succeeding provisions of the clause, and subject to the Law and to any orders of any relevant court, the Responsible Entity shall as soon as practicable after it is required to terminate the Project divide the balance of the relevant Investments and property and the proceeds of such sale, calling in and conversion, less all proper costs and disbursements commissions brokerage fees and other outgoings and all proper provisions for liabilities, among

the relevant Members (as the case requires) according to their Proportional Interests;

51.2 admits that in order to terminate any Woodlot Scheme, by clause 34.5 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme, the Responsible Entity may, from time to time and at any time, make such interim distributions to Applicants and Growers or Applicants on account of their respective entitlements under this clause and in proportion to their Proportional Interests as the Responsible Entity determines;
- (b) in respect of the 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, the Responsible Entity may, from time to time and at any time, make such interim distributions to Members or a class of Members on account of their respective entitlements under this clause and in proportion to their Proportional Interests as the Responsible Entity determines;

51.3 says that at no time during the Relevant Period was GPL required to do this; and

51.4 otherwise denies the matters alleged.

52 As to the matters alleged in paragraph 52 of the Plaintiffs' Contentions, the Third Defendant:

52.1 admits that by clause 29.1 of the Constitution:

- (a) in respect of the 2002 Gunns Woodlot Scheme:
  - (i) subject to clauses 28.2, 29.2 to 29.4 and 30 of the Constitution, on or before each Distribution Date, the Responsible Entity shall distribute, or shall ensure that the Custodian, on its behalf distributes, among the Non-Electing Growers for a Planting Option who were such Non-Electing Growers on the last day of the previous

Accounting Period, out of the Section of the Wood Proceeds Portion for that Planting Option each Non-Electing Grower's Proportional Interest in that Section of the Wood Proceeds Portion relating to the last Accounting Period;

- (ii) the Responsible Entity shall on behalf of the Custodian, or shall ensure that the Custodian collects, receives and pays to each Grower its Proportional Interest to the Section of the Carbon Rights Proceeds Portion for the relevant Planting Option in accordance with clause 11.2 of the relevant Management Agreement at the same time distributions are made under paragraph (a);
- (b) in respect of the 2003 Gunns Woodlot Scheme:
- (i) subject to clauses 28.2, 29.2 to 29.4 and 30 of the Constitution, on or before each Distribution Date, the Responsible Entity shall distribute, or shall ensure that the Custodian, on its behalf distributes, among the Growers for a Planting Option who were such Growers on the last day of the previous Accounting Period, out of the Section of the Wood Proceeds Portion for that Planting Option each Grower's Proportional Interest in that Section of the Wood Proceeds Portion relating to the last Accounting Period;
  - (ii) the Responsible Entity shall on behalf of the Custodian, or shall ensure that the Custodian collects, receives and pays to each Grower its Proportional Interest to the Section of the Carbon Rights Proceeds Portion for the relevant Planting Option in accordance with clause 11.2 of the relevant Management Agreement at the same time distributions are made under paragraph (a);
- (c) in respect of the 2004 Gunns Woodlot Scheme, 2005 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme:

- (i) subject to clauses 28.2, 29.2 to 29.4 and 30 of the Constitution, on or before each Distribution Date, the Responsible Entity shall distribute, or shall ensure that the Custodian, on its behalf distributes, among the Contributing Growers for a Planting Option who were such Contributing Growers on the last day of the previous Accounting Period, out of the Section of the Wood Proceeds Portion for that Planting Option each Contributing Grower's Proportional Interest in that Section of the Wood Proceeds Portion relating to the last Accounting Period;
- (ii) the Responsible Entity shall on behalf of the Custodian, or shall ensure that the Custodian collects, receives and pays to each Contributing Grower its Proportional Interest to the Section of the Carbon Rights Proceeds Portion for the relevant Planting Option in accordance with clause 11.2 of the relevant Management Agreement at the same time distributions are made under paragraph (a);

52.2 admits that by clause 29.4 of the Constitution the Responsible Entity is to be paid:

- (a) a Fee out of the Wood Sale Proceeds; and
- (b) 50% of the Carbon Rights Proceeds,

for the proper performance of its duties;

52.3 otherwise does not admit the matters alleged.

### **Auditor oversight and Compliance Plans**

53 The Third Defendant does not admit the matters alleged in paragraph 53 of the Plaintiffs' Contentions as they do not relate to him.

54 The Third Defendant admits the matters alleged in paragraph 54 of the Plaintiffs' Contentions.

55 The Third Defendant admits the matters alleged in paragraph 55 of the Plaintiffs' Contentions.

### **External Administration and Distributions**

56 The Third Defendant does not admit the matters alleged in paragraph 56 of the Plaintiffs' Contentions.

57 The Third Defendant does not admit the matters alleged in paragraph 57 of the Plaintiffs' Contentions.

58 The Third Defendant admits the matters alleged in paragraph 58 of the Plaintiffs' Contentions.

59 The Third Defendant does not admit the matters alleged in paragraph 59 of the Plaintiffs' Contentions.

60 The Third Defendant admits the matters alleged in paragraph 60 of the Plaintiffs' Contentions.

61 As to the matters alleged in paragraph 61 of the Plaintiffs' Contentions, the Third Defendant:

61.1 admits that the Supreme Court of Victoria made Orders dated 31 May 2013 subject to the full terms and effect of the Orders;

61.2 admits that the Supreme Court of Victoria made Orders dated 21 June 2013 subject to the full terms and effect of the Orders;

61.3 otherwise does not admit the matters alleged.

62 The Third Defendant does not admit the matters alleged in paragraph 62 of the Plaintiffs' Contentions.

63 The Third Defendant does not admit the matters alleged in paragraph 63 of the Plaintiffs' Contentions.

64 The Third Defendant does not admit the matters alleged in paragraph 64 of the Plaintiffs' Contentions.

### C3. THE DEFENDANTS' DUTIES

#### GPL

65 As to the matters alleged in paragraph 65 of the Plaintiffs' Contentions, the Third Defendant:

65.1 as to the matters alleged in paragraph 65.1:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, admits that by clause 13.4(b)(2)(b) of the Constitution, the Responsible Entity shall ensure that any goods or services which are required to be provided or performed under the terms of a Lease Agreement and Management Agreement are provided or performed in accordance with the relevant material agreement and the Constitution;
- (b) in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 13.4(b)(2)(b) of the Constitution, the Responsible Entity shall ensure that any goods or services which are required to be provided or performed under the terms of a Sub-Forestry Right Deed and Management Agreement are provided or performed in accordance with the relevant material agreement and the Constitution;
- (c) says that GPL's duties pursuant to the Constitutions were contractual duties owed to Members of the Gunns Woodlot Schemes;

65.2 as to the matters alleged in paragraph 65.2:

- (a) admits that by clause 5(a) of the Management Agreement, the Manager must do all things necessary to rear the Trees and maintain the Grower's Woodlots in accordance with good silvicultural practice;
- (b) admits that by clause 13.2 of the Management Agreement:

- (i) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, the Manager will be responsible for insuring the Plantation against public risk for an amount of not less than \$10,000,000. This insurance will be effected in accordance with the terms and conditions set out in the lease agreements between the Manager and each owner of land that forms part of the Plantation;
  - (ii) in respect of the 2006 Gunns Woodlot Scheme and 2008 Gunns Woodlot Scheme, the Manager will be responsible for insuring the Plantation against public risk for an amount of not less than \$10,000,000. This insurance will be effected in accordance with the terms and conditions set out in the Forestry Right Deed between the Manager and each owner of land that forms part of the Plantation;
  - (iii) in respect of the 2009 Gunns Woodlot Scheme, the Manager will be responsible for insuring the Plantation against public risk for an amount of not less than \$20,000,000. This insurance will be effected in accordance with the terms and conditions set out in the Forestry Right Deed between the Manager and each owner of land that forms part of the Plantation;
- (c) admits that by clause 14(b) of the Management Agreement, the Manager undertakes that it will at all times during the Term ensure that all Services are carried out in a proper and diligent manner;
  - (d) admits that by clause 14(c) of the Management Agreement, the Manager undertakes that it will at all times during the Term make good any defect or damage caused to the Grower's Woodlots by faulty workmanship or materials;

- (e) says that GPL's duties pursuant to the Management Agreements were contractual duties owed to the Grower who was party to the relevant Management Agreement;

65.3 as to the matters alleged in paragraph 65.3:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2004 Gunns Woodlot Scheme and 2005 Gunns Woodlot Scheme, admits that by clause 5.1 of the Forestry Right Lease Deed, the Lessor must not breach the Forestry Right Deed or do anything that may end the Forestry Right Deed or the registration of the Forestry Right before the Term has expired;
- (b) in respect of the 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 5.1 of the Sub-Forestry Right Deed, the Grantor must not breach the Forestry Right Deed or do anything that may end the Forestry Right Deed or the registration of the Forestry Right before the Term has expired;
- (c) says that GPL's duties pursuant to the Sub-Forestry Right Deed or the Forestry Right Lease Deed were contractual duties owed by GPL to the Grower who was party to the relevant Sub-Forestry Right Deed or Forestry Right Lease Deed;

65.4 as to the matters alleged in paragraph 65.4:

- (a) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 6.1(a) of the Forestry Right Deed, GPL will pay the Forestry Right Fee for each year of the Term quarterly in arrears on each of the Payment Dates;
- (b) in respect of the 2002 Gunns Woodlot Scheme, 2003 Gunns Woodlot Scheme, 2006 Gunns Woodlot Scheme, 2008 Gunns Woodlot Scheme and 2009 Gunns Woodlot Scheme, admits that by clause 7(f) of the Forestry Right Deed, GPL must keep



current with a reputable insurer a public risk insurance policy covering GPL's liability in respect of its interest in the Land in which the limit of public risk will be not less than \$10,000,000 and the policy will contain all provisions as are normally contained in public risk insurance policies;

- (c) says that the obligations of GPL pursuant to the Forestry Right Deeds were contractual obligations owed by GPL to Gunns Ltd and not to any of the Plaintiffs;
- (d) denies that GPL owed any of the duties alleged in paragraph 65.4 to the Plaintiffs;

65.5 as to the matters alleged in paragraph 65.5:

- (a) admits that GPL was required to comply with the rules of the Original Compliance Plans in the period when the relevant Original Compliance Plan was in operation;
- (b) does not admit the allegations as to the terms of the Original Compliance Plan as set out in sub paragraphs (a) – (j);
- (c) denies that GPL owed any of the duties alleged in paragraph 65.5 to the Plaintiffs;

65.6 as to the matters alleged in paragraph 65.6:

- (a) admits that GPL was required to comply with the rules of the Amended Compliance Plans in the period when the relevant Amended Compliance Plan was in operation;
- (b) does not admit the allegations as to the terms of the Amended Compliance Plan as set out in sub paragraphs (a) – (i);
- (c) denies that GPL owed any of the duties alleged in paragraph 65.6 to the Plaintiffs;

65.7 otherwise denies the matters alleged.

66 The Third Defendant admits that GPL owed the duties alleged in paragraph 66 of the Plaintiffs' Contentions.

67 As to the matters alleged in paragraph 67 of the Plaintiffs' Contentions, the Third Defendant denies that there were any Growers' Trust Funds as that term is defined in paragraph 49 of the Plaintiffs' Contentions. To the extent any funds were held on trust by GPL in respect of the Gunns Woodlot Schemes the Third Defendant:

- 67.1 admits that GPL was required to act in the best interest of members pursuant to section 601FC(1)(b) of the Act;
- 67.2 admits that GPL was required to comply with the Gunns Woodlot Schemes Compliance Plans pursuant to section 601FC(1)(h) of the Act;
- 67.3 admits that GPL was required to ensure that scheme property was clearly identified as scheme property and held separately from property of the responsible entity and property of any other scheme pursuant to section 601FC(1)(i) of the Act;
- 67.4 admits that GPL was required to ensure that all payments out of the scheme property were made in accordance with the scheme's constitution and the Act pursuant to section 601FC(1)(k) of the Act;
- 67.5 admits that GPL was required to carry out or comply with any other duty, not inconsistent with the Act, that is conferred on GPL by the scheme's Constitution pursuant to section 601FC(1)(m) of the Act;
- 67.6 admits that GPL holds scheme property on trust for scheme members pursuant to section 601FC(2) of the Act;
- 67.7 admits that pursuant to section 601LC of the Act, if all of the following conditions are satisfied in relation to a financial benefit:
  - (a) the benefit is given by:
    - (i) the responsible entity of a registered scheme;
    - (ii) an entity that the responsible entity controls; or
    - (iii) an agent of, or person engaged by, the responsible entity

- (b) the benefit either:
  - (i) is given out of the scheme property; or
  - (ii) could endanger the scheme property
- (c) the benefit is given to:
  - (i) the person or a related party; or
  - (ii) another person referred to in paragraph (a) or a related party of that person;

then, for the person referred to in paragraph (a) to give the benefit, either:

- (d) the person referred to in paragraph (a) must:
  - (i) obtain the approval of the scheme's members in the way set out in sections 217 to 227 of the Act; and
  - (ii) give the benefit within 15 months of approval; or
- (e) the giving of the benefit must fall within an exception set out in section 201 to 216 of the Act;

67.8 as to the matters alleged in paragraph 67.10:

- (a) admits that GPL was required to comply with the rules of the Original Compliance Plans in the period when the relevant Original Compliance Plan was in operation;
- (b) does not admit the allegations as to the terms of the Original Compliance Plan as set out in sub paragraphs (a) – (g);
- (c) denies that GPL owed any of the duties alleged in paragraph 67.10 to the Plaintiffs;

67.9 as to the matters alleged in paragraph 6.11:

- (a) admits that GPL was required to comply with the rules of the Amended Compliance Plans in the period when the relevant Amended Compliance Plan was in operation;

- (b) does not admit the allegations as to the terms of the Amended Compliance Plan as set out in sub paragraphs (a) – (g);
- (c) denies that GPL owed any of the duties alleged in paragraph 67.11 to the Plaintiffs;

67.10 otherwise denies the matters alleged.

### **Gunns Ltd**

68 As to the matters alleged in paragraph 68 of the Plaintiffs' Contentions, the Third Defendant denies that there were any Growers' Trust Funds as that term is defined in paragraph 49 of the Plaintiffs' Contentions and in respect of Gunns Ltd's obligations as Custodian of the Gunns Woodlot Schemes pursuant to the Management Agreements:

68.1 admits that by clause 10.1(a) of the Management Agreement, the Grower must pay to the:

- (a) Custodian to hold on behalf of GPL; or
- (b) to the Manager,

the Establishment Fee;

68.2 admits that by clause 10.3(b) of the Management Agreement, the Grower must pay to the:

- (a) Custodian to hold on behalf of the Manager; or
- (b) the Manager,

the Baseline Pruning Fee in accordance with this clause 10.3;

68.3 admits that by clause 11.2 of the Management Agreement, the Carbon Rights Proceeds procured or obtained by the Manager as agent for the Grower must be paid to the Custodian and be distributed in accordance with the Constitution;

68.4 says that Gunns Ltd's duties were contractual duties pursuant to the Management Agreements between Gunns Ltd, GPL and the relevant Grower;

68.5 otherwise denies the matters alleged.

### **The GPL Directors**

69 As to the matters alleged in paragraph 69 of the Plaintiffs' Contentions, the Third Defendant:

69.1 admits that he owed the duties alleged in paragraphs 69.1 to 69.5 inclusive, but only during the Relevant Period;

69.2 says that such duties were owed by him only to GPL and to no other person or entity, and without limitation, denies that any such duties were owed by him during the Relevant Period to the Plaintiffs;

69.3 denies that he owed any such duties to GPL other than in the Relevant Period;

69.4 denies the matters alleged in paragraph 69.6.

### **KPMG**

70 As to the matters alleged in paragraph 70 of the Plaintiffs' Contentions, the Third Defendant repeats paragraphs 53, 54, 55, 65 and 67 of this Commercial List Response.

71 The Third Defendant does not admit the matters alleged in paragraph 71 of the Plaintiffs' Contentions as they do not relate to him.

72 The Third Defendant does not admit the matters alleged in paragraph 72 of the Plaintiffs' Contentions as they do not relate to him.

## **C4. CONDUCT OF GPL, GUNNS LTD AND KPMG**

### **Payments of Growers' Trust Funds to Gunns Ltd**

73 As to the matters alleged in paragraph 73 of the Plaintiffs' Contentions, the Third Defendant:

73.1 Denies that in respect of each of the Gunns Woodlot Schemes, there were Growers' Trust Funds, as that term is defined in paragraph 49 of the Plaintiffs' Contentions;

73.2 repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49 and 50 of this Commercial List Response;

73.3 otherwise denies the matters alleged.

74 As to the matters alleged in paragraph 74 of the Plaintiffs' Contentions, the Third Defendant:

74.1 denies that the amounts alleged in paragraph 74 to have been paid by GPL to Gunns by way of loan, were paid by GPL to Gunns;

74.2 says that the notes to the Annual Financial Reports of GPL record the following loan balances in respect of loans made by GPL to Gunns Ltd:

<b>YEAR</b>	<b>AMOUNT RECEIVABLE FROM PARENT ENTITY AT 30 JUNE (FROM NOTE 6)</b>
2002	\$2,584,535
2003	\$36,330,410
2004	\$71,420,154
2005	\$112,797,268
2006	\$29,052,380
2007	\$0
2008	\$2,163,349
2009	\$89,825,709
2010	\$71,669,102
2011	\$70,315,348

74.3 deny that GPL made any loans to Gunns Ltd in the financial years ended 30 June 2006 and 30 June 2007;

- 74.4 say that all loans made by GPL to Gunns Ltd prior to 30 June 2007 were repaid in full on or before 30 June 2007;
- 74.5 say that no loans were made by GPL to Gunns Ltd after 30 June 2009;
- 74.6 say that Gunns Ltd made loan repayments to GPL of:
- (a) \$18,156,607 in the year ended 30 June 2010; and
  - (b) \$1,353,754 in the year ended 30 June 2011;
- 74.7 say that as at 30 June 2011, the balance of the loan from GPL to Gunns Ltd was \$70,315,348;
- 74.8 admits that GPL paid the following amount to Gunns Ltd by way of dividend, as recorded in the Annual Financial Reports of GPL:
- (a) \$8,000,000 for the year ending 30 June 2004;
  - (b) \$50,000,000 for the year ending 30 June 2006;
  - (c) \$50,000,000 for the year ending 30 June 2007; and
  - (d) \$10,000,000 for the year ending 30 June 2009;
- 74.9 denies that any amounts paid by GPL to Gunns Ltd were paid without all necessary authority and entitlement to do so pursuant to the terms of the Scheme Documents and the consent of the Plaintiffs;
- 74.10 denies that any loans or dividends made by GPL to Gunns Limited were made from Growers Trust Funds.

### **Forestry Right Fees and Insurances**

- 75 As to the matters alleged in paragraph 75 of the Plaintiffs' Contentions, the Third Defendant:
- 75.1 denies the matters alleged in paragraph ~~75(a)~~ 75(b) of the Plaintiffs' Contentions;
- 75.2 does not admit the matters alleged in paragraph ~~75(b)~~ 75(c) of the Plaintiffs' Contentions;

75.3 otherwise denies the matters alleged.

76 The Third Defendant denies the matters alleged in paragraph 76 of the Plaintiffs' Contentions.

#### **KPMG Compliance Plan audit reports**

77 The Third Defendant does not admit the matters alleged in paragraph 77 of the Plaintiffs' Contentions as they do not relate to him.

78 The Third Defendant does not admit the matters alleged in paragraph 78 of the Plaintiffs' Contentions as they do not relate to him.

#### **C.5 BREACHES OF DUTY BY THE DEFENDANTS**

##### **GPL**

79 As to the matters alleged in paragraph 79 of the Plaintiffs' Contentions, the Third Defendant in respect of the Relevant Period:

79.1 as to the duties owed by GPL, repeats paragraphs 65 and 66 of this Commercial List Response;

79.2 denies any breach of those obligations by GPL in the manner alleged under the heading "Particulars" to each of those sub paragraphs; and

79.3 repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49, 50, 73 and 74 of this Commercial List Response.

80 As to the matters alleged in paragraph 80 of the Plaintiffs' Contentions, the Third Defendant:

80.1 denies that GPL breached any such duties to the Plaintiffs or at all;

80.2 repeats paragraphs 49, 67, 73 and 74 of this Commercial List Response.

##### **Gunns Ltd**

81 As to the matters alleged in paragraph 81 of the Plaintiffs' Contentions, the Third Defendant:

81.1 denies that Gunns Ltd breached any duties to the Plaintiffs or at all;



81.2 repeats paragraphs 67, 68, 73 and 74 of this Commercial List Response.

### **The GPL Directors**

82 As to the matters alleged in paragraph 82 of the Plaintiffs' Contentions, the Third Defendant:

82.1 denies the matters alleged;

82.2 repeats paragraphs 69, 79 and 80 of this Commercial List Response;

82.3 says that any duties owed him under the Act, were owed by him during the Relevant Period to GPL and not to the Plaintiffs; and

82.4 says that to the extent that any of the matters alleged against him occurred before or after the Relevant Period, he was not an officer of GPL and had no obligation, power or authority, to cause GPL to do the things which the Plaintiffs allege ought to have been done by GPL.

83 As to the matters alleged in paragraph 83 of the Plaintiffs' Contentions, the Third Defendant:

83.1 denies the matters alleged;

83.2 repeats paragraphs 69, 73, 74, 79 and 80 of this Commercial List Response;

83.3 says that any duties owed by him under the Act, were owed by him during the Relevant Period to GPL and not to the Plaintiffs;

83.4 says that to the extent that any of the matters alleged against him occurred before or after the Relevant Period, he was not an officer of GPL and had no obligation, power or authority, to cause GPL to do the things which the Plaintiffs allege ought to have been done by GPL.

84 The Third Defendant denies the matters alleged in paragraph 84 of the Plaintiffs' Contentions and say that he has no such liability under s 197 of the Act or otherwise.

**The Fourth Defendant's liability for Gunns Ltd**

85 The Third Defendant does not admit the matters alleged in paragraph 85 of the Plaintiffs' Contentions as they do not relate to him.

**KPMG**

86 The Third Defendant does not admit the matters alleged in paragraph 86 of the Plaintiffs' Contentions as they do not relate to him and says that he had no knowledge of any breach of duty by KPMG whether in the manner pleaded or otherwise.

**C6. CAUSATION AND LOSS****GPL**

87 The Third Defendant denies the matters alleged in paragraph 87 of the Plaintiffs' Contentions.

88 The Third Defendant denies the matters alleged in paragraph 88 of the Plaintiffs' Contentions.

89 The Third Defendant denies the matters alleged in paragraph 89 of the Plaintiffs' Contentions.

90 The Third Defendant denies the matters alleged in paragraph 90 of the Plaintiffs' Contentions.

**GPL Directors**

91 The Third Defendant denies the matters alleged in paragraph 91 of the Plaintiffs' Contentions.

92 The Third Defendant denies the matters alleged in paragraph 92 of the Plaintiffs' Contentions.

93 The Third Defendant denies the matters alleged in paragraph 93 of the Plaintiffs' Contentions.

94 The Third Defendant denies the matters alleged in paragraph 94 of the Plaintiffs' Contentions.

**Gunns Ltd**

95 The Third Defendant denies the matters alleged in paragraph 95 of the Plaintiffs' Contentions.

96 The Third Defendant denies the matters alleged in paragraph 96 of the Plaintiffs' Contentions.

**KPMG**

97 The Third Defendant does not admit the matters alleged in paragraph 97 of the Plaintiffs' Contentions as they do not relate to him.

98 The Third Defendant does not admit the matters alleged in paragraph 86 of the Plaintiffs' Contentions as they do not relate to him.

99 The Third Defendant denies the matters alleged in paragraph 99 of the Plaintiffs' Contentions.

100 The Third Defendant denies the matters alleged in paragraph 100 of the Plaintiffs' Contentions.

**The Plaintiffs' Loss**

101 The Third Defendant denies the matters alleged in paragraph 101 of the Plaintiffs' Contentions.

102 The Third Defendant denies the matters alleged in paragraph 102 of the Plaintiffs' Contentions.

103 The Third Defendant denies the matters alleged in paragraph 103 of the Plaintiffs' Contentions.

**Further issues**Limitation period exceeded

104 The Plaintiffs' claim is subject to the following legislation (**Limitation Acts**) to the extent which the Limitation Acts are applicable to a Group Member:

104.1 sections 1317K and 1325(4) of the Act;

104.2 section 24(2) of the *Limitation Act 1974* (TAS);

104.3 section 48 of the *Limitation Act 1969* (NSW);

104.4 section 21 of the *Limitation of Actions Act 1958* (VIC);

104.5 sections 31 and 32 of the *Limitation of Actions Act 1936* (SA);

104.6 section 27 of the *Limitation Act 2005* (WA);

104.7 section 27 of the *Limitation of Actions Act 1974* (QLD);

104.8 section 11 of the *Limitation Act 1985* (ACT);

104.9 section 33 of the *Limitation Act 1981* (NT).

105 The causes of action alleged in the Plaintiffs' Contentions occurred more than 6 years prior to the Plaintiffs commencing the current proceeding.

106 The Plaintiffs' claims are barred by operation of the Limitation Acts.

106A If (which is not admitted) any of the Plaintiffs' claims are not subject to any specific Limitation Act then section 1317K of the Act applies by appropriate analogy and the claim is barred.

#### Apportionment of liability

107 The Plaintiffs' claims are apportionable claims within the meaning of section 43A(1) of the *Civil Liability Act 2002* (TAS) or alternatively section 34(1) of the *Civil Liability Act 2003* (NSW) or.

108 Solely for the purpose of this paragraph, the Third Defendant says that if the Plaintiffs suffered loss and damage as alleged, the acts or omissions of KPMG and the persons alleged by it to be partners of KPMG, being Andrew Gray (the Tenth Defendant) and Mathew Gary Wallace (the Eleventh Defendant) caused the loss and damage claimed by the Plaintiffs within the meaning of section 34(2) of the *Civil Liability Act 2002* (NSW) or alternatively section 43A(2) of the *Civil Liability Act 2002* (TAS).

#### **Particulars**

The Third Defendant repeats the matters alleged in paragraphs 12, 53, 71, 72, 77, 78, 86, 97, 98, 99 and 100 of the Plaintiffs' Contentions.

- 109 Solely for the purpose of this paragraph, the Third Defendant says that if the Plaintiffs suffered loss and damage as alleged, the acts or omissions of Gunns Ltd caused the loss and damage claimed by the Plaintiffs within the meaning of section 43A(2) of the *Civil Liability Act 2002* (TAS) or alternatively section 34(2) of the *Civil Liability Act 2002* (NSW).

**Particulars**

The Third Defendant repeats the matters alleged in paragraphs 2, 68, 95 and 96 of the Plaintiffs' Contentions.

- 110 Solely for the purpose of this paragraph, the Third Defendant says that if the Plaintiffs suffered loss and damage as alleged, the acts or omissions of GPL caused the loss and damage claimed by the Plaintiffs within the meaning of section 43A(2) of the *Civil Liability Act 2002* (TAS) or alternatively section 34(2) of the *Civil Liability Act 2002* (NSW).

**Particulars**

The Third Defendant repeats the matters alleged in paragraphs 65, 66, 67, 74, 75, 76, 79, 80, 81, 87, 88, 89 and 90 of the Plaintiffs' Contentions.

Relief from liability

- 111 The Plaintiffs allege contravention of a civil penalty provision in that the Plaintiffs allege that the Third Defendant contravened sections 601FD(1)(b), 601FD(1)(c), 601FD(1)(e) and 601FD(1)(f) of the Act.
- 112 The Third Defendant has acted honestly and having regard to all the circumstances of the case ought fairly to be excused for the contravention pursuant to section 1317S(2) of the Act.

**Particulars**

- 112.1 In complying with his duties pursuant to section 601FD of the Act, the Third Defendant at all times relied on reports provided to him by the management of GPL, which reports indicated that GPL as Responsible Entity of the Gunns Woodlot Schemes was complying with:

- (a) the Act;

- (b) any conditions imposed on GPL's Australian financial services licence;
- (c) the Constitutions of the Gunns Woodlot Schemes; and
- (d) the Compliance Plans or Amended Compliance Plans (as applicable).

112.2 In complying with his duties pursuant to section 601FD of the Act, the Third Defendant at all times relied on audit reports provided to him by KPMG in respect of the financial reports of GPL and the Compliance Plans and Amended Compliance Plans, which reports indicated that:

- (a) the financial reports of GPL were in accordance with:
  - (i) the Act, including:
    - (A) giving a true and fair view of GPL's financial position as at 30 June in the year in which the financial report was published and of its performance for the financial year ended on that date; and
    - (B) complying with Accounting Standards and Corporations Regulations 2001;
  - (ii) in respect of the financial reports in the financial years ending 30 June 2002, 2003, 2004, 2005 and 2006, other mandatory professional reporting requirements; and
  - (iii) in respect of the financial reports in the financial years ending 30 June 2008, 2009, 2010 and 2011, International Financial Reporting Standards as disclosed in note 1(a) to the financial reports;
- (b) GPL as Responsible Entity of the Gunns Woodlot Schemes was complying with:
  - (i) the Act;

- (ii) any conditions imposed on GPL's Australian financial services licence;
- (iii) the Constitutions of the Gunns Woodlot Schemes; and
- (iv) the Compliance Plans or Amended Compliance Plans (as applicable).

112.3 At the time when GPL made any loan to Gunns Ltd, the financial reports of Gunns Ltd indicated that it was solvent and had the ability to repay any such loans.

112.4 At the end of the Relevant Period, GPL was complying with:

- (a) the Act;
- (b) any conditions imposed on GPL's Australian financial services licence;
- (c) the Constitutions of the Gunns Woodlot Schemes; and
- (d) the Compliance Plans or Amended Compliance Plans (as applicable).

### Laches

113 To the extent which it is alleged that the Third Defendant is liable to pay equitable compensation to the Plaintiffs and the Group Members in respect of alleged breaches of trust for the loss of the Plaintiffs' and each of the Group Members' portion of the Growers' Trust Funds, then:

113.1 by reason of the matters alleged in paragraphs 73 and 74 of the Plaintiffs' Contentions, the Plaintiffs were, or must have been, at all material times fully aware of the facts relied on in support of the alleged breaches of trust (which are denied);

113.2 notwithstanding that the Plaintiffs were, or must have been, at all material times fully aware of the facts relied on in support of the alleged breaches of trust, they:

- (a) were guilty of prolonged, inordinate and inexcusable delay in bringing this action and seeking equitable compensation; and
- (b) acquiesced in the matters complained of;

and they thereby caused or permitted the Third Defendant to believe that the Plaintiffs did not intend to make the alleged claims for breach of trust (which are denied) and seek equitable compensation from him, such that the Third Defendant would now be prejudiced;

113.3 in the premises, the Plaintiffs are barred by laches or acquiescence from claiming the relief sought, or any relief, against the Third Defendant and it is inequitable and unjust to grant the Plaintiffs the relief sought or any relief.

**D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

1 None.

**E. STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION, WHETHER THE PARTY IS WILLING TO PROCEED TO MEDATION AT AN APPROPRIATE TIME**

1 The parties have not attempted mediation. The Third Defendant is willing to attempt mediation at an appropriate time.

**SIGNATURE**

Signature of legal representative



Capacity

Michael Barrett, Solicitor

Date of signature

24 August 2018



**PARTY DETAILS****Plaintiffs****Giabal Pty Ltd**

First Plaintiff

**Geoffry Edward Underwood**

Second Plaintiff

**Defendants****Gunns Plantations Ltd (in Liquidation)**

First Defendant

**Gunns Ltd (in Liquidation) (Receivers and Managers Appointed)**

Second Defendant

**Wayne Leonard Chapman**

Third Defendant

**John Eugene Gay**

Fourth Defendant

**Rodney John Loone**

Fifth Defendant

**Leslie Ralph Baker**

Sixth Defendant

**Robert Henry Graham**

Seventh Defendant

**Robin Gray**

Eighth Defendant

**Paul Desmond Teisseire**

Ninth Defendant

**Andrew Gray (KPMG Partner)**

Tenth Defendant

**Mathew Gary Wallace**

Eleventh Defendant