

IN THE FEDERAL COURT OF AUSTRALIA )  
DISTRICT REGISTRY: VICTORIA )  
DIVISION: CORPORATIONS )

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

**BRIAN SILVIA** and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)  
First Plaintiffs

**FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)  
Second Plaintiff

### AFFIDAVIT OF BRIAN RAYMOND SILVIA

I, **BRIAN RAYMOND SILVIA**, of Level 30, Australia Square, 264 George Street, Sydney in the State of New South Wales, Chartered Accountant, make oath and say as follows:

1. I am one of the two deed administrators of FEA Plantations Ltd (subject to deed of company arrangement) (receivers appointed) (ACN 055 969 429) (**FEAP**). I am authorised by the other deed administrator, Peter Paul Krejci, to make this affidavit and do so on behalf of FEAP. Save where otherwise stated, I make this affidavit from my own knowledge.
2. I refer to and rely upon my Affidavit sworn 8 November 2013 ('my first affidavit').
- 2A In my first affidavit, I refer in BRS-1, tab 45 to an annexure which was inadvertently omitted from the bundle of annexures. Annexed hereto and marked **BRS-3** is that

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Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2000	Fax	(03) 9608 2222
Email	<a href="mailto:s.sawer@cornwalls.com.au">s.sawer@cornwalls.com.au</a>		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000	<b>Peter Phillip Choice</b> A Justice of the Peace in and for the State of New South Wales	22.11.13

137396 [Form approved 01/08/2011]

annexure. I have also realised that BRS-1, tab 38 contains the incorrect annexure. Annexed hereto and marked **BRS-4** is the First Defendant's Amended Statement of Facts and Contentions.

3. FEAP is the responsible entity of a number of Forestry Schemes, other than those the subject of the present application. It is responsible entity of the following schemes:

<b>Scheme</b>	<b>ARSN</b>	<b>Year</b>
Tasmanian Forests Trust No 3	ARSN 093 165 005	1995
Tasmanian Forests Trust No 4	ARSN 093 165 103	1996
Tasmanian Forests Trust No 5	ARSN 093 165 050	1997
Tasmanian Forests Trust No 6	ARSN 093 165 327	1998
Tasmanian Forests Trust No 7	ARSN 093 164 866	1999
Tasmanian Forests Project 2000	ARSN 092 500 984	2000
Australian Forests Project 2001	ARSN 094 614 678	2001

4. Those Schemes are not the subject of the present application, although they are relevant to and are part of the compromise referred to in the document in tab 1 of Confidential Annexure BRS-2 to my first affidavit.
5. The compromise contemplates that in relation to those Schemes, a two-track sales process will be pursued by the Receivers. That process contemplates that there will either be a one line sale of the land and trees occupied by those Schemes, or, alternatively, if a purchaser were prepared to do so, it would purchase the Tasmanian estate as defined in the Compromise, subject to the Schemes continuing in place, albeit with Macquarie Alternative Asset Management Limited as a substitute responsible entity for FEAP. Which of those outcomes occurs is wholly dependent upon the sale process being managed by the Receivers.
6. As part of the steps required under the compromise, meetings of members of each of those Schemes have been convened to consider resolutions to amend the

  
**Peter Phillip Choice**  
A Justice of the Peace in and for  
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137396

  
22.11.13

Constitutions of each Scheme to contemplate the potential appointment of Macquarie Alternative Asset Management Limited as responsible entity and to authorise a one line sale if that were to be appropriate.

- 7. Meetings of the members of each of those Schemes were held in Launceston on 11 November 2013 and at that time, resolutions required for each of those Schemes, were passed by the requisite majority of growers in each of those Schemes.
- 8. Annexed hereto and marked with the letters **BRS-5** are copies of the Minutes for each of the meetings of those Schemes.

Sworn by the said **BRIAN RAYMOND SILVIA** at Sydney in the State of New South Wales this 22<sup>nd</sup> day of November 2013 )

Before me: )

*MSL*

*[Signature]*

**Peter Phillip Choice**  
A Justice of the Peace in and for  
the State of New South Wales  
137396

*I saw the face of the deponent whom I have known for more than twelve months*

*[Signature]*

**Peter Phillip Choice**  
A Justice of the Peace in and for  
the State of New South Wales  
137396

*22. 11. 13*

IN THE FEDERAL COURT OF AUSTRALIA )  
DISTRICT REGISTRY: VICTORIA )  
DIVISION: CORPORATIONS )

No. VID 1157 of 2013

IN THE MATTER OF FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF AUSTRALIAN FORESTS PROJECT 2002 (ARSN 099 656 429) and other schemes

Between

**BRIAN SILVIA** and **PETER KREJCI** as  
deed administrators of FEA  
PLANTATIONS LTD  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

First Plaintiffs

**FEA PLANTATIONS LTD**  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

Second Plaintiff

**ANNEXURE 'BRS-3'**

This is the annexure marked with the letters '**BRS-3**' referred to in the affidavit of **BRIAN RAYMOND SILVIA** sworn before me this 22<sup>nd</sup> day of November 2013.

Before me:



**Peter Phillip Choice**  
A Justice of the Peace in and for  
the State of New South Wales  
137396

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Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2000	Fax	(03) 9608 2222
Email	<a href="mailto:s.sawer@cornwalls.com.au">s.sawer@cornwalls.com.au</a>		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

FEA Plantations Limited - Summary of Projects 2002 to 2009 Cash Position  
as at 30 September 2013

	Project 2002	Project 2003	Project 2004	Project 2005	Project 2006	Project 2007	Project 2008	Project 2009	Total
Cash at bank as at 30/9/2013	209,722	52,567	2,968	4,205	6,646	4,713	7,293	2,004	290,118
Add: GST Refund Receivable	5,004	6,569	11,705	13,235	10,665	12,389	1,057	-	60,625
Less: Refund to Growers for Voluntary Contribution and Insurance*	(63,995)	(329,438)	(485,818)	(942,551)	(1,097,347)	(915,038)	(1,707,475)	(233,027)	(5,774,689)
Net Cash Position as at 30/9/2013	150,731	(270,302)	(471,145)	(925,112)	(1,080,036)	(897,955)	(1,699,125)	(231,023)	(5,423,947)

\*Note:

2002 Scheme is in positive net cash position as at 30 September 2013. However, the net cash available is not sufficient to cover the negative net future cash flow.

IN THE FEDERAL COURT OF AUSTRALIA )  
DISTRICT REGISTRY: VICTORIA )  
DIVISION: CORPORATIONS )

No. VID 1157 of 2013

IN THE MATTER OF FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF AUSTRALIAN FORESTS PROJECT 2002 (ARSN 099 656 429) and other schemes

Between

**BRIAN SILVIA** and **PETER KREJCI** as  
deed administrators of FEA  
PLANTATIONS LTD  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

First Plaintiffs

**FEA PLANTATIONS LTD**  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

Second Plaintiff

**ANNEXURE 'BRS-4'**

This is the annexure marked with the letters 'BRS-4' referred to in the affidavit of **BRIAN RAYMOND SILVIA** sworn before me this 22<sup>nd</sup> day of November 2013.

Before me:



**Peter Phillip Choice**  
A Justice of the Peace in and for  
the State of New South Wales  
137396

---

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2000	Fax	(03) 9608 2222
Email	<a href="mailto:s.sawyer@cornwalls.com.au">s.sawyer@cornwalls.com.au</a>		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

Amended Pursuant to Order 36.04(1)(b)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
CORPORATIONS LIST

SCI 2011 5202

IN THE MATTER OF **TASMANIAN PLANTATION PTY LTD** (ACN 009 560 463)  
(subject to deed of company arrangement) (controllers acting), **FOREST ENTERPRISES  
AUSTRALIA LTD** (ACN 009 553 548) (subject to deed of company arrangement) (receivers  
and managers appointed) and **FEA CARBON PTY LTD** (ACN 009 505 195) (subject to deed  
of company arrangement) (receivers and managers appointed)

BETWEEN:

**TASMANIAN PLANTATION PTY LTD** (ACN 009 560 463) (subject to deed of company  
arrangement) (controllers acting) and others

Plaintiffs

- and -

**FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement)  
(receivers appointed) and others

Defendant Defendants

(by original proceeding)

AND BETWEEN:

**FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement)  
(receivers appointed)

Plaintiffs Plaintiff by counterclaim

- and -

**TASMANIAN PLANTATION PTY LTD** (ACN 009 560 463) (subject to deed of company  
arrangement) (controllers acting) and another according to the Schedule

Defendants by counterclaim

(by counterclaim)

AMENDED STATEMENT OF FACTS AND CONTENTIONS AND  
COUNTERCLAIM

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Filed on behalf of: The First Defendant

Solicitor's Code: 274

Prepared by:

DX 147 Melbourne

DLA Piper Australia

Tel: (03) 9274 5000

140 William Street

Ref: SPS:NXM:051124 1202330915\_1

Stephen Sawyer

Melbourne VIC 3000

Stephen.Sawyer@dlapiper.com

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In response to the plaintiffs' Amended Statement of Facts and Contentions, ~~the~~dated 7 September 2012, the first defendant says as follows:

### SUMMARY

In substance, the first defendant's contentions are that:

- A. The plaintiffs, in their Amended Statement of Facts and Contentions, misdescribe the relevant leases and their terms.
- B. The first defendant has discharged all of its relevant obligations to pay rent.
- C. The plaintiffs' claim must fail and the plaintiffs ought to account to the first defendant for overpaid rent.
- D. Further, and in any event, there is no sound reason to disturb the first defendant's (and the Growers') enjoyment of their forestry rights.
- E. Further and alternatively if (which it denies) the first defendant has failed to discharge any of its obligations to pay rent, and or any relevant lease has been forfeited, the first defendant is entitled to relief against forfeiture of the relevant lease(s).

### FACTS

#### PARTIES

1. The first plaintiff, Tasmanian Plantation Pty Ltd (ACN 009 560 463) (subject to deed of company arrangement) (controllers acting) (**Tasmanian Plantation**) was, on 14 November 1986, incorporated pursuant to the laws of Tasmania and is taken to be registered pursuant to the *Corporations Act 2001* (Cth).
2. The second plaintiff, Forest Enterprises Australia Ltd (ACN 009 553 548) (subject to deed of company arrangement) (receivers and managers appointed) (**FEA**) was on 25 September 1985, incorporated pursuant to the laws of Tasmania and is taken to be registered pursuant to the *Corporations Act*.

3. The third plaintiff, FEA Carbon Pty Ltd (ACN 009 505 195) (subject to deed of company arrangement) (receivers and managers appointed) (**FEA Carbon**) was on 25 June 1976, incorporated pursuant to the laws of Tasmania and is taken to be registered pursuant to the *Corporations Act*.
4. The first defendant, FEA Plantations Ltd (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed) (**FEAP**) was on 19 May 1992, incorporated pursuant to the laws of Tasmania and is taken to be registered pursuant to the *Corporations Act*.
5. Each of the fourth plaintiff, Timothy Bryce Norman, and the fifth plaintiff, Salvatore Algeri, is:
  - (a) a controller of property of Tasmanian Plantation;
  - (b) a receiver and manager of property of FEA;
  - (c) a receiver and manager of property of FEA Carbon; and
  - (d) a receiver of property of FEAP.

#### **OFFICERS**

6. Anthony Maxwell Cannon is:
  - (a) and since 8 May 1995 has been a director of Tasmanian Plantation;
  - (b) and since 25 September 1985 has been a director of FEA;
  - (c) and since 30 June 1987 has been a director of FEA Carbon; and
  - (d) and since 19 May 1992 has been a director of FEAP.
7. Michael John Williams:
  - (a) is and since 27 November 1997 has been a director of Tasmanian Plantation;
  - (b) was from 20 February 1996 to 7 April 2000 and since 29 November 2002 is and has been a director of FEA;

- (c) is and since 20 February 1996 has been a director of FEA Carbon; and
  - (d) was from 20 February 1996 to 2 July 1999 and since 7 April 2000 is and has been a director of FEAP.
8. Bradley James Watson was:
- (a) from 5 February 1992 to 25 July 2003 a director of FEA;
  - (b) from 18 August 1998 to 25 November 2003 a director of FEA Carbon; and
  - (c) from 19 May 1992 to 11 February 2003 a director of FEAP.
9. Anthony Wayne Seymour was:
- (a) from 14 May 1992 to 16 January 2002 a director of Tasmanian Plantation;
  - (b) from 19 May 1992 to 30 September 2000 a director of FEAP;
  - (c) from 19 May 2002 to 22 December 2000 a company secretary of FEAP; and
  - (d) from 19 May 1992 to 8 December 1995 the Principal Executive Officer of Tasmanian Plantation and FEAP.
10. ~~9-~~ Steven Paul Bishop was from 7 April 2000 to 24 December 2004 a director of FEAP.
11. ~~10-~~ Peter David Curran was:
- (a) from 25 June 1999 to 25 July 2003 a company secretary of Tasmanian Plantation;
  - (b) from 25 June 1999 to 25 July 2003 a company secretary of FEA; and
  - (c) from 25 June 1999 to 27 July 2003 a company secretary of FEAP.
12. ~~11-~~ Andrew Michael Webb was:
- (a) from 5 July 2001 to 29 April 2005 a company secretary of Tasmanian Plantation;
  - (b) from 5 July 2001 to 29 April 2005 a company secretary of FEA;

- (c) from 5 July 2001 to 29 April 2005 a company secretary of FEA Carbon; and
- (d) from 5 July 2001 to 29 April 2005 a company secretary of FEAP.

13. ~~12.~~ FEA is and at all material times was a director of FEAP with the meaning of the *Corporations Law* and the *Corporations Act*.

#### **THE FEA GROUP**

- 14. ~~13.~~ Each of Tasmanian Plantation, FEA Carbon and FEAP is and at all material times was a wholly owned subsidiary of FEA.
- 15. ~~14.~~ Together, FEA, Tasmanian Plantation, FEA Carbon and FEAP formed the **FEA Group**.
- 16. ~~15.~~ In the period from 1993 to 2009, the FEA Group established, promoted and managed a number of commercial forestry projects.

#### **THE FORESTRY PROJECTS AND MANAGED INVESTMENT SCHEMES**

- 17. ~~16.~~ Each year from 1993 to 2009 the FEA Group established and promoted a forestry project for which investors were sought.
- 18. ~~17.~~ The FEA Group's forestry project for each year from 1993 to 1999 inclusive was initially structured as an investment trust.
- 19. ~~18.~~ The relevant ~~There were divisions of the investment trusts were~~ trust known as:
  - (a) Tasmanian Forest Trust No 1 (the 1993 Trust);
  - (b) Tasmanian Forest Trust No 2 (the 1994 Trust);
  - (c) Tasmanian Forest Trust No 3 (the 1995 Trust);
  - (d) Tasmanian Forest Trust No 4 (the 1996 Trust);
  - (e) Tasmanian Forest Trust No 5 (the 1997 Trust);
  - (f) Tasmanian Forest Trust No 6 (the 1998 Trust); and
  - (g) Tasmanian Forest Trust No 7 (the 1999 Trust).

(collectively, the Trusts)

20. ~~19.~~ In respect of each of the Trusts investment trust, there was a trust deed.

**Particulars**

~~Copies~~ A copy of the trust deeds may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to the trust deeds deed, dated 1 June 1993, is in the possession of the plaintiffs (Trust Deed). The plaintiffs are also in the possession of a copy of Supplemental Deed Number One, dated 11 April 1994, Supplemental Deed Number Two dated, 19 May 1995, Supplemental Deed Number Three, dated 19 April 1996, Supplemental Deed Number Four, dated 1 April 1997, Supplemental Deed Number Five, dated 9 September 1997, Supplemental Deed Number Six, dated 11 October 1998, a Deed of Amendment, dated 23 December 1999 and Supplemental Deed of Amendment No 8, dated 3 May 2000. At trial, the first defendant will refer to each of them for their full terms and effect.

21. ~~20.~~ In respect of each division of the Trusts investment trust, there was a prospectus.

**Particulars**

The prospectus in respect of the 1993 Trust was in writing and dated 3 June 1993.

The prospectus in respect of the 1994 Trust was in writing and dated 22 April 1994.

The prospectus in respect of the 1995 Trust was in writing and dated 29 May 1995.

The prospectus in respect of the 1996 Trust was in writing and dated 15 April 1996.

The prospectus in respect of the 1997 Trust was in writing and dated 27 March 1997.

The prospectus in respect of the 1998 Trust was in writing and dated 29 October 1997.

The prospectus in respect of the 1999 Trust was in writing and dated 29 October 1998.

Copies of the prospectuses may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the prospectuses for their full terms and effect.

**LAND, MANAGEMENT, FLOWS OF FUNDS AND SERVICES FOR THE 1993-1999 TRUSTS**

**1993 AND 1994 TRUSTS**

22. FEA was the owner of the land used in the forestry projects that were the subject of the 1993 Trust and the 1994 Trust.

23. Each investor in each of the 1993 Trust and the 1994 Trust (known as Growers) took, as lessee, from FEA, as lessor, a lease of land allocated to her, him or it in and for the purposes of the 1993 Trust and the 1994 Trust, respectively (Grower Leases).

Particulars

The Grower Leases are in writing and in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Leases for their full terms and effect.

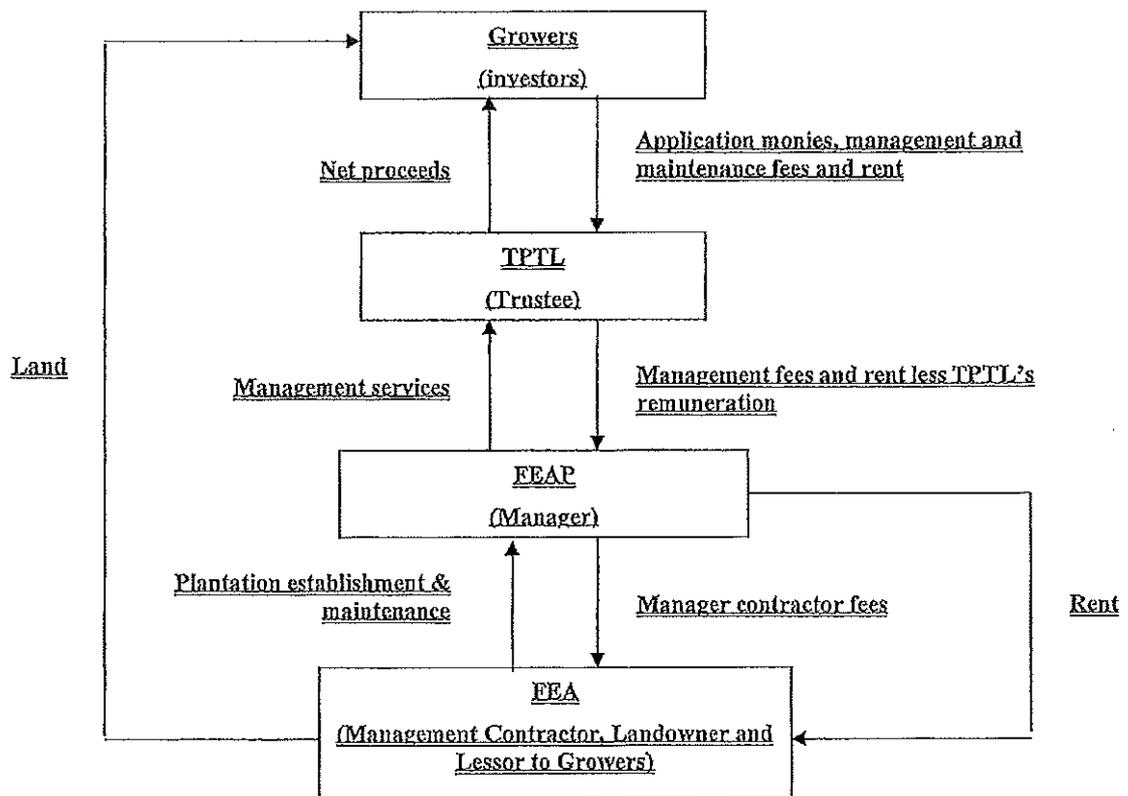
24. It was a term, among others, of each Grower Lease that:
- (a) the Grower must pay to FEA rent on a lump sum or annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, whichever occurred first.
25. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

26. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees;
  - (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
27. FEAP appointed FEA to perform its obligations under the Grower Management Agreements.
28. Rent paid by Growers pursuant to the Grower Leases was received by the trustee of the 1993 Trust and the 1994 Trust, Tasmanian Perpetual Trustees Limited (TPTL).
29. After making deductions for its own remuneration, TPTL paid to FEA the balance of the rent paid by Growers pursuant to the Grower Leases.

30. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were received by the trustee, TPTL.
31. After making deductions for its own remuneration, TPTL paid to FEA the balance of the management and maintenance fees paid by Growers pursuant to the Grower Management Agreements.
32. The flows of funds and services in the 1993 Trust and the 1994 Trusts are summarised in the diagram below:



### 1995-1999 TRUSTS

33. Tasmanian Plantation was the owner of most of the land used in the forestry projects that were the subject of the 1995 Trust, the 1996 Trust, the 1997 Trust, the 1998 Trust and the 1999 Trust.
34. By an agreement made in or about May 1995 between Tasmanian Plantation and FEA,

Tasmanian Plantation leased to FEA land used in and for the 1995 Trust (the 1995 Land and the 1995 Head Lease).

Particulars

The existence of the 1995 Head Lease is to be inferred from correspondence dated 23 May 1995 between FEAP and Bishops and 24 May 1995 between Bishops and FEA and reference is made to it in the 1995 prospectus on pages 8, 9, 38 and 39. These documents are in the possession of the plaintiffs. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

35. It was a term of the 1995 Head Lease that FEA must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 1995 Land less TPTL's remuneration.

Particulars

The term is to be inferred from pages 8, 9, 38 and 39 of the 1995 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

36. By an agreement made in or about April 1996 between Tasmanian Plantation and FEA, Tasmanian Plantation leased land to FEA that was used in and for the 1996 Trust (the 1996 Land and the 1996 Head Lease).

Particulars

The existence of the 1996 Head Lease is to be inferred from correspondence: (i) dated 19 February 1996 from FEAP to the Commonwealth Bank of Australia; (ii) dated 27 February 1996 from the Commonwealth Bank of Australia to Tasmanian Plantation; (iii) dated 2 April 1996 between Bishops and FEAP, a handwritten note dated 28 April 1996 and reference is made to it in the 1996 prospectus on pages 12, 13 and 36. A copy of the correspondence is in the possession of the plaintiffs. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

37. It was a term of the 1996 Head Lease that FEA must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 1996 Land less TPTL's remuneration.

Particulars

The term is to be inferred from pages 12, 13 and 36 of the 1996 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

38. By an agreement made in or about March 1997 between Tasmanian Plantation and FEA, Tasmanian Plantation leased land to FEA that was used in and for the 1997 Trust (the 1997 Land and the 1997 Head Lease).

Particulars

The existence of the 1997 Head Lease is to be inferred from pages 12, 13 and 36 of the 1997 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

39. It was a term of the 1997 Head Lease that FEA must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 1997 Land less TPTL's remuneration.

Particulars

The term is to be inferred from pages 12, 13 and 36 of the 1997 prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

40. By an agreement made in or about late 1997 or early 1998 between Tasmanian Plantation and FEA, Tasmanian Plantation leased land to FEA that was used in and for the 1998 Trust (the 1998 Land and the 1998 Head Lease).

Particulars

The existence of the 1998 Head Lease is to be inferred from pages 12, 13 and 36 of the 1998 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

41. It was a term of the 1998 Head Lease that FEA must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 1998 Land less TPTL's remuneration.

Particulars

The term is to be inferred from pages 12, 13 and 36 of the 1998 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

42. By an agreement made in or about late 1998 or early 1999 between Tasmanian Plantation and FEA, Tasmanian Plantation leased land to FEA that was used in the 1999 Trust (the 1999 Land and the 1999 Head Lease).

Particulars

The existence of the 1999 Head Lease is to be inferred from pages 12, 13 and 36 of the 1999 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

43. It was a term of the 1999 Head Lease that FEA must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 1999 Land less TPTL's remuneration.

Particulars

The term is to be inferred from pages 12, 13 and 36 of the 1999 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

44. Investors in each of the 1995 Trust through to the 1999 Trust (known as Growers) took, as sub-lessee, from FEA, as sub-lessor, a sub-lease of land allocated to her, him or it in and for the purposes of the relevant project (Grower Leases).

Particulars

The Grower Leases are in writing and in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Leases for their full terms and effect.

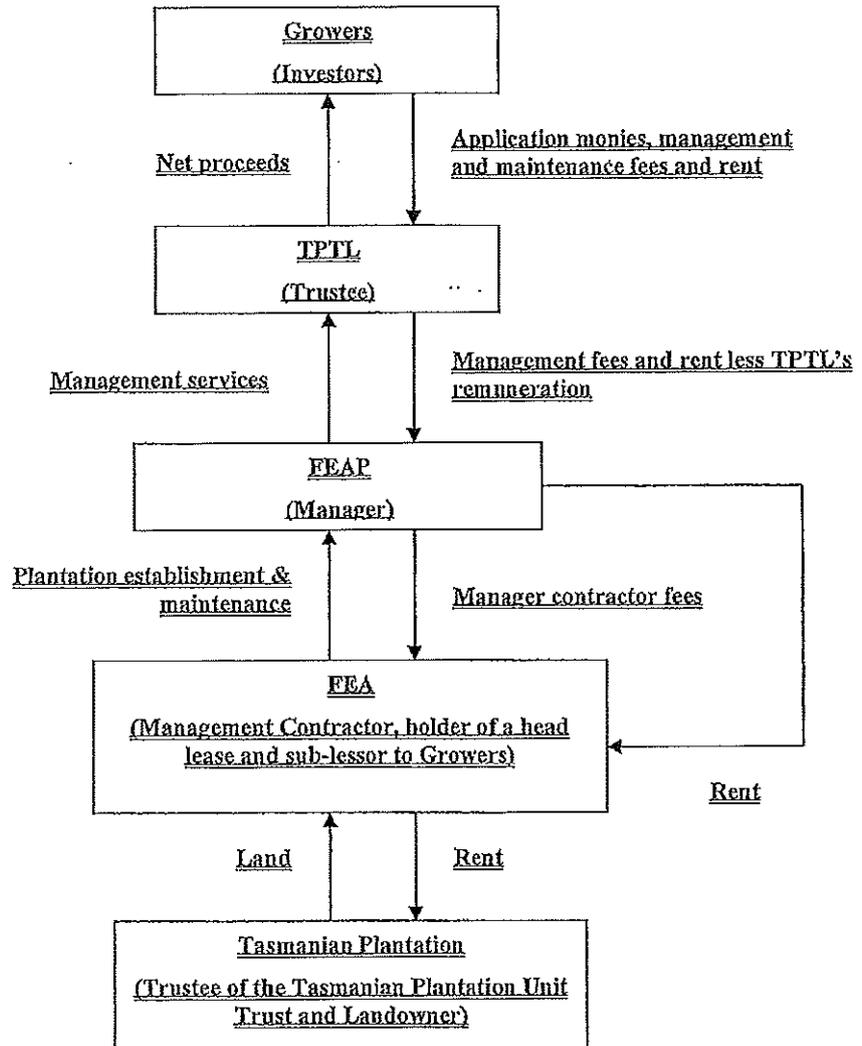
45. It was a term, among others, of each Grower Lease that:
- (a) the Grower must pay to FEA rent on a lump sum or annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, whichever occurred first.

46. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

47. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees;
  - (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
48. FEAP appointed FEA to perform its obligations under the Grower Management Agreements.
49. Rent paid by Growers pursuant to the Grower Leases was received by the trustee of the relevant trusts, TPTL.
50. After making deductions for its own remuneration, TPTL paid to FEA the balance of the rent paid by Growers pursuant to the Grower Leases.
51. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were received by the trustee of the relevant trusts, TPTL.
52. After making deductions for its own remuneration, TPTL paid to FEA the balance of the management and maintenance fees paid by Growers pursuant to the Grower Management Agreements.
53. The flows of funds and services in respect of the 1995 Trust through to the 1999 Trust are summarised in the diagram below:



#### CONVERSION OF TRUSTS TO SCHEMES

54. 21—In or about June 2000, each division of the Trusts investment trust was converted into and registered as managed investment scheme within the meaning of Chapter 5C of the *Corporations Law*.

**Particulars**

The 1993 Trust became ARSN 093 165 210 (the **1993 Scheme**).  
 The 1994 Trust became ARSN 093 165 505 (the **1994 Scheme**).  
 The 1995 Trust became ARSN 093 165 005 (the **1995 Scheme**).  
 The 1996 Trust became ARSN 093 165 103 (the **1996 Scheme**).  
 The 1997 Trust became ARSN 093 165 050 (the **1997 Scheme**).  
 The 1998 Trust became ARSN 093 165 327 (the **1998 Scheme**).  
 The 1999 Trust became ARSN 093 164 866 (the **1999 Scheme**).

55. ~~22-~~ For and upon the conversion of each division of the ~~Trusts~~investment trust into a managed investment scheme, a constitution within the meaning of Part 5C.3 of the *Corporations Law* was prepared and adopted by and for the purposes of that scheme.

**Particulars**

Copies of the constitutions for the 1993 to 1999 schemes may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the constitutions for their full terms and effect.

56. The terms of the constitution for each of the 1995 to 1999 Schemes recognised:
- (a) the financial obligations of Growers under the 1995 Trust through to the 1999 Trusts, namely, to make rent payments and payments of management and maintenance fees pursuant to Grower Leases and the Grower Management Agreements (clauses 14.1 and 14.2); and
  - (b) the remuneration arrangements under the 1995 Trust through to the 1999 Trust in that the remuneration of the Responsible Entity was to be deducted from Grower payments on substantially the same basis as TPTL had been remunerated as Trustee of the 1995 to 1999 Trusts (clause 6.2).

**CREATION OF THE 2000 TO 2009 SCHEMES**

57. ~~23-~~ The FEA Group's forestry project for each year from 2000 to 2009 inclusive was structured as a managed investment scheme within the meaning of Chapter 5C of the *Corporations Act* and its predecessor.
58. ~~24-~~ The relevant managed investment schemes were:
- (a) Tasmanian Forests Project 2000 (ARSN 092 500 984) (the **2000 Scheme**);

- (b) Australian Forests Project 2001 (ARSN 094 614 678) (the **2001 Scheme**);
- (c) Australian Forests Project 2002 (ARSN 099 656 429) (the **2002 Scheme**);
- (d) Forest Enterprises Plantation Project 2003 (ARSN 104 311 533) (the **2003 Scheme**);
- (e) FEA Plantations Project 2004 (ARSN 108 148 198) (the **2004 Scheme**);
- (f) FEA Plantations Project 2005 (ARSN 113 195 583) (the **2005 Scheme**);
- (g) FEA Plantations Project 2006 (ARSN 119 069 591) (the **2006 Scheme**);
- (h) FEA Plantations Project 2007 (ARSN 125 108 063) (the **2007 Scheme**);
- (i) FEA Plantations Project 2008 (ARSN 129 750 296) (the **2008 Scheme**); and
- (j) FEA Plantations Project 2009 (ARSN 136 438 616) (the **2009 Scheme**).

59. 25. In respect of each of the schemes referred to in the last preceding paragraph, there was a prospectus or a product disclosure statement.

#### Particulars

The prospectus in respect of the 2000 Scheme was in writing and dated 6 June 2000.

The prospectus in respect of the 2001 Scheme was in writing and undated.

The prospectus in respect of the 2002 Scheme was in writing and dated 12 March 2002.

The product disclosure statement in respect of the 2003 Scheme was in writing and dated 30 June 2003.

The product disclosure statement in respect of the 2004 Scheme was in writing and dated 10 March 2004.

The product disclosure statement in respect of the 2005 Scheme was in writing and dated 1 March 2005.

The product disclosure statement in respect of the 2006 Scheme was in writing and dated 13 April 2006.

The product disclosure statement in respect of the 2007 Scheme was in writing and dated 2 May 2007.

The product disclosure statement in respect of the 2008 Scheme was in writing and dated 19 March 2008.

The product disclosure statement in respect of the 2009 Scheme was in writing and dated 7 May 2009.

Copies of the prospectuses and product disclosure statements may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the prospectuses and product disclosure statements for their full terms and effect.

60. ~~26-~~In respect of each of the schemes referred to in the last two preceding paragraphs, there was prepared and adopted a constitution within the meaning of Part 5C.3 of the *Corporations Law* and or the *Corporations Act*.

**Particulars**

Copies of the constitutions for the 2000 to 2009 schemes may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the constitutions for their full terms and effect.

61. ~~27-~~In respect of each of the schemes referred to above, there was prepared and adopted a compliance plan within the meaning of Part 5C.4 of the *Corporations Law* and the *Corporations Act*.

**Particulars**

Copies of the compliance plans for the schemes may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the compliance plans for their full terms and effect.

**RESPONSIBLE ENTITY OF THE SCHEMES**

62. ~~28-~~FEAP is and since on or about 19 June 2000 has been the responsible entity of the 1993 Scheme, the 1994 Scheme, the 1995 Scheme, the 1996 Scheme, the 1997 Scheme, the 1998 Scheme, the 1999 Scheme and the 2000 Scheme.
63. FEAP is and since on or about 11 October 2000 has been the responsible entity of the 2001 Scheme.
64. ~~29-~~FEAP is and since on or about 24 January 2002 has been the responsible entity of the 2002 Scheme.
65. ~~30-~~FEAP is and since on or about 3 April 2003 has been the responsible entity of the 2003 Scheme.

66. ~~31-~~FEAP is and since on or about 25 February 2004 has been the responsible entity of the 2004 Scheme.
67. ~~32-~~FEAP is and since on or about 2 March 2005 has been the responsible entity of the 2005 Scheme.
68. ~~33-~~FEAP is and since on or about 30 March 2006 has been the responsible entity of the 2006 Scheme.
69. ~~34-~~FEAP is and since on or about 27 April 2007 has been the responsible entity of the 2007 Scheme.
70. ~~35-~~FEAP is and since on or about 14 February 2008 has been the responsible entity of the 2008 Scheme.;
71. ~~36-~~FEAP is and since on or about 31 March 2009 has been the responsible entity of the 2009 Scheme.
72. The schemes referred to in paragraphs 54 and 58 above are hereafter referred to as 'the Schemes'.
73. ~~37-~~From 16 May 2000, FEAP held Dealer's Licence number 63239 issued by the Australian Securities and Investments Commission (ASIC).

**Particulars**

FEAP's Dealer's Licence number 63239 was in writing and copies of it may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to FEAP's Dealer's Licences for their full terms and effect.

74. ~~38-~~From 1 March 2004, FEAP held Australian Financial Services Licence number 243515 issued by ASIC.

**Particulars**

FEAP's Australian Financial Services Licence number 243515 was in writing and copies of it may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to FEAP's Australian Financial Services Licences for their full terms and effect.

**MANAGEMENT AGREEMENTS IN RESPECT OF THE SCHEMES**

75. ~~39-~~FEAP has not at any relevant time employed any staff.
76. ~~40-~~Since ~~2000~~, in or about 1992, FEAP has engaged and retained FEA to establish, maintain and harvest the plantations that are the subject of the Schemes.

**2000 Standard Management Agreement**

77. ~~41-~~By an agreement in writing dated 30 June 2000 between FEAP and FEA, FEAP and FEA agreed to standard terms governing the provision of forestry establishment and maintenance services by FEA in respect of then existing and future Schemes (**2000 Standard Management Agreement**).
78. ~~42-~~The 2000 Standard Management Agreement provided, among other things, that:
- (a) FEAP had paid to FEA a management fee in the sum of \$1.00 in consideration of which FEA agreed to manage the Schemes conducted by FEAP in accordance with the terms of the 2000 Standard Management Agreement and the fee may be varied at any time by agreement between the parties (clause 2);
  - (b) FEA would manage the Schemes conducted by FEAP in accordance with the Constitution of each Scheme (clause 3); and
  - (c) The terms of the 2000 Standard Management Agreement would apply to existing and future Schemes (clause 4).

**Particulars**

A copy of the 2000 Standard Management Agreement may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to the 2000 Standard Management Agreement for its full terms and effect.

**2001 Standard Management Agreement**

79. ~~43-~~By an agreement in writing dated 31 May 2001 between FEAP and FEA, FEAP and FEA agreed to standard terms governing the provision of forestry establishment and maintenance services by FEA in respect of then existing and future Schemes (**2001 Standard Management Agreement**).

80. 44.-The 2001 Standard Management Agreement provided, among other things, that:
- (a) The 2001 Standard Management Agreement would replace, among other things, the 2000 Standard Management Agreement (clause 2);
  - (b) FEAP had paid to FEA a management fee in the sum of \$1.00 in consideration of which FEA agreed to manage the Schemes conducted by FEAP in accordance with the terms of the 2001 Standard Management Agreement and the fee may be varied at any time by agreement between the parties (clause 3);
  - (c) FEA would manage the Schemes conducted by FEAP in accordance with the Constitution of each Scheme (clause 4); and
  - (d) The terms of the 2001 Standard Management Agreement would apply to existing and future Schemes (clause 5).

#### Particulars

A copy of the 2001 Standard Management Agreement may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to 2001 Standard Management Agreement for its full terms and effect.

#### 2009 Head Management Agreement

81. 45.-By an agreement in writing made between FEAP and FEA, dated 25 March 2009, FEA was appointed to provide forestry establishment and maintenance services in respect of then existing and future Schemes (**2009 Head Management Agreement**).
82. 46.-The 2009 Head Management Agreement provided, among other things, that:
- (a) in consideration of FEA agreeing to provide management services to or for FEAP, FEAP was obliged to pay to FEA the sum of \$1.00 (or such other sum as agreed between the parties) the receipt of which must be acknowledged by FEA (clause 3.1);
  - (b) FEA was liable out of its own funds for all overheads and all other costs of managing the plantations and performing its obligations under the 2009 Head Management Agreement (clause 3.2(a)); and

- (c) FEAP shall have no further liability for costs beyond the fees payable under clause 3 (clause 3.2(b)).

**Particulars**

A copy of the 2009 Head Management Agreement may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to 2009 Head Management Agreement for its full terms and effect.

**LAND**

83. ~~47. Prior to FEAP's appointment as responsible entity of the Schemes, investors in the Trusts were granted interests in the land by members of the FEA Group, including Tasmanian Plantation and FEA. Since 30 June 2000, FEAP and FEA have agreed that the management fees payable by FEAP to FEA be equal to the amount of the management and maintenance fees paid by Growers less deductions for FEAP's remuneration calculated in accordance with the constitutions of the Schemes.~~

**2000 STANDARD HEAD LEASE LEASE**

48. ~~By an agreement in writing made on or about 30 June 2000 between Tasmanian Plantation as Lessor and FEAP as lessee, Tasmanian Plantation agreed to standard terms which would govern leases including anticipated future leases between Tasmanian Plantation and FEAP (2000 Standard Head Lease).~~

**Particulars**

~~A copy of the 2000 Standard Head Lease may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to 2000 Standard Head Lease for its full terms and effect.~~

49. ~~The 2000 Standard Head Lease records, among other things, that:~~
- (a) ~~pursuant to the constitutions of the 1993 Scheme, the 1994 Scheme, the 1995 Scheme, the 1996 Scheme, the 1997 Scheme, the 1998 Scheme, the 1999 Scheme and the 2000 Scheme, Tasmanian Plantation is to hold land and lease it to FEAP and FEAP is to sub-lease the land to Growers who pay fees to FEAP in order to engage in the business of forestry plantation (recital C);~~
- (b) ~~Tasmanian Plantation and FEAP agreed that the terms of the 2000 Standard~~

~~Head Lease would govern leases between Tasmanian Plantation and FEAP in respect of all~~

84. ~~On or about 30 June 2000 Tasmanian Plantation, FEA and FEAP agreed that the land owned by Tasmanian Plantation to be used for managed investment schemes conducted by FEAP (recital D); and~~

~~(c) Tasmanian Plantation and FEAP acknowledged by entering into the 2000 Standard Head Lease that they agreed to enter into leases on the terms of the 2000 Standard Head Lease and a collateral Deed of Charge and Encumbrance in respect of all land leased and that FEAP would caveat all charged and encumbered land to protect the interests of growers (recital E).~~

50. ~~Relevant terms of the 2000 Standard Head Lease provided, among other things, that; and used in the 1995 Scheme through to the 1999 Scheme would on and from that date be leased as follows:~~

~~(a) the rent reserved and payable by FEAP to leased from Tasmanian Plantation in respect of each lease between Tasmanian Plantation and FEAP which adopted the terms of the 2000 Standard Head Lease was one dollar (clauses 1, 2(a) and 5) to FEAP; and~~

~~(b) FEAP shall have the right to use the land for the establishment of a plantation of trees and to harvest and sell such trees (clause 2(b)); and sub-leased from FEAP to Growers.~~

~~(c) the term of a particular lease would commence from the date of the relevant act of adoption of the terms of the 2000 Standard Head Lease and ends upon the final clear fall of all the trees upon the Land (clause 6).~~

51. ~~On 30 June 2000, at meetings of the boards of directors of Tasmanian Plantation and FEAP, respectively, Tasmanian Plantation and FEAP resolved to execute and adopt the terms of the 2000 Standard Head Lease.~~

#### Particulars

~~The meetings were held at 19 Brisbane Street, Launceston, Tasmania at approximately 4.00pm on 30 June 2000 and were attended by Mr~~

Anthony Seymour, Mr Anthony Cannon, Mr Bradley Watson and Mr Steven Bishop agreement was oral and is to be inferred. Insofar as it was oral it was made during discussions at meetings of directors of FEA, Tasmanian Plantation and FEAP on 30 June 2000 held at 19 Brisbane Street, Launceston, Tasmania. The substance of the discussions was to the effect alleged. Insofar as the agreement is to be inferred, it may be inferred from: (i) a memorandum dated 30 June 2000 addressed from Steve Bishop, FEA Group General Counsel, to Tony Seymour, Tony Cannon, Brad Watson, Peter Curran and Andrew Webb; (ii) minutes of the meetings of the directors of Tasmanian Plantation and FEAP on 30 June 2000; (iii) a written agreement made between Tasmanian Plantation and FEAP dated 30 June 2000 (2000 Standard Terms); (iv) a letter dated 30 June 2000 from Tasmanian Plantation to FEAP. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

52. On and after 30 June 2000, the terms of the 2000 Standard Head Lease were adopted by Tasmanian Plantation and FEAP and constituted the terms of each and every lease of land from Tasmanian Plantation to FEAP.

85. Also on or about 30 June 2000 Tasmanian Plantation agreed to lease to FEAP land:

- (a) to be used in and for the 2000 Scheme; and
- (b) to be used in and for future schemes,

in consideration for which FEAP agreed to pay to Tasmanian Plantation the rent specified below.

#### Particulars

The first defendant refers to and repeats the particulars sub-joined to the last preceding paragraph.

86. The agreements referred to in paragraphs 84 and 85 above are hereinafter referred to as the 2000 Standard Lease.

87. The following were terms of the 2000 Standard Lease:

- (a) subject to sub-paragraphs (b) and (c) below, the terms contained in the 2000 Standard Terms;
- (b) a term that the duration of the 2000 Standard Lease is 20 years from

commencement or until clear fall of all of the trees grown upon the land, which ever occurs first, plus one day; and

- (c) a term that the rent payable by FEAP to Tasmanian Plantation is equal to the rent paid by Growers less FEAP's remuneration calculated in accordance with the constitutions of the Schemes.

#### Particulars

The first defendant refers to and repeats the particulars sub-joined to paragraphs 84 and 85 above. A copy of the 2000 Standard Terms may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to 2000 Standard Terms for their full terms and effect.

### LAND, MANAGEMENT, FLOWS OF FUNDS AND SERVICES FOR THE 2000-2009 SCHEMES

#### 2000 SCHEME

88. Tasmanian Plantation was the owner of most of the land used in the forestry projects which were the subject of the 2000-2009 Schemes.
89. By an agreement made in or about June 2000 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2000 Scheme (the 2000 Land and the 2000 Head Lease).
90. It was a term of the 2000 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2000 Land less FEAP's remuneration.

#### Particulars

The term is express and may be inferred from page 18 of the 2000 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

91. Each investor in the 2000 Scheme (known as Growers) took, as sub-lessee, from FEAP, as sub-lessor, a lease of land allocated to her, him or it in and for the purposes of the 2000 Scheme (Grower Sub-Leases).

Particulars

The Grower Sub-Leases are in writing and in the possession of the plaintiffs. Proforma copies of the Grower Sub-Leases formed part of the Prospectus and the Constitution in respect of the 2000 Scheme. At trial, the first defendant will refer to the Grower Sub-Leases for their full terms and effect.

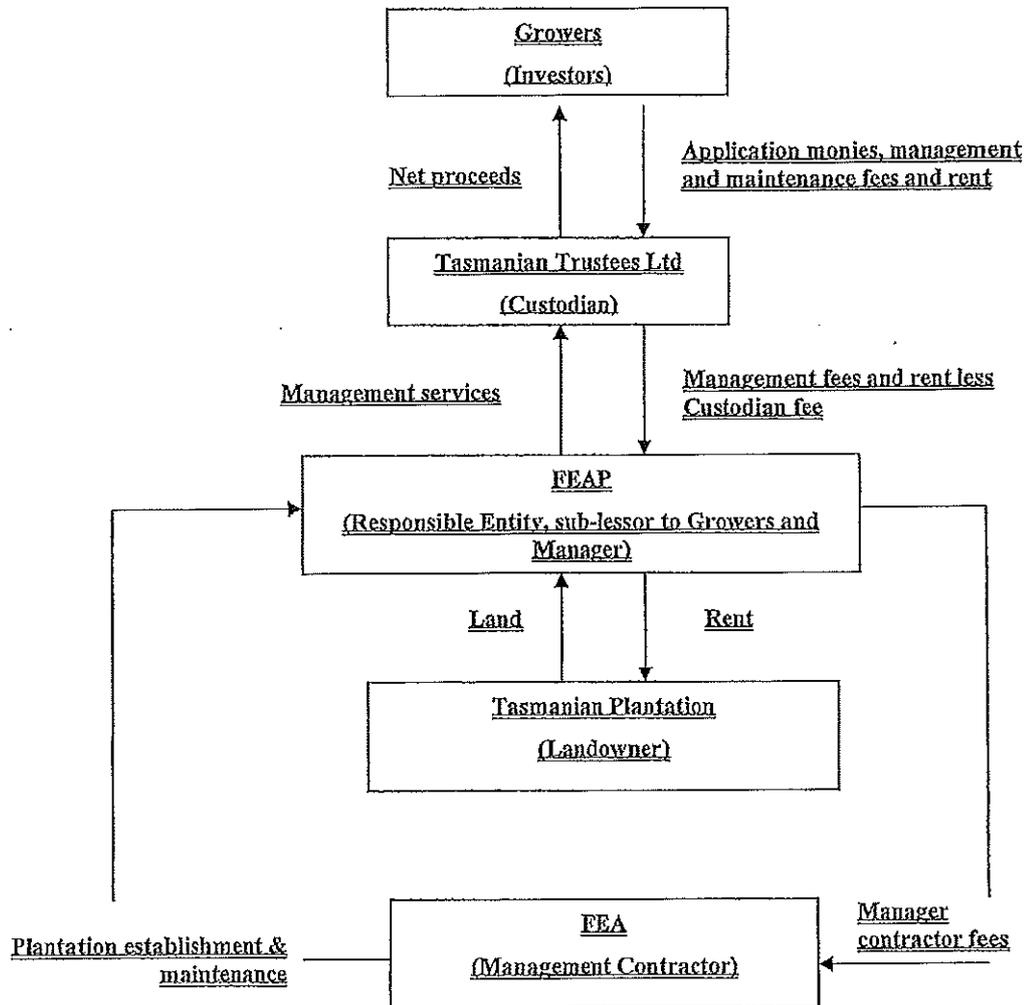
92. It was a term, among others, of each Grower Sub-Lease that:
- (a) the Grower must pay to FEA rent on a lump sum or annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, which ever occurred first.
93. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

94. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees;
  - (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
95. FEAP appointed FEA to perform its obligations under the Grower Management Agreements.
96. Rent paid by Growers pursuant to the Grower Sub-Leases was payable to FEAP as sub-lessor and responsible entity of the 2000 Scheme.
97. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were payable to FEAP as responsible entity of the 2000 Scheme.
98. The flows of funds and services in the 2000 Scheme are summarised in the diagram

below:



### 2001 SCHEME

99. By an agreement made in or about June 2001 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2001 Scheme (the 2001 Land and the 2001 Head Lease).
100. It was a term of the 2001 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2001 Land less FEAP's remuneration.

Particulars

The term is express and may be inferred from page 18 of the 2001 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

101. Each investor in the 2001 Scheme (known as Growers) took, as sub-lessee, from FEAP, as sub-lessor, a lease of land allocated to her, him or it in and for the purposes of the 2001 Scheme (Grower Sub-Leases).

Particulars

The Grower Sub-Leases are in writing and in the possession of the plaintiffs. Proforma copies of the Grower Sub-Leases formed part of the Prospectus and the Constitution in respect of the 2001 Scheme. At trial, the first defendant will refer to the Grower Sub-Leases for their full terms and effect.

102. It was a term, among others, of each Grower Sub-Lease that:
- (a) the Grower must pay to FEA rent on a lump sum or annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, which ever occurred first.
103. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

104. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees;
  - (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
105. FEAP appointed FEA to perform its obligations under the Grower Management

Agreements.

106. Rent paid by Growers pursuant to the Grower Sub-Leases was payable to FEAP as sub-lessor and responsible entity of the 2001 Scheme.
107. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were payable to FEAP as responsible entity of the 2001 Scheme.
108. The flows of funds and services in the 2001 Scheme are summarised in the diagram set out in paragraph 98, above.

2002 SCHEME

109. By an agreement made in or about March 2002 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2002 Scheme (the 2002 Land and the 2002 Head Lease).
110. It was a term of the 2002 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2002 Land less FEAP's remuneration.

Particulars

The term is express and may be inferred from page 20 of the 2002 Prospectus. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

111. Each investor in the 2002 Scheme (known as Growers) took, as sub-lessee, from FEAP, as sub-lessor, a lease of land allocated to her, him or it in and for the purposes of the 2002 Scheme (Grower Sub-Leases).

Particulars

The Grower Sub-Leases are in writing and in the possession of the plaintiffs. Proforma copies of the Grower Sub-Leases formed part of the Prospectus and the Constitution in respect of the 2002 Scheme. At trial, the first defendant will refer to the Grower Sub-Leases for their full terms and effect.

112. It was a term, among others, of each Grower Sub-Lease that:

- (a) the Grower must pay to FEA rent on an annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, which ever occurred first.
113. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

114. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees;
  - (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
115. FEAP appointed FEA to perform its obligations under the Grower Management Agreements.
116. Rent paid by Growers pursuant to the Grower Sub-Leases was payable to FEAP as sub-lessor and responsible entity of the 2002 Scheme.
117. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were payable to FEAP as responsible entity of the 2002 Scheme.
118. The flows of funds and services in the 2002 Scheme are summarised in the diagram set out in paragraph 98, above.

2003 SCHEME

119. By an agreement made in or about June 2003 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2003 Scheme (the 2003 Land and the 2003 Head Lease).

120. It was a term of the 2003 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2003 Land less FEAP's remuneration.

Particulars

The term is express and may be inferred from page 19 of the 2003 Product Disclosure Statement. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

121. Each investor in the 2003 Scheme (known as Growers) took, as sub-lessee, from FEAP, as sub-lessor, a lease of land allocated to her, him or it in and for the purposes of the 2003 Scheme (Grower Sub-Leases).

Particulars

The Grower Sub-Leases are in writing and in the possession of the plaintiffs. Proforma copies of the Grower Sub-Leases formed part of the Prospectus and the Constitution in respect of the 2003 Scheme. At trial, the first defendant will refer to the Grower Sub-Leases for their full terms and effect.

122. It was a term, among others, of each Grower Sub-Lease that:
- (a) the Grower must pay to FEA rent on a lump sum or annual basis; and
  - (b) the term or duration of the lease was for 20 years or until clear fall of the relevant plantation trees, which ever occurred first.
123. Each Grower also entered into a management agreement with FEAP for the establishment and maintenance of plantation trees (Grower Management Agreements).

Particulars

The Grower Management Agreements are in the possession of the plaintiffs. At trial, the first defendant will refer to the Grower Management Agreements for their full terms and effect.

124. It was a term, among others, of each Grower Management Agreement that:
- (a) the Grower must pay to FEAP annual management and maintenance fees:

- (b) FEAP could appoint persons to perform its obligations under the Grower Management Agreement.
125. FEAP appointed FEA to perform its obligations under the Grower Management Agreements.
126. Rent paid by Growers pursuant to the Grower Sub-Leases was payable to FEAP as sub-lessor and responsible entity of the 2003 Scheme.
127. Management and maintenance fees paid by Growers pursuant to the Grower Management Agreements were payable to FEAP as responsible entity of the 2003 Scheme.
128. The flows of funds and services in the 2003 Scheme are summarised in the diagram set out on page 19 of the 2003 prospectus.

#### 2004-2009 SCHEMES

129. By an agreement made in or about March 2004 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2004 Scheme (the 2004 Land and the 2004 Head Lease).
130. It was a term of the 2004 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2004 Land less FEAP's remuneration.

#### Particulars

The term is express and may be inferred from page 22 of the 2004 Product Disclosure Statement. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

131. By an agreement made in or about March 2005 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2005 Scheme (the 2005 Land and the 2005 Head Lease).
132. It was a term of the 2005 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2005 Land less FEAP's remuneration.

Particulars

The term is express. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

133. By an agreement made in or about April 2006 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2006 Scheme (the 2006 Land and the 2006 Head Lease).
134. It was a term of the 2006 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2006 Land less FEAP's remuneration.

Particulars

The term is express. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

135. By an agreement made in or about May 2007 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2007 Scheme (the 2007 Land and the 2007 Head Lease).
136. It was a term of the 2007 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2007 Land less FEAP's remuneration.

Particulars

The term is express and may be inferred from page 21 of the 2007 Product Disclosure Statement. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

137. By an agreement made in or about March 2008 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2008 Scheme (the 2008 Land and the 2008 Head Lease).
138. It was a term of the 2008 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2008 Land less FEAP's remuneration.

Particulars

The term is express and may be inferred from page 33 of the 2008 Product Disclosure Statement. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

139. By an agreement made in or about May 2009 between Tasmanian Plantation and FEAP, Tasmanian Plantation leased to FEAP land to be used in and for the 2009 Scheme (the 2009 Land and the 2009 Head Lease).
140. It was a term of the 2009 Head Lease that FEAP must pay to Tasmanian Plantation rent equal to the amount of the rent paid by Growers in respect of the 2009 Land less FEAP's remuneration.

Particulars

The term is express. The first defendant may provide further and better particulars following the provision of further and better disclosure by the plaintiffs.

141. Each investor in the 2004 to 2009 Schemes (known as Growers) received a sub-lease and or the benefit of a registered forestry right in connection with the interest allocated to her, him or it in and for the purposes of the relevant Scheme (Growers Forestry Rights).
142. There were terms of the Growers Forestry Rights, amongst others, that:
- (a) Growers must pay 'rent' to FEAP on a deferred basis calculated as a percentage of the Growers proportionate share of gross proceeds of harvest in accordance with the constitution of the relevant Scheme; and
  - (b) the duration of the Growers Forestry Rights is 20 years or until clear fall, which ever occurs first.
143. There were terms of the Grower Management Agreements for the 2004-2009 Schemes, amongst others, that Growers must pay to FEAP deferred management and maintenance fees calculated as a percentage of the Growers proportionate share of gross proceeds of harvest in accordance with the constitution of the relevant Scheme.

RIGHTS GRANTED BY TASMANIAN PLANTATION TO FEAP

144. ~~53. To protect the interests of Growers as sub-lessees of the Tasmanian Plantation land leased to FEAP and used in and for the Schemes, Tasmanian Plantation granted additional to FEAP rights over the land, described below.~~

#### **Deed of Charge**

145. ~~54. By a deed in writing made between Tasmanian Plantation, as Chargor, and FEAP, as Chargee, on or about 30 June 2000, Tasmanian Plantation agreed to charge and encumber certain land owned by Tasmanian Plantation in favour of FEAP (Deed of Charge).~~

#### **Particulars**

A copy of the Deed of Charge may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to Deed of Charge for its full terms and effect.

146. ~~55. The Deed of Charge recorded, among other things, that all land owned by Tasmanian Plantation and used for the 1993-1999 Schemes and future Schemes would be charged and encumbered in favour of FEAP as lessee of land in accordance with the terms of the 2000 Standard Head Lease Terms (recitals (a)-(d)).~~
147. ~~56. The expressed purpose of the Deed of Charge was to protect the interests of Growers as sub-lessees of land used in the Schemes (recitals (e)-(g)).~~
148. ~~57. The Deed of Charge charged and encumbered in FEAP's favour all parcels of land owned by Tasmanian Plantation and leased to FEAP in accordance with the terms of the 2000 Standard Head Lease Terms (clause 1).~~

#### **First Forestry Right**

149. ~~58. Pursuant to the Deed of Charge, by an instrument made on 1 May 2001, Tasmanian Plantation granted to FEAP, among other things, the right to establish, maintain and harvest a crop of trees on land owned by Tasmanian Plantation (First Forestry Right).~~

#### **Particulars**

A copy of the First Forestry Right may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the First Forestry Right for its full terms and effect.

150. 59.-The First Forestry Right applies to all land owned by Tasmanian Plantation as at the date of registration. The land described in the First Forestry Right was used in the 1994-2008 Schemes.

### **Second Forestry Right**

151. 60.-Pursuant to the 2000 Standard Head Lease Terms, by an instrument effective from 1 January 2006, Tasmanian Plantation granted to FEAP, among other things, the right to establish, maintain and harvest a crop of trees on land owned by Tasmanian Plantation (**Second Forestry Right**).

#### **Particulars**

A copy of the Second Forestry Right may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the Second Forestry Right for its full terms and effect.

### **Third Forestry Right**

152. 61.-Pursuant to the 2000 Standard Head Lease Terms, by an instrument dated 15 February 2006, Tasmanian Plantation granted to FEAP, among other things, the right to establish, maintain and harvest a crop of trees on land owned by Tasmanian Plantation (**Third Forestry Right**).

#### **Particulars**

A copy of the Third Forestry Right may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the Third Forestry Right for its full terms and effect.

### **Fourth Forestry Right**

153. 62.-Pursuant to the 2000 Standard Head Lease Terms, by an instrument dated 9 November 2006, Tasmanian Plantation granted to FEAP, among other things, the right to establish, maintain and harvest a crop of trees on land owned by Tasmanian Plantation and described as Folio 2 of the Register Volume 136708 (**Fourth Forestry Right**).

#### **Particulars**

A copy of the Fourth Forestry Right may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first

defendant will refer to the Fourth Forestry Right for its full terms and effect.

154. FEAP has paid to or for Tasmanian Plantation and or FEA all that it is obliged to pay to satisfy all of its obligations to date.

**INTERNAL LEASES PURPORTEDLY MADE IN 2002 (COLLECTIVELY REFERRED TO AS THE 2002 PURPORTED LEASES)**

**2002 FEA Purported Lease (No. 1)**

155. 63.-By a purported agreement, dated 26 June 2002, between, amongst others:

- (a) Tasmanian Plantation as lessor; and
- (b) FEA as lessee,

Tasmanian Plantation purported to lease to FEA certain land cultivated in relation to the 1993-1999 Schemes (2002 FEA Purported Lease (No. 1)).

**Particulars**

The 2002 FEA Purported Lease (No. 1) was not intended by the parties to have its apparent or any legal consequence including making FEA liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 151 to 153, above and paragraphs 163 and 164, below.

A copy of the 2002 FEA Purported Lease (No. 1) may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the 2002 FEA Purported Lease (No. 1) for its full terms and effect.

156. 64.-Cannon, Curran, FEA and each of them caused or procured Tasmanian Plantation to execute the 2002 FEAPFEA Purported Lease (No. 1).

**Particulars**

Cannon and Curran executed the 2002 FEA Purported Lease (No. 1).

**2002 FEA Purported Lease (No. 2)**

157. 65.-By a purported agreement, dated 26 June 2002, between, amongst others:

- (a) Tasmanian Plantation as Lessor; and
- (b) FEA as lessee,

Tasmanian Plantations purported to lease to FEA certain land cultivated in relation to the 1993-1999 Schemes (2002 FEA Purported Lease (No. 2)).

**Particulars**

The 2002 FEA Purported Lease (No. 2) was not intended by the parties to have its apparent or any legal consequence including making FEA liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 151 to 153, above and paragraphs 163 and 164, below.

A copy of the 2002 FEA Purported Lease (No. 2) may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the 2002 FEA Purported Lease (No. 2) for its full terms and effect.

158. ~~66-~~Cannon, Curran and FEA caused or procured Tasmanian Plantation to execute the 2002 FEA Purported Lease (No. 2).

**Particulars**

Cannon and Curran executed the 2002 FEA Purported Lease (No 2).

**2002 FEAP Purported Lease (No. 1)**

159. ~~67-~~By a purported agreement, dated 26 June 2002, between, amongst others:

- (a) Tasmanian Plantation as lessor; and
- (b) FEAP as lessee,

Tasmanian Plantation purported to lease to FEAP land cultivated in relation to the 2000-2002 Schemes (2002 FEAP Purported Lease (No. 1)).

**Particulars**

The 2002 FEAP Purported Lease (No. 1) was not intended by the parties to have its apparent or any legal consequence including making FEAP liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 151 to 153, above and paragraphs 163 and 164, below.

A copy of the 2002 FEAP Purported Lease (No. 1) may be inspected by

appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the 2002 FEAP Purported Lease (No. 1) for its full terms and effect.

160. ~~68-~~Cannon, Curran, FEA and each of them caused or procured FEAP to execute the 2002 FEAP Purported Lease (No. 1).

Particulars

Cannon and Curran executed the 2002 FEAP Purported Lease (No. 1).

**2002 FEAP Purported Lease (No. 2)**

161. ~~69-~~By a purported agreement, dated 26 June 2002, between, amongst others:

- (a) Tasmanian Plantation as lessor; and
- (b) FEAP as lessee,

Tasmanian Plantation purported to lease to FEAP land cultivated in relation to the 2000 and 2001 Schemes (2002 FEAP Purported Lease (No. 2)).

Particulars

The 2002 FEAP Purported Lease (No. 2) was not intended by the parties to have its apparent or any legal consequence including making FEAP liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 151 to 153, above and paragraphs 163 and 164, below.

A copy of the 2002 FEAP Purported Lease (No. 2) may be inspected by appointment at the office of the first defendant's solicitors. At trial, the first defendant will refer to the 2002 FEAP Purported Lease (No. 2) for its full terms and effect

162. ~~70-~~Cannon, Curran, FEA and each of them caused or procured FEAP to execute the 2002 FEAP Purported Lease (No. 2).

Particulars

Cannon and Curran executed the 2002 FEAP Purported Lease (No. 2).

163. ~~71-~~The 2002 Purported Leases were created to improve the apparent value of the land referred to in them so that funds may be borrowed using that land as security for the performance of the borrower's obligations.

Particulars

TPTL could lend no more than 50% of the value of real estate against which borrowed funds were to be secured. To secure a loan to Tasmanian Plantation in the sum of \$6 million from Tasmanian Perpetual Trustees Limited the rent purportedly payable to Tasmanian Plantation bore no relationship to what the growers were paying as rent and in fact exceeded what growers were paying as rent; see for example FEA.001.012.7254, FEA.001.012.7216, FEA.209.008.0475; FEA.209.009.0438; file note prepared by Steve Bishop dated 5 March 2002. A copy of the file note may be inspected by appointment at the office of the first defendant's solicitors.

164. ~~72.~~ Rent was not paid in accordance with the 2002 Purported Leases.

**INTERNAL LEASES PURPORTEDLY MADE IN 2004 (COLLECTIVELY REFERRED TO AS THE 2004 PURPORTED LEASES)**

**2004 FEA Purported Lease**

165. ~~73.~~ In or about August 2005:

- (a) Tasmanian Plantation as lessor; and
- (b) FEA as lessee,

purported to enter into an agreement dated 30 June 2004 whereby Tasmanian Plantation would lease to FEA certain land cultivated in relation to the 1993-1999 Schemes (2004 FEA Purported Lease).

Particulars

The 2004 FEA Purported Lease was not intended by the parties to have its apparent or any legal consequence including making FEA liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 152 and 153, above and paragraphs 171 and 172, below.

A copy of the 2004 FEA Purported Lease may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to the 2004 FEA Purported Lease for its full terms and effect.

166. ~~74.~~ Cannon, Webb, FEA and each of them caused or procured Tasmanian Plantation to execute the 2004 FEA Purported Lease.

Particulars

Cannon and Curran executed the 2004 FEA Purported Lease.

167. ~~75.~~ The expressed consideration for the 2004 FEA Purported Lease was a loan agreement made on 30 June 2004 (recital K).

**2004 FEAP Purported Lease**

168. ~~76.~~ In or about August 2005:

- (a) Tasmanian Plantation as lessor;
- (b) FEAP as lessee; and
- (c) Tasmanian Perpetual Trustees Ltd,

purported to enter into an agreement dated 30 June 2004 whereby Tasmanian Plantation would lease to FEAP certain land cultivated in relation to the 2000-2002 Schemes (2004 FEAP Purported Lease).

Particulars

The 2004 FEAP Purported Lease was not intended by the parties to have its apparent or any legal consequence including making FEAP liable to pay to Tasmanian Plantation the monthly rent by reference to all the circumstances which include the matters referred to at paragraphs 152 and 153, above and paragraphs 171 and 172, below.

A copy of the 2004 FEAP Purported Lease may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to the 2004 FEAP Purported Lease for its full terms and effect.

169. ~~77.~~ Cannon, Webb, FEA and each of them caused or procured FEAP to execute the 2004 FEAP Purported Lease.

Particulars

Cannon and Curran executed the 2004 FEAP Purported Lease.

170. ~~78.~~ The expressed consideration for the 2004 FEAP Purported Lease was a loan agreement made on 30 June 2004 (recital K).
171. ~~79.~~ The 2004 Purported Leases were created to improve the apparent value of the land

referred to in them so that funds may be borrowed using that land as security for the performance of the borrower's obligations.

**Particulars**

TPTL could lend no more than 50% of the value of real estate against which borrowed funds were to be secured. To secure a loan to Tasmanian Plantation the rent purportedly payable to Tasmanian Plantation bore no relationship to what the growers were paying as rent and in fact exceeded what growers were paying as rent.

172. 80--Rent was not paid in accordance with the 2004 Purported Leases.

**5 AUGUST 2009 PURPORTED MASTER HEAD LEASE**

173. 81--On or about 5 August 2009:

- (a) Tasmanian Plantation as Lessor;
- (b) FEA as lessee; and
- (c) FEAP as sub-lessee,

purported to enter into an agreement, dated 26 June 2003, whereby Tasmanian Plantations leased to FEA and FEA sub-leased to FEAP the land that was the subject of a lease said to have been made on 26 June 2002 between the parties (recitals C & D) (5 August 2009 Purported Master Head Lease).

**Particulars**

The 5 August 2009 Purported Master Head Lease was drafted in or about July and August 2009. The document was executed on or about 5 August 2009. Email memoranda showing amendments to draft of the document were sent in a series from 16 July 2009 through to 20 July 2009. The executed 5 August 2009 Purported Master Head Lease was attached to an email copied to Richard Kelev of Deloitte on 5 August 2009.

A copy of the 5 August 2009 Purported Master Head Lease and email memoranda may be inspected by appointment at the office of the defendant's solicitors. At trial, the defendant will refer to the 5 August 2009 Purported Master Head Lease for its full terms and effect.

174. 82--No lease was made on 26 June 2002 between Tasmanian Plantation, FEA and FEAP.

175. ~~83.~~The 5 August 2009 Purported Master Head Lease purports to:

- (a) have been executed on 26 June 2003; and
- (b) substantially increase rent payable by FEAP and to Tasmanian Plantation in respect of land leased by Tasmanian Plantation and used in and for the purposes of the Schemes (clauses 2(a) and 5).

#### **2009 PURPORTED DEED OF VARIATION**

176. ~~84.~~On or about 22 December 2009:

- (a) Tasmanian Plantation, as lessor;
- (b) FEA as lessee; and
- (c) FEAP as sub-lessee,

purported to enter into an agreement whereby the rent payable by FEAP and to Tasmanian Plantation in respect of land leased by Tasmanian Plantation to FEA or FEAP under previous leases was varied to the rates set out in Annexure B (**2009 Purported Deed of Variation**).

#### **FLOWS OF FUNDS**

~~85.~~—The Constitution of the 1993-2002 Schemes record that the price for an interest in the Scheme was:

- (a) — an establishment fee (**Initial Investment**);
- (b) — an annual management fee; and
- (c) — annual rent; (**Annual Payments**)
- (d) — a harvest fee (**Harvest Fee**).

(clause 2, First Schedule, items 1 to 4)

~~86.~~—The Constitution of the 2003-2009 Schemes record that the price for an interest in the Scheme was:

- ~~(a) — an establishment fee (Initial Investment);~~
  - ~~(b) — rent payable from harvest proceeds;~~
  - ~~(c) — a management fee payable from harvest proceeds; and~~
  - ~~(d) — miscellaneous expenses specified in clause 17.2 of the Constitution.~~
- ~~(clause 2, First Schedule, items 1 to 4)~~

87. ~~Since June 2000, FEAP received and recorded as revenue in its financial accounts Initial Investments and Annual Payments.~~
88. ~~Since June 2000, FEAP has paid to FEA the entirety of the Initial Investments (less commissions to financial advisers) and Annual Payments.~~
89. ~~From 30 June 2000 to 30 June 2004, FEAP paid no rent to Tasmanian Plantation or FEA.~~

**Particulars**

~~Further particulars will be provided prior to trial.~~

90. ~~From 1 July 2004 FEAP did not pay to Tasmanian Plantation or FEA rent in accordance with the 2002 FEAP Purported Leases, 2004 FEAP Purported Lease, 5 August 2009 Purported Master Head Lease or 2009 Purported Deed of Variation.~~
177. ~~91. FEAP remains ready and willing to discharge all of its obligations in relation to the land used in the Schemes.~~

**FEA charges for management services**

92. ~~For the 2000-2009 financial years FEAP recorded as an expense in its financial accounts management services charged by FEA, which were:~~
- ~~(a) — in excess of \$1.00; and~~
  - ~~(b) — greater than the total amount of Annual Payments recorded as revenue in FEAP's financial accounts.~~

**Particulars**

~~Further particulars will be provided following discovery and prior to~~

trial.

### Solvency

178. ~~93.~~ The Schemes are not insolvent.

### CONTENTIONS

179. ~~94.~~ Land owned by Tasmanian Plantation and cultivated in relation to the 1995-2009 Schemes is leased from Tasmanian Plantation to FEAP on the terms contained in the 2000 Standard Head Lease, amongst others, alleged in paragraphs 84 to 87, 90, 100, 110, 120, 130, 132, 134, 136, 138, 140.
180. ~~95.~~ At all relevant times FEAP was, as the responsible entity of the Schemes, required by:
- (a) section 601FC(1)(a) of the *Corporations Act 2001* to exercise its powers and carry out its duties honestly; and
  - (b) section 601FC(1)(c) of the *Corporations Act 2001* to exercise its powers and carry out its duties in the best interests of the members (i.e. Growers) of the 1995-2009 Schemes and, if there was a conflict between the Growers' interests and FEAP's own interests, to give priority to the Growers' interests.
  - (c) section 601FC(1)(i) of the *Corporations Act 2001* to ensure that scheme property was clearly identified as scheme property and held separately from the property of the responsible entity and property of any other scheme.
181. ~~96.~~ As responsible entity of the Schemes, FEAP holds scheme property on trust for the Growers pursuant to s 601FC(2) of the *Corporations Act 2001*.
182. ~~97.~~ As responsible entity of the Schemes, FEAP occupied a fiduciary position of trust in respect of the affairs of the Growers under the 1995-2009 Schemes.
183. ~~98.~~ Consequently, FEAP in its capacity as a responsible entity at all relevant times owed to the members of the 1995-2009 Schemes a fiduciary duty to act honestly and in the best interests of the Growers in carrying out its responsibilities in relation to those

Schemes.

184. 99.—By reason of the matters referred to in paragraphs 6 to 84 above the table below, the 2002 Purported Leases, 2004 Purported Leases, 5 August 2009 Purported Master Head Lease and the 2009 Purported Deed of Variation are void, voidable or unenforceable. are void, voidable or unenforceable.

100.—Accordingly

<u>2002 FEA Purported Leases</u>	<u>2002 FEAP Purported Leases</u>
<p>(i) <u>They were and are a sham:</u></p> <ul style="list-style-type: none"> <li>• <u>The defendant refers to and repeats the particulars at paragraphs 155 and 157, above.</u></li> </ul>	<p>(i) <u>They were and are a sham:</u></p> <ul style="list-style-type: none"> <li>• <u>The defendant refers to and repeats the particulars at paragraphs 159 and 161, above.</u></li> </ul>
<p>(ii) <u>FEA contravened s 601FD(1)(a), (c), (e) and breached its equivalent fiduciary duties as a director of FEAP when it entered into the 2002 FEA Purported Leases since the Growers in the 1993-1999 Schemes were detrimentally affected, in that:</u></p> <ul style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEAP, by purportedly increasing the rent to \$612,113 per annum which exceeded what Growers were paying as rent;</u></li> <li>• <u>the term of the leases were reduced from 20 years or until clear fell which ever occurred first to one year with an option to renew;</u> <u>with no corresponding benefit, in that:</u></li> <li>• <u>Tasmanian Plantation borrowed from Tasmanian Perpetual Trustees Limited \$6 million under a loan agreement dated 26 June 2002;</u></li> <li>• <u>the funding was used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>The 1993-1999 Schemes were financially self-sustaining until</u></li> </ul>	<p>(ii) <u>The officers of FEAP, Cannon and Curran, contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached their equivalent fiduciary duties by preferring the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the 2000-2002 Schemes who were detrimentally affected in that:</u></p> <ul style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEAP, by purportedly increasing the rent to \$387,887 per annum which exceeded what Growers were paying as rent;</u></li> <li>• <u>the term of the leases were reduced from 20 years or until clear fell which ever occurred first to one year with an option to renew;</u> <u>with no corresponding benefit, in that:</u></li> <li>• <u>Tasmanian Plantation borrowed \$6 million from Tasmanian Perpetual Trustees Limited under a loan agreement dated 26 June 2002;</u></li> <li>• <u>the funding was used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>the 2000-2002 Schemes were financially</u></li> </ul>

<u>harvest.</u>	<u>self-sustaining until harvest.</u>
<p data-bbox="237 398 738 705">(iii) <u>Officers of FEAP, Cannon and Curran, contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached their equivalent fiduciary duties by executing the 2002 FEA Purported Leases in that they preferred the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the 1993-1999 Schemes who were detrimentally affected in that:</u></p> <ul data-bbox="288 728 738 1093" style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEA, by purportedly increasing the rent to \$612,113 per annum which exceeded what Growers were paying as rent;</u></li> <li>• <u>the term of the leases were reduced from 20 years or until clear fell which ever occurred first to one year with an option to renew;</u></li> </ul> <p data-bbox="288 1115 694 1142"><u>with no corresponding benefit, in that:</u></p> <ul data-bbox="288 1164 738 1507" style="list-style-type: none"> <li>• <u>Tasmanian Plantation borrowed \$6 million from Tasmanian Perpetual Trustees Limited under a loan agreement dated 26 June 2002;</u></li> <li>• <u>the funding was used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>The 1993-1999 Schemes were financially self-sustaining until harvest.</u></li> </ul>	<p data-bbox="754 398 1289 813">(iii) <u>Tasmanian Plantation aided and abetted in the contraventions by Cannon and Curran when it entered into the 2002 FEAP Purported Leases and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by FEAP when it entered into the 2002 FEAP Purported Leases with actual or constructive knowledge of FEAP's breaches of fiduciary duties.</u></p>
<p data-bbox="237 1541 738 1986">(iv) <u>Tasmanian Plantation aided and abetted the contraventions by FEA and/or Cannon and Curran when it entered into the 2002 FEA Purported Leases and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by FEA and/or Cannon and Curran when it entered into the 2002 FEA Purported Leases with actual or constructive knowledge of FEA, Cannon and</u></p>	

<u>Curran's breaches of fiduciary duties.</u>	
(v) <u>FEA aided and abetted in the contraventions by Cannon and Curran when it entered into the 2002 FEA Purported Leases and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act, FEA knowingly assisted in the breaches of fiduciary duties by Cannon and Curran when it entered into the 2002 FEAP Purported Leases with actual or constructive knowledge of Cannon and Curran's breaches of fiduciary duties.</u>	

185. By reason of the matters referred to in the table below, the 2004 Purported Leases are void, voidable or unenforceable.

<u>2004 FEA Purported Lease</u>	<u>2004 FEAP Purported Lease</u>
(i) <u>Past consideration is no consideration: The 2004 FEA Purported Lease is unenforceable by reason of paragraphs 165 and 167 of the defendant's statement of facts and contentions.</u>	(i) <u>Past consideration is no consideration: The 2004 FEAP Purported Lease is unenforceable by reason of paragraphs 168 and 170 of the defendant's statement of facts and contentions.</u>
(ii) <u>The lease was and is a sham:</u> <ul style="list-style-type: none"> <li>• <u>The defendant refers to and repeats the particulars at paragraph 165, above.</u></li> </ul>	(ii) <u>The lease was and is a sham:</u> <ul style="list-style-type: none"> <li>• <u>The defendant refers to and repeats the particulars at paragraph 168, above.</u></li> </ul>
(iii) <u>FEA contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached its equivalent fiduciary duties as a director of FEAP when it entered into the 2004 FEA Purported Lease since the Growers in the 1993-1999 Schemes were detrimentally affected, in that:</u> <ul style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEA, which purportedly increased to \$1,224,226 per annum;</u></li> </ul> <u>with no corresponding benefit, in that:</u> <ul style="list-style-type: none"> <li>• <u>Tasmanian Plantation sought to borrow \$5 million from Tasmanian Perpetual Trustees</u></li> </ul>	(iii) <u>Officers of FEAP, Cannon and Webb, contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached their equivalent fiduciary duties by preferring the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the 2000-2002 Schemes who were detrimentally affected in that:</u> <ul style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEAP, which purportedly increased to \$775,774 per annum;</u></li> </ul> <u>with no corresponding benefit, in that:</u> <ul style="list-style-type: none"> <li>• <u>Tasmanian Plantation sought to borrow \$5</u></li> </ul>

<p><u>Limited under a loan agreement dated 30 June 2004:</u></p> <ul style="list-style-type: none"> <li>• <u>the funding was intended to be used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>The 1993-1999 Schemes were financially self-sustaining until harvest.</u></li> </ul>	<p><u>million from Tasmanian Perpetual Trustees Limited under a loan agreement dated 30 June 2004;</u></p> <ul style="list-style-type: none"> <li>• <u>the funding was intended to be used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>The 2000-2002 Schemes were financially self-sustaining until harvest.</u></li> </ul>
<p><u>(iv) Officers of FEAP, Cannon and Webb contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached their equivalent fiduciary duties by executing the 2002 FEA Purported Leases in that they preferred the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the 1993-1999 Schemes who were detrimentally affected in that:</u></p> <ul style="list-style-type: none"> <li>• <u>the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent by FEA, which purportedly increased to \$1,224,226 per annum;</u></li> </ul> <p><u>with no corresponding benefit, in that:</u></p> <ul style="list-style-type: none"> <li>• <u>Tasmanian Plantation sought to borrow \$5 million from Tasmanian Perpetual Trustees Limited under a loan agreement dated 30 June 2004;</u></li> <li>• <u>the funding was intended to be used to acquire land for cultivation in other Schemes; and</u></li> <li>• <u>The 1993-1999 Schemes were financially self-sustaining until harvest.</u></li> </ul>	<p><u>(iv) Tasmanian Plantation aided and abetted the contraventions by Cannon and Webb when it entered into the 2004 FEAP Purported Lease and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by Cannon and Webb when it entered into the 2004 FEAP Purported Lease with actual or constructive knowledge of Cannon and Webb's breaches of fiduciary duties.</u></p>
<p><u>(v) Tasmanian Plantation aided and abetted the contraventions by FEA or Cannon and Webb when it entered into the 2004 FEA Purported Lease and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by FEA or Cannon and Webb when it entered into the 2004 FEA Purported Lease with actual or constructive knowledge of FEA, Cannon and Curran's breaches of fiduciary</u></p>	

<u>duties.</u>	
(vi) <u>FEA aided and abetted in the contraventions by Cannon and Webb when it entered into the 2004 FEA Purported Lease and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. FEA knowingly assisted in the breaches of fiduciary duties by Cannon and Webb when it entered into the 2004 FEA Purported Lease with actual or constructive knowledge of Cannon and Webb's breaches of fiduciary duties.</u>	

186. The 5 August 2009 Purported Master Head Lease is void, voidable or unenforceable as:

- (a) It is uncertain. The 5 August 2009 Purported Master Head Lease refers at recitals D to E to a lease made on 26 June 2002 between Tasmanian Plantation, FEA and FEAP. No such lease exists.
- (b) The officers of FEAP who executed the 5 August 2009 Purported Master Head Lease on behalf of FEAP contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached their equivalent fiduciary duties in that they preferred the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the Schemes who were detrimentally affected in that the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent, which purportedly was increased substantially.
- (c) FEA contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached its equivalent fiduciary duties as a director of FEAP when it entered into the 5 August 2009 Purported Master Head Lease since Growers in the Schemes were detrimentally affected in that the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent, which purportedly was increased substantially.
- (d) Tasmanian Plantation aided and abetted the contraventions by officers of FEAP when it entered into the 5 August 2009 Purported Master Head Lease and accordingly was involved in the contraventions for the purposes of s 79 of the

Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by officers of FEAP when it entered into the 5 August 2009 Purported Master Head Lease with actual or constructive knowledge of the breaches of fiduciary duties

187. The 2009 Purported Deed of Variation is void, voidable or unenforceable as:
- (a) in relation to land used in relation to the 1995-2009 Schemes, FEAP was obliged to pay rent to Tasmanian Plantation of only \$1.00; and It is uncertain. The 2009 Purported Deed of Variation refers at recital D to the Original Lease. It also refers to a lease entered into on 26 June 2003. No such leases as defined exist.
  - (b) The officers of FEAP who executed the 2009 Purported Deed of Variation on behalf of FEAP contravened s 601FD(1)(a), (c) and (e) of the Corporations Act and breached their equivalent fiduciary duties in that they preferred the interests of Tasmanian Plantation and/or FEA over the interests of Growers in the Schemes who were detrimentally affected in that the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent, which purportedly was increased substantially to the rates set out in Annexure B.
  - (c) FEA contravened s 601FD(1)(a), (c), (e) of the Corporations Act and breached its equivalent fiduciary duties as a director of FEAP when it entered into the 5 August 2009 Purported Master Head Lease since Growers in the Schemes were detrimentally affected in that the risk of termination of the Grower sub-leases was substantially increased by the risk of default in rent, which purportedly was increased substantially to the rates set out in Annexure B.
  - (d) Tasmanian Plantation aided and abetted the contraventions by officers of FEAP when it entered into the 2009 Purported Deed of Variation and accordingly was involved in the contraventions for the purposes of s 79 of the Corporations Act. Tasmanian Plantation knowingly assisted in the breaches of fiduciary duties by officers of FEAP when it entered into the 2009 Purported Deed of Variation with actual or constructive knowledge of the breaches of fiduciary duties.

188. (b) Accordingly the Plaintiffs' notices of default and termination are invalid.

**Later Schemes (2000-2009)**

101. ~~Alternatively to paragraphs 94 to 185 above, if FEAP is obliged to pay rent to FEA in relation to the Later Schemes as contended by the Plaintiffs<sup>‡</sup> (which is denied), FEAP would have been able to pay such rent to FEA were it not for the conduct of FEA referred to in paragraphs 0 to 0 below.~~

102. ~~Since 1 July 2000, FEA has:~~

~~(a) — charged FEAP for management services as referred to in paragraph 92 above; and~~

~~(b) — received payment from FEAP for such services which has exceeded the amount due under the management agreements referred to in paragraphs 77 to 82 above thereby breaching the management agreements.~~

103. ~~FEA:~~

~~(a) — was required by:~~

~~(i) — section 181 of the *Corporations Act 2001* to exercise its powers and discharge its duties in good faith and in the best interests of FEAP; and~~

~~(ii) — section 182(1) not to improperly use their position to gain an advantage for itself or someone else or cause detriment to FEAP.~~

~~(b) — occupied a fiduciary position as a director and in that capacity at all relevant times owed to FEAP a fiduciary duty to:~~

~~(i) — act honestly and in the best interests of FEAP in carrying out its responsibilities; and~~

---

<sup>‡</sup> — As alleged in paragraphs 26 and 27(a) of the Plaintiffs' Statement of Facts and Contentions.

(ii) ~~not to improperly use its position as director to gain an advantage for itself or someone else or cause detriment to FEAP.~~

104. ~~FEA has breached its duties owed to FEAP as referred to in sub-paragraphs 0(a)(i) and (b)(i) above, in that FEA has:~~

- ~~(a) charged FEAP for management services based on the amount of annual payments received by Growers rather than the costs of delivering the management services; and~~
- ~~(b) charged FEAP for management services in circumstances where FEAP could not recover from Growers the expenses involved in managing the plantations until harvest, pursuant to the Constitution of each of the 2003 to 2009 Schemes; and~~

~~has thereby failed to act in good faith in the best interests of FEAP.~~

105. ~~FEA has breached its duties owed to FEAP as referred to in sub-paragraphs 0(a)(ii) and (b)(ii) above, in that FEA has:~~

- ~~(a) gained an advantage for itself by charging FEAP for management services and receiving payment of those services; and~~
- ~~(b) caused detriment to FEAP in that FEAP could not recover from the Growers the expenses involved in managing the plantations until harvest, pursuant to the Constitution to each of the 2003 to 2009 Schemes.~~

106. ~~Alternatively, if the leases to FEAP are at an end, which is denied, FEAP remains ready and willing to discharge its obligations in respect of the land used in the Schemes.~~

#### **Defaults alleged against FEA .**

107. ~~In so far as Tasmanian Plantation, FEA Carbon and/or their controllers, receivers or managers seek any relief adverse to the interests of FEA that relief should be refused on the basis that FEA is a necessary and proper, but absent, defendant to that claim.~~

**SET-OFF**

By way of set-off against FEA, FEAP says:

- ~~108. It refers to and repeats the matters referred to at paragraphs 75 to 82, 0 to 0, 0, 0 to 0, above.~~
- ~~109. By reason of those matters FEAP is entitled to set-off against any claim by FEA for rent due from FEAP, payments made by FEAP to FEA for management services.~~

**COUNTERCLAIM**

And by way of counter-claim against the Tasmanian Plantation and FEA, FEAP says as follows.

- ~~189. 110.~~ Pursuant to the powers of FEAP under the constitutions of the 1995-2002 Schemes, FEAP may on behalf of any Grower commence and conduct legal proceedings of any kind in any court where that is in the best interest of the Grower or the Scheme.
- ~~190. 111.~~ It refers to and repeats the matters referred to at paragraphs 11 to ~~106~~188 above.

**AND THE DEFENDANT COUNTERCLAIMS AGAINST TASMANIAN PLANTATION AND FEA:**

- A. An order or declaration under sub-section 1325(5)(a) of the *Corporations Act* that the 2002 Purported Leases, 2004 Purported Leases, 5 August 2009 Master Head Lease and the 2009 Purported Deed of Variation are void *ab initio*.
- B. Alternatively to A, an order or declaration under sub-section 1325(5)(c) of the *Corporations Act* that the 2002 Purported Leases, 2004 Purported Leases, 5 August 2009 Master Head Lease and the 2009 Purported Deed of Variation are unenforceable.
- C. Alternatively to A and B, a declaration under section 36 of the *Supreme Court Act 1986* (Vic) that the 2002 Purported Leases, 2004 Purported Leases, 5 August 2009 Purported Master Head Lease and the 2009 Purported Deed of Variation are void, unenforceable or be set aside *ab initio*.

- D. A declaration that the plaintiffs' Notices of Default and Notices of Termination are invalid.
- E. An order pursuant to section 444F(4) of the *Corporations Act* that Tasmanian Plantation and FEA not take any steps to obtain possession of land described in Annexure GD of the Amended Originating Process filed ~~30 September~~ dated 4 November 2011.
- F. A direction that Tasmanian Plantations and FEA, to the extent necessary, take all steps to ensure that FEAP has rights to the Land as set out in the First Forestry Right, Second Forestry Right, Third Forestry Right and Fourth Forestry Right.
- G. Alternatively, a declaration pursuant to section 36 of the *Supreme Court Act 1986* (Vic), alternatively, an order pursuant to section 146(2) of the ~~*Property Law Act 1958*~~ (Vic), that that FEAP be relieved from forfeiture of the leases referred to in the Plaintiffs' Statement of Facts and Contentions.
- H. Costs.
- I. Such further or other order as the Court deems fit.

**AND THE DEFENDANT COUNTERCLAIMS AGAINST FEA:**

- ~~J. An order under s 1317H(2) of the *Corporations Act* that FEA is liable to account to FEAP in respect of profits it has derived from the management agreements as a result of its breach of duties.~~
- ~~K. Alternatively to J, a declaration that FEA is liable to account to FEAP in respect of profits it has derived from the management agreements as a result of its breach of fiduciary duties.~~
- ~~J. An order under s 1317H(2) of the *Corporations Act* that FEA is liable to account to FEAP in respect of any overpaid rent FEA received from FEAP.~~
- ~~K. All necessary accounts and enquiries.~~
- ~~N. Alternatively to J to MK, damages.~~

M. ~~Q~~-Interest:

- a. pursuant to the *Supreme Court Act 1958* (Vic);
- b. pursuant to the jurisdiction of the Court (including compound interest) alternatively;
- c. under the principles of *Hungerfords v Walker*.

N. ~~P~~-Costs.

O. ~~Q~~-Such further or other order as the Court deems fit.

Dated: 16 February 21 December 2012

A P Young

V M Priskich

*DLA Piper Australia*  
.....  
**DLA Piper Australia**  
Lawyers for the first defendant

IN THE FEDERAL COURT OF AUSTRALIA )  
DISTRICT REGISTRY: VICTORIA )  
DIVISION: CORPORATIONS )

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed  
of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002**  
(ARSN 099 656 429) and other schemes

Between

**BRIAN SILVIA** and **PETER KREJCI** as  
deed administrators of **FEA**  
**PLANTATIONS LTD**  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

First Plaintiffs

**FEA PLANTATIONS LTD**  
(ACN 055 969 429) (subject to deed of  
company arrangement) (receivers  
appointed)

Second Plaintiff

**ANNEXURE 'BRS-5'**

This is the annexure marked with the letters '**BRS-5**' referred to in the affidavit of **BRIAN RAYMOND SILVIA** sworn before me this 22<sup>nd</sup> day of November 2013.

Before me:



.....**Peter Phillip Choice**  
A Justice of the Peace in and for  
the State of New South Wales  
137396

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Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	<b>Cornwall Stodart</b>		
Tel	(03) 9608 2000	Fax	(03) 9608 2222
Email	<a href="mailto:s.sawyer@cornwalls.com.au">s.sawyer@cornwalls.com.au</a>		
<b>Address for service</b> (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

**MINUTES OF THE MEETING OF MEMBERS OF TASMANIAN FORESTS TRUST NO 3 ("FEAP 1995")  
ARSN 093 165 005 HELD ON MONDAY, 11 NOVEMBER 2013 AT 8.00 AM AT THE GRAND  
CHANCELLOR, 29 CAMERON STREET LAUNCESTON TAS 7250.**

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<b>PRESENT</b>	<u>Person</u> Brian Silvia	Chairman and Deed Administrator of FEA Plantations Limited as Responsible Entity of FEAP 1995 (Subject to Deed of Company Arrangement) ("FEAP")
	Stephen Sawer	Deed Administrator's Legal Advisor, from Cornwall Stodart
	Alva Zeng	Deed Administrator's Assistant
	Matthew Jacobs	Deed Administrator's Assistant
	Other Attendees	Refer to attached Attendance Schedule

**OPEN AND WELCOME** Mr Brian Silvia introduced himself and his assistant to the Meeting as the Chairman and Deed Administrator of FEAP.

The Chairman advised the Meeting has been called by the Scheme's current Responsible Entity ("RE"), FEAP, pursuant to Section 252A of the Corporations Act 2001 ("the Act"). The RE appoints its Joint and Several Deed Administrator, Mr Brian Silvia, to chair the Meeting. The Chairman advised the Meeting would be assisted by a PowerPoint presentation (attached).

**CONVENING OF THE MEETING** The Chairman advised the Meeting is a resumption of the Meeting held on 17 October 2013 which had been convened by Notice of Meeting dated 23 September 2013, a copy of which is attached.

The Chairman noted a Supplementary Explanatory Memorandum dated 1 November 2013 had been distributed to Growers by both post and email notifying them of the resumption of the Scheme Meeting on 11 November 2013 at the same time and place as the original meeting.

**TIME AND PLACE** The Chairman asked attendees if there was any objection to the time and place of this resumed Meeting.

No objection was raised.

The Chairman declared:

*"That the Meeting had been held at a reasonable time and place."*

**QUORUM**

Pursuant to Section 252R of the Act, the quorum for a meeting of a registered Scheme's members is two members.

The Chairman declared:

*"That a quorum was present for the Meeting".*

**PROXIES**

The Chairman tabled proxies received inviting their inspection at the conclusion of the meeting.

The Chairman explained the following:

1. **Poll** – The proposed Resolutions 2 and 3 are special and extraordinary resolutions and will be put to the vote on a poll pursuant to Section 253J(1) of the Act.
2. **Number and value of votes** – On a poll, each Grower (identified by a Grower Number) has one vote for each dollar of the value of the total interest they have in the Scheme. Pursuant to clause 18.4 of the current Scheme Constitution, the value of each Grower's vote is to be determined in accordance with the number of woodlots held by the Growers.
3. **Conduct of the Poll** – The voting cards will be counted by an external professional meeting service company, Link Market Services. Each attendee entitled to vote has been given a voting card.
4. **Proposed amendments to Resolution 2** – It is proposed Resolution 2 will be amended as detailed in the Supplementary EM.

**PURPOSE OF MEETING:**

The Chairman noted that the Meeting had been convened by Notice dated 23 September 2013 pursuant to Section 252A of the Act.

The Meeting was convened for the following purpose:

- ▲ To receive Explanatory Memorandum ("EM") dated 23 September 2013 and Supplementary Explanatory Memorandum ("Supplementary EM") dated 1 November 2013 including the proposed amended Constitution;

- 4 To consider the contents of both the EM and Supplementary EM and the proposed amendments to the current Scheme Constitution as outlined therein;
- 4 For Members to consider, and if thought fit, pass the resolutions detailed below; and
- 4 Any other business that may be lawfully brought forward.

**SUPPLEMENTARY  
EXPLANATORY  
MEMORANDUM**

The Chairman tabled the EM dated 23 September 2013, which was taken to have been read. He then advised the Meeting would be supported by the attached PowerPoint presentation. Whilst dealing with each of the issues outlined in it, he made the following comments:

Update regarding ASIC Enquiry

- 4 ASIC previously raised a number of queries concerning the Settlement Proposal before the Scheme Meeting held on 17 October 2013. It had also requested a Supplementary EM be issued and an additional period of notice before resumption of this meeting.  
  
As a result, the Scheme Meeting held on 17 October 2013 was adjourned to 11 November 2013 at the same time and place. The FEAP Varied DOCA was also amended and extended to 29 November 2013 at a Section 445F Meeting of Creditors held on 29 October 2013.
- 4 The Deed Administrators' solicitors provided information to ASIC in response to its queries. However, resolution of the issues raised was delayed as a consequence of a number of issues including the relevant ASIC officer being on leave for a period of time.
- 4 ASIC subsequently indicated it did not require a Supplementary EM. However, the Deed Administrators prepared an update to Growers on the basis of keeping them informed of developments.
- 4 The Supplementary EM was issued on 1 November 2013 and distributed to Growers providing:
  - More information concerning the Settlement proposal;
  - Notifying Growers of the Adjourned Scheme Meeting; and
  - Outlining proposed amendments to Resolution 2 contained in the Original EM.

#### Updated Estimated Return to Growers

- Δ The Deed Administrators have updated the financial model estimating Grower returns based on the continuing dynamics of costs incurred in the Administration process and issues attaching to the value of Growers' trees.
- Δ The variance between the estimated returns contained in the Original and Supplementary EM mainly related to:
  - Changes in projected harvesting time and hence the resulting increase in the projected timber volume and price;
  - The Inclusion of the estimated net return to Growers rather than gross return; and
  - Changes in projected Scheme expenses.

#### Additional Key Risks under the MIS Transition

- Δ Additional key risks not contained in the original Prospectus mentioned in EM have been further expanded in the Supplementary EM.

#### Proposed Fees and Charges under the MIS Transition

- Δ The MIS Transition process contemplates Macquarie Alternative Assets Management Ltd ("MAAML"), becoming the replacement Responsible Entity ("replacement RE") continuing to manage the Scheme through to harvesting.
- Δ The Supplementary EM clarified proposed fees and charges as being those contained in the proposed amended Constitution. Fees and charges levied may vary subject to MAAML's discretion.

#### Conditions Precedent to MIS Transition

- Δ The Chairman noted Conditions Precedent B, C, and L contained in Schedule A of the Notice of Meeting dated 23 September 2013 have not been met.
- Δ Mr Stephen Sawyer, the Deed Administrators' legal advisor, commented ASIC had provided conditional relief to MAAML in respect of its normal statutory obligation on 8 November 2013. However, technically Condition Precedent A has not been satisfied as MAAML has not formally advised whether the ASIC relief is in a form to its satisfaction.

### Outstanding Milestone Events

- 4 The Chairman commented the most significant outstanding Milestones required under the Implementation Deed was the need for the three proposed Resolutions for consideration at this Meeting to be also passed at the 1995 to 2001 Scheme Meetings (excluding 1995) and the winding up order of 2002 to 2009 Schemes.
- 4 The applications for winding up the 2002 to 2009 Schemes will be filed shortly with an anticipated hearing date on 26 or 27 November 2013. If the winding up orders are not obtained before 29 November 2013, the FEAP and FEAP Varied DOCAs will "drop dead" on 29 November 2013.

### Proposed Amendments to Resolution 2

- 4 The Operative Date as defined in the Original EM refers to the meaning given to it in the Implementation Deed dated 5 September 2013. The Implementation Deed has been amended and it is possible that it may be amended in the future to facilitate the implementation of the Settlement Proposal. It is proposed the definition of 'Operative Date' as contained in Resolution 2 be amended to incorporate any future amendments to the Implementation Deed.
- 4 The percentage sharing costs contained in clause 5.11 of the amended Constitution were calculated on the previously perceived proportionate net present value for each Scheme of the projected cash flow of the 1995 to 2001 Schemes. As the proportionate net present value of the project Scheme cash flows have changed, it is proposed the cost sharing percentage as contained in clause 5.11 of the amended Constitution be changed accordingly. The Chairman noted the changes in the percentages are not material.

**DEED  
ADMINISTRATORS'  
RECOMMENDATION**

The Chairman recommends Growers vote in favour of all proposed Resolutions. He noted the Settlement Proposal will "fall over" unless all Scheme Growers approve the Resolutions with their requisite majorities.

**RESOLUTIONS**

The following Resolution was put to the Meeting:

**Resolution 1**

The Chairman put the following resolution to the meeting:

*"That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) the Scheme will continue in a restructured form; or*
- (b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered,*

*be approved."*

The Chairman declared the resolution carried on the voices. He noted he had exercised special proxies conferred upon him in accordance with their terms.

**Amending Resolution to Resolution 2**

The Chairman proposed to combine the proposed amendments to Resolution 2 into one amending Resolution, and invited objection from the Meeting against voting on the proposed amendments to Resolution 2 simultaneously.

No objection was raised.

The Chairman put the following proposed amendment to Resolution 2 as one Resolution to the Meeting:

*"That Resolution 2 as outlined in the notice of meeting dated 23rd September 2013, be amended as follows:*

**Amendment 1**

*"Omit "Operative Date (as that term is defined in the Explanatory Memorandum)" and replace it with "date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional"*

**Amendment 2**

In clause 5.11 of the draft Constitution, omit the schedule, and replace it with:

<b>Scheme</b>	<b>Share (%)</b>
Tasmanian Forests Trust No 3 (ARSN 093 165 005)	1.73%
Tasmanian Forests Trust No 4 (ARSN 093 165 103)	2.90%
Tasmanian Forests Trust No 5 (ARSN 093 165 050)	2.73%
Tasmanian Forests Trust No 6 (ARSN 093 165 327)	8.41%
Tasmanian Forests Trust No 7 (ARSN 093 164 866)	60.06%
Tasmanian Forests Project 2000 (ARSN 092 500 984)	18.97%
Australian Forests Project 2001 (ARSN 094 614 678)	5.20%

The Chairman declared the resolution carried on the voices. He noted he had exercised special proxies conferred upon him in respect of the original Resolution 2 in accordance with their terms.

**Amended Resolution now becomes Resolution 2**

The Chairman put the following resolution to the meeting:

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

The Chairman noted clause 5.11 in the amended Constitution annexed to the Notice of Meeting has been amended in accordance with the amending Resolution and marked for identification with the letter A. A copy of this amended Constitution is attached.

The Chairman announced the result of the poll as following:

Summary of Outcome as per Link Market Report			
For	Against	Abstain	Total
Woodlots	Woodlots	Woodlots	Woodlots Voted
492.00	Nil	Nil	492.00
100.00%	0.00%	0.00%	100.00%

The Chairman declared Resolution carried.

### **Resolution 3**

The Chairman put the following resolution to the meeting:

*"That:*

*(a) subject to and conditional upon:*

- (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and*
- (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:*

*then*

*(iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and*

*(iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or*

*(b) if there is no MIS Disposal on or before 31 March 2014:*

*(i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and*

*(ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and*

*(iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and*

*the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."*

The Chairman announced the result of the poll as following:

Summary of Outcome as per Link Market Report				
For	Against	Abstain	Total Woodlots Voted	Total Number of Woodlots Entitled to Vote
Woodlots	Woodlots	Woodlots	Woodlots	Woodlots
492.00	Nil	Nil	492.00	561.00
87.70%	0.00%	0.00%	87.70%	100.00%

The Chairman declared Resolution carried.

**QUESTIONS**

The Chairman invited questions from the attendees.

No further questions were raised.

**CLOSURE OF MEETING:**

There being no further business, the Chairman thanked those present for attending.

The Chairman declared the Meeting Closed at 8.51 am.

Signed as a correct record.

DATED this the *21st* day of November 2013.

  
BRIAN SILVIA  
CHAIRMAN

**BETTER OUTCOMES  
THROUGH EXPERIENCE**

**TASMANIAN FORESTS TRUST NO 3 (1995)  
ARSN 093 165 005**

**MEETING OF MEMBERS  
11 November 2013**

**CONVENED BY FEA PLANTATIONS LIMITED AS RESPONSIBLE ENTITY  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)  
(RECEIVERS APPOINTED)**

**BRI Ferrier**

Business Reconstruction & Insolvency

Sydney | Melbourne | Brisbane | Perth | Adelaide | Townsville | Cairns | Hong Kong

## Agenda

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1. Introduction
2. Purpose of Meeting
3. Background Information
4. Deed Administrators' Update
5. Settlement Proposal – Sale Process Options
6. Estimated Return to Growers per Woodlot
7. MIS Transition
  - Summary of Fees and Charges
  - Key Risks
  - Conditions Precedent
8. Deed Administrators' Comments on Proposed Resolutions
9. Resolutions
10. Questions

## 1. Introduction

- ▲ Introductions: Deed Administrators
- ▲ Corporate Regulations:
  1. Resumed Meeting convened by Notice dated 23 September 2013 pursuant to Section 252A of Corporations Act 2001.
  2. Time and place of Meeting.
  3. Quorum.
  4. Voting:
    - ▲ Poll required for Special and Extraordinary Resolutions
    - ▲ On a poll, each Grower (identified by a Grower Number) has one vote for each dollar of the value of the total interest they have in the Scheme
    - ▲ Value of each Grower's vote determined by number of woodlots held

## **2. Purpose of Meeting**

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- ▶ To receive Explanatory Memorandum (“EM”) dated 23 September 2013 and Supplementary Explanatory Memorandum (“Supplementary EM”) dated 1 November 2013
- ▶ To consider the contents of both EMs and Supplementary EM and the proposed amendments to the current Scheme Constitutions as outlined therein
- ▶ For Members to consider, and if thought fit, pass the resolutions detailed below
- ▶ Any other business that may be lawfully brought forward

### **3. Background Information**

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- ▶ Company into Voluntary Administration on 14 April 2010 and subsequently Deed of Company Arrangement (“DOCA”) on 14 December 2010
- ▶ From April 2010 until late 2012, protracted legal disputes between Deed Administrators representing Creditors and Growers and the Receivers
- ▶ Mediation between Deed Administrators and Banks began in October 2012
- ▶ In June 2013, Deed Administrators and Banks reached in principle commercial agreement to a Settlement Proposal
- ▶ On 28 June 2013, FEAP and FEA Varied DOCAs approved by Creditors including Growers
- ▶ On 5 September 2013, Implementation Deed executed by Banks and Deed Administrators concerning sale process and asset distribution to Growers – One-Line Sale vs MIS Transition
- ▶ On 23 September 2013, EM and Scheme Meeting Notice issued

#### 4. Deed Administrators' Update

- ▲ 23 September 2013 to 10 October 2013, various financial advisor meetings, Grower Online Information Session, FEA Growers Group telephone conferences, and COI Meeting were held
- ▲ On 9 October 2013, ASIC in considering the application for relief regarding MIS Transition raised queries in writing about information in the EM
- ▲ On 17 October 2013, Scheme Meeting was adjourned to 11 November 2013
- ▲ ASIC subsequently indicated it did not require a Supplementary EM. However, the Deed Administrators were prepared to issue an update to Growers.
- ▲ On 29 October 2013, FEAP and FEA Creditors approved the amendments to Varied DOCAs and its extension to 29 November 2013
- ▲ On 1 November 2013, Supplementary EM issued, providing:
  - More information about the Settlement proposal;
  - Notifying Growers of the Adjourned Scheme Meeting; and
  - Outlining proposed amendments to the Resolution 2 as contained in the Original EM

## 5. Settlement Proposal – Sale Process Options

### Option 1 – One Line Sale

- ▲ In the first instance, the Internal land owned by entities in the FEA Group and the trees planted on it will be offered for sale together, with a share of the net proceeds being paid to Growers. This is called a “One-line Sale”.

### Option 2 – MIS Transition

- ▲ A Macquarie Group entity (“Macquarie”) may become the Responsible Entity of the 1995 to 2001 Schemes and continue them until harvest, sale or wind-up, under lease arrangements with new owner/s of the Internal Land. If Macquarie is to be appointed, the Schemes will need to amend their Constitutions and related documents to provide for more commercially practical lease and management arrangements.

Buyers will be able to make an offer for the land under either or both scenarios

The outcome of the sale process will be determined by the Receivers based on the bids received and the Sale Advisor’s advice

## 6. Estimated Return to Growers per Woodlot

### Project 1995

Projection	Estimated Return Per Woodlot					
	One Line Sale		MIS Transition Option 1		MIS Transition Option 2	
	Low	High	Low	High	Low	High
Original EM	287	783	1,260	2,484	1,260	2,484
<u>Less:</u>						
Gross Distribution as per Original EM						
Required Grower Contributions to						
New RE to Clear Fall Harvest	-	-	(356)	(356)	(343)	(343)
Estimated Net Distribution	\$287	\$783	\$904	\$2,128	\$918	\$2,141
<b>Supplementary EM</b>	<b>\$308</b>	<b>\$738</b>	<b>\$1,112</b>	<b>\$2,197</b>	<b>\$1,134</b>	<b>\$2,219</b>
<i>Variance</i>	\$21	(\$45)	\$208	\$69	\$216	\$78

## 6. Estimated Return to Growers per Woodlot

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- ▲ The differences between the projections in the Supplementary and Original EM arose as a result of:
- Showing net as opposed to gross return. The net return is after deducting projected contributions to the New RE
  - Higher projected volume and prices of timber to be harvested, the result of deferral of harvesting over the past year in the face of depressed prices
  - Changes in the projected Administration and Legal fees –reduced overhead
  - Revised assumptions on financial performance of the scheme between now and the outcome of the sale process
  - More equitable allocation of scheme expenses sharing

## 7. MIS Transition – Summary of Fees and Charges

Fee Item	Unit	CPI Indexed	Amount
Initial Contribution	per woodlot	No	100.00
Management Fee	per woodlot/per annum	Yes	50.00
Lease Fee – Ongoing Members	per woodlot/per annum	Yes	108.33
Lease Fee – Prepaid Members	per woodlot/per annum	Yes	100.00
Fixed Management Fee*	per ha	Yes	900.00
Sales Proceeds Fee*	%	No	12.5%

Fixed Management Fee and Sale Proceeds Fee have been factored into the Estimated Return to Growers in the Supplementary EM.

This fee structure is based on a Grower's woodlot size being one third of a hectare.

## 7. MIS Transition – Key Risks

- ▲ The following risks may adversely affect the value of your investment and the estimated return to Growers:
- Timber price risk
  - Foreign exchange risk
  - Access to infrastructure risk
  - Yield and quality risk
  - Environmental risk
  - Fire risk
  - Regulatory risk
  - Loss of investment risk
  - Risk of additional liabilities
  - Insolvency risk
  - Non-performance risk
  - Substitution of lease rights
  - Early wind up prior to harvest
  - Delay to implement Settlement Proposal
  - Other Grower actions

## 7. MIS Transition – Conditions Precedent

- ▶ There are a number of Conditions Precedent (“CP’s”) to the Macquarie entity unconditionally agreeing to become new RE
- ▶ The following CP’s have not been met:
  - CP A – ASIC Relief obtained in a form satisfactory to Macquarie
  - CP B – Tax / duties advice obtained by Macquarie to its satisfaction
  - CP C – Macquarie entity obtaining all necessary internal approval
  - CP L – Appropriate due diligence performed by Macquarie entity to their satisfaction
- ▶ It is uncertain whether all of the CP’s will be able to be satisfied
- ▶ If CP’s are not all satisfied, Macquarie retains an ability to waive satisfaction of the CP’s. Whether Macquarie will in fact do so is uncertain

## 8. Deed Administrators' Comments on Proposed Resolutions

### ▲ Growers' approval is required for:

Resolution	Summary of Resolution	Type of Resolution Required	Vote Required
Resolution 1	Overall acceptance of the Settlement	Ordinary	50% of all woodlots voting at meeting
Resolution 2	Resolution for amendments to each of the respective Scheme's Constitution	Special	75% of all woodlots voting at meeting
Resolution 3	Resolution for the potential appointment of Mac Bank as New RE and allows for Schemes to be wound up (if One Line Sale occurs)	Extraordinary	50% of all woodlots within each Scheme voting in favour of the Resolution

- ▲ Proposed amendments to Resolution 2:
  - Definition of the date on which the current Constitution is to be amended
  - Percentage of the Scheme's share in the cost and net proceeds distribution as contained in clause 5.11 of the Amended Constitution
- ▲ The Settlement Proposal provides a commercial outcome for Growers. It is recommended Grower vote in favour of all Resolutions.

## 9. Resolutions

### ▲ Resolution 1

*“That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) the Scheme will continue in a restructured form; or*
- (b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered, be approved.”*

## 9. Resolutions

### 4 Amending Resolutions to Resolution 2:

#### Amendment 1

*Omit "Operative Date (as that term is defined in the Explanatory Memorandum)" and replace it with "date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional"*

#### Amendment 2

*In clause 5.11 of the draft Constitution, omit the schedule, and replace it with:*

<b>Scheme</b>	<b>Share (%)</b>
Tasmanian Forests Trust No 3 (ARSN 093 165 005)	1.73%
Tasmanian Forests Trust No 4 (ARSN 093 165 103)	2.90%
Tasmanian Forests Trust No 5 (ARSN 093 165 050)	2.73%
Tasmanian Forests Trust No 6 (ARSN 093 165 327)	8.41%
Tasmanian Forests Trust No 7 (ARSN 093 164 866)	60.06%
Tasmanian Forests Project 2000 (ARSN 092 500 984)	18.97%
Australian Forests Project 2001 (ARSN 094 614 678)	5.20%

## 9. Resolutions

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### ▲ Amended Resolution now becomes Resolution 2

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

## 9. Resolutions

### 4 Resolution 3

"That:

- (a) subject to and conditional upon:
- (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and
  - (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:  
then
  - (iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and
  - (iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or
- (b) if there is no MIS Disposal on or before 31 March 2014:
- (i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and
  - (ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and
  - (iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and
- the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."

## 10. Questions

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# Questions

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**Meeting Closed**

**Thank you for attending**

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MINUTES OF THE MEETING OF MEMBERS OF TASMANIAN FORESTS TRUST NO 4 ("FEAP 1996")  
ARSN 093 165 103 HELD ON MONDAY, 11 NOVEMBER 2013 AT 8.50 AM AT THE GRAND  
CHANCELLOR, 29 CAMERON STREET LAUNCESTON TAS 7250.

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PRESENT	Person	
	Brian Silvia	Chairman and Deed Administrator of FEA Plantations Limited as Responsible Entity of FEAP 1996 (Subject to Deed of Company Arrangement) ("FEAP")
	Stephen Sawyer	Deed Administrator's Legal Advisor, from Cornwall Stodart
	Alva Zeng	Deed Administrator's Assistant
	Matthew Jacobs	Deed Administrator's Assistant
	Other Attendees	Refer to attached Attendance Schedule

**OPEN AND WELCOME** Mr Brian Silvia introduced himself and his assistant to the Meeting as the Chairman and Deed Administrator of FEAP.

The Chairman advised the Meeting has been called by the Scheme's current Responsible Entity ("RE"), FEAP, pursuant to Section 252A of the Corporations Act 2001 ("the Act"). The RE appoints its Joint and Several Deed Administrator, Mr Brian Silvia, to chair the Meeting. The Chairman advised the Meeting would be assisted by a PowerPoint presentation (attached).

Mr Michael Johns of Maddocks Lawyers, representing Commonwealth Bank of Australia, Australia New Zealand Banking Group, Forest Enterprises Australia Ltd ("FEA"), FEA Carbon Pty Ltd, and Tasmanian Plantations Pty Ltd (All subject to Deed of Company Arrangement) (All with Receivers and Managers Appointed), attended the Meeting as an observer.

Ms Carol Lee and Mr Andrew McCarthy of the Macquarie Bank Limited attended the Meeting as observers.

**CONVENING OF THE MEETING** The Chairman advised the Meeting is a resumption of the Meeting held on 17 October 2013 which had been convened by Notice of Meeting dated 23 September 2013, a copy of which is attached.

The Chairman noted a Supplementary Explanatory Memorandum dated 1 November 2013 had been distributed to Growers by both post and email notifying them of the resumption of the Scheme Meeting on 11 November 2013 at the same time and place as the original meeting.

**TIME AND PLACE** The Chairman asked attendees if there was any objection to the time and place of this resumed Meeting.

No objection was raised.

The Chairman declared:

*"That the Meeting had been held at a reasonable time and place."*

**QUORUM** Pursuant to Section 252R of the Act, the quorum for a meeting of a registered Scheme's members is two members.

The Chairman declared:

*"That a quorum was present for the Meeting".*

**PROXIES** The Chairman tabled proxies received inviting their inspection at the conclusion of the meeting.

The Chairman explained the following:

1. **Poll** – The proposed Resolutions 2 and 3 are special and extraordinary resolutions and will be put to the vote on a poll pursuant to Section 253J(1) of the Act.
2. **Number and value of votes** – On a poll, each Grower (identified by a Grower Number) has one vote for each dollar of the value of the total interest they have in the Scheme. Pursuant to clause 18.4 of the current Scheme Constitution, the value of each Grower's vote is to be determined in accordance with the number of woodlots held by the Growers.
3. **Conduct of the Poll** – The voting cards will be counted by an external professional meeting service company, Link Market Services. Each attendee entitled to vote has been given a voting card.
4. **Proposed amendments to Resolution 2** – It is proposed Resolution 2 will be amended as detailed in the Supplementary EM.

**PURPOSE OF MEETING:** The Chairman noted that the Meeting had been convened by Notice dated 23 September 2013 pursuant to Section 252A of the Act.

The Meeting was convened for the following purpose:

- Δ To receive Explanatory Memorandum ("EM") dated 23 September 2013 and Supplementary Explanatory Memorandum ("Supplementary EM") dated 1 November 2013 including the proposed amended Constitution;
- Δ To consider the contents of both the EM and Supplementary EM and the proposed amendments to the current Scheme Constitution as outlined therein;
- Δ For Members to consider, and if thought fit, pass the resolutions detailed below; and
- Δ Any other business that may be lawfully brought forward.

**SUPPLEMENTARY  
EXPLANATORY  
MEMORANDUM**

The Chairman tabled the EM dated 23 September 2013, which was taken to have been read. He then advised the Meeting would be supported by the attached PowerPoint presentation. Whilst dealing with each of the issues outlined in it, he made the following comments:

Update regarding ASIC Enquiry

- Δ ASIC previously raised a number of queries concerning the Settlement Proposal before the Scheme Meeting held on 17 October 2013. It had also requested a Supplementary EM be issued and an additional period of notice before resumption of this meeting.  
  
As a result, the Scheme Meeting held on 17 October 2013 was adjourned to 11 November 2013 at the same time and place. The FEAP Varied DOCA was also amended and extended to 29 November 2013 at a Section 445F Meeting of Creditors held on 29 October 2013.
- Δ The Deed Administrators' solicitors provided information to ASIC in response to its queries. However, resolution of the issues raised was delayed as a consequence of a number of issues including the relevant ASIC officer being on leave for a period of time.
- Δ ASIC subsequently indicated it did not require a Supplementary EM. However, the Deed Administrators prepared an update to Growers on the basis of keeping them informed of developments.
- Δ The Supplementary EM was issued on 1 November 2013 and distributed to Growers providing:
  - More information concerning the Settlement proposal;
  - Notifying Growers of the Adjourned Scheme Meeting; and
  - Outlining proposed amendments to Resolution 2 contained in the Original EM.

#### Updated Estimated Return to Growers

- Δ The Deed Administrators have updated the financial model estimating Grower returns based on the continuing dynamics of costs incurred in the Administration process and issues attaching to the value of Growers' trees.
- Δ The variance between the estimated returns contained in the Original and Supplementary EM mainly related to:
  - Changes in projected harvesting time and hence the resulting increase in the projected timber volume and price;
  - The inclusion of the estimated net return to Growers rather than gross return; and
  - Changes in projected Scheme expenses.

#### Additional Key Risks under the MIS Transition

- Δ Additional key risks not contained in the original Prospectus mentioned in EM have been further expanded in the Supplementary EM.

#### Proposed Fees and Charges under the MIS Transition

- Δ The MIS Transition process contemplates Macquarie Alternative Assets Management Ltd ("MAAML"), becoming the replacement Responsible Entity ("replacement RE") continuing to manage the Scheme through to harvesting.
- Δ The Supplementary EM clarified proposed fees and charges as being those contained in the proposed amended Constitution. Fees and charges levied may vary subject to MAAML's discretion.

#### Conditions Precedent to MIS Transition

- Δ The Chairman noted Conditions Precedent B, C, and L contained in Schedule A of the Notice of Meeting dated 23 September 2013 have not been met.
- Δ ASIC had provided conditional relief to MAAML in respect of its normal statutory obligation on 8 November 2013. However, technically Condition Precedent A has not been satisfied as MAAML has not formally advised whether the ASIC relief is in a form to its satisfaction.

#### Outstanding Milestone Events

- Δ The Chairman commented the most significant outstanding Milestones required under the Implementation Deed was the need for the three proposed Resolutions for consideration at this Meeting to be also passed at the 1995 to 2001 Scheme Meetings (excluding 1996)

and the winding up order of 2002 to 2009 Schemes.

- 4 The applications for winding up the 2002 to 2009 Schemes will be filed shortly with an anticipated hearing date on 26 or 27 November 2013. If the winding up orders are not obtained before 29 November 2013, the FEAP and FEAP Varied DOCAs will "drop dead" on 29 November 2013.

#### Proposed Amendments to Resolution 2

- 4 The Operative Date as defined in the Original EM refers to the meaning given to it in the Implementation Deed dated 5 September 2013. The Implementation Deed has been amended and it is possible that it may be amended in the future to facilitate the implementation of the Settlement Proposal. It is proposed the definition of 'Operative Date' as contained in Resolution 2 be amended to incorporate any future amendments to the Implementation Deed.
- 4 The percentage sharing costs contained in clause 5.11 of the amended Constitution were calculated on the previously perceived proportionate net present value for each Scheme of the projected cash flow of the 1995 to 2001 Schemes. As the proportionate net present value of the project Scheme cash flows have changed, it is proposed the cost sharing percentage as contained in clause 5.11 of the amended Constitution be changed accordingly. The Chairman noted the changes in the percentages are not material.

#### DEED ADMINISTRATORS' RECOMMENDATION

The Chairman recommends Growers vote in favour of all proposed Resolutions. He noted the Settlement Proposal will "fall over" unless all Scheme Growers approve the Resolutions with their requisite majorities.

#### RESOLUTIONS

The following Resolution was put to the Meeting:

#### Resolution 1

The Chairman put the following resolution to the meeting:

*"That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) *the Scheme will continue in a restructured form; or*
- (b) *the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered,*

*be approved."*

The Chairman declared the resolution carried on the voices. He noted he

had exercised special proxies conferred upon him in accordance with their terms.

**Amending Resolution to Resolution 2**

The Chairman proposed to combine the proposed amendments to Resolution 2 into one amending Resolution, and invited objection from the Meeting against voting on the proposed amendments to Resolution 2 simultaneously.

No objection was raised.

Mr Johns queried whether the amending Resolution would be passed on a poll.

The Chairman confirmed it would be voted on the voices and not by poll.

The Chairman put the following proposed amendment to Resolution 2 as one Resolution to the Meeting:

*"That Resolution 2 as outlined in the notice of meeting dated 23rd September 2013, be amended as follows:*

**Amendment 1**

*"Omit "Operative Date (as that term is defined in the Explanatory Memorandum)" and replace it with "date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional"*

**Amendment 2**

*In clause 5.11 of the draft Constitution, omit the schedule, and replace it with:*

<i>Scheme</i>	<i>Share (%)</i>
<i>Tasmanian Forests Trust No 3 (ARSN 093 165 005)</i>	<i>1.73%</i>
<i>Tasmanian Forests Trust No 4 (ARSN 093 165 103)</i>	<i>2.90%</i>
<i>Tasmanian Forests Trust No 5 (ARSN 093 165 050)</i>	<i>2.73%</i>
<i>Tasmanian Forests Trust No 6 (ARSN 093 165 327)</i>	<i>8.41%</i>
<i>Tasmanian Forests Trust No 7 (ARSN 093 164 866)</i>	<i>60.06%</i>
<i>Tasmanian Forests Project 2000 (ARSN 092 500 984)</i>	<i>18.97%</i>
<i>Australian Forests Project 2001 (ARSN 094 614 678)</i>	<i>5.20%</i>

The Chairman declared the resolution carried on the voices. He noted he had exercised special proxies conferred upon him in respect of the original Resolution 2 in accordance with their terms.

**Amended Resolution now becomes Resolution 2**

The Chairman put the following resolution to the meeting:

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

The Chairman noted clause 5.11 in the amended Constitution annexed to the Notice of Meeting has been amended in accordance with the amending Resolution and marked for identification with the letter A. A copy of this amended Constitution is attached.

The Chairman noted that there is a potential dispute as to the ownership of plantations on coupe NW112, where the Grower and the landlord is the same person. The issue is whether the trees on this block belongs to the Scheme. As a result of this potential issue as to the ownership of the relevant woodlots, the Chairman intends to announce the result of the poll on the basis of both including and excluding the relevant Grower from the vote.

The Chairman announced the result of the poll as following:

Summary of Outcome as per Link Market Report (including Grower with trees on Coupe NW112)			
For	Against	Abstain	Total
Woodlots	Woodlots	Woodlots	Woodlots Voted
384.75	3.00	Nil	387.75
99.23%	0.77%	0.00%	100.00%

Summary of Outcome as per Link Market Report (excluding Grower with trees on Coupe NW112)			
For	Against	Abstain	Total
Woodlots	Woodlots	Woodlots	Woodlots Voted
293.55	3.00	Nil	296.55
98.99%	1.01%	0.00%	100.00%

The Chairman declared Resolution carried irrespective of whether the Grower in relation to NW112 is included or excluded from the vote.

**Resolution 3**

The Chairman put the following resolution to the meeting:

*"That:*

*(a) subject to and conditional upon:*

- (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and*
- (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:*

*then*

*(iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and*

*(iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or*

*(b) if there is no MIS Disposal on or before 31 March 2014:*

*(i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and*

*(ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and*

*(iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and*

*the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."*

The Chairman announced the result of the poll including Growers on Coupe NW112 as following:

Summary of Outcome as per Link Market Report (including Grower with trees on Coupe NW112)				
For	Against	Abstain	Total Woodlots Voted	Total Number of Woodlots Entitled to Vote
Woodlots	Woodlots	Woodlots	Woodlots	Woodlots
354.75	33.00	Nil	387.75	599.75
59.15%	5.50%	0.00%	64.65%	100.00%

The Chairman announced the result of the poll excluding Growers on Coupe NW112 as following:

Summary of Outcome as per Link Market Report (excluding Grower with trees on Coupe NW112)				
For	Against	Abstain	Total Woodlots Voted	Total Number of Woodlots Entitled to Vote
Woodlots	Woodlots	Woodlots	Woodlots	Woodlots
263.55	33.00	Nil	296.55	508.55
51.82%	6.49%	0.00%	58.31%	100.00%

The Chairman declared Resolution carried irrespective of whether the Grower in relation to NW112 is included or excluded from the vote.

**QUESTIONS**

The Chairman invited questions from the attendees.

No further questions were raised.

**CLOSURE OF MEETING:**

There being no further business, the Chairman thanked those present for attending.

The Chairman declared the Meeting Closed at 9.09 am.

Signed as a correct record.

DATED this the 21<sup>st</sup> day of November 2013.



**BRIAN SILVIA**  
CHAIRMAN

**BETTER OUTCOMES  
THROUGH EXPERIENCE**

**TASMANIAN FORESTS TRUST NO 4 (1996)  
ARSN 093 165 103**

**MEETING OF MEMBERS  
11 November 2013**

**CONVENED BY FEA PLANTATIONS LIMITED AS RESPONSIBLE ENTITY  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)  
(RECEIVERS APPOINTED)**

**BRI Ferrier**

Business Reconstruction & Insolvency

Sydney | Melbourne | Brisbane | Perth | Adelaide | Townsville | Cairns | Hong Kong

## Agenda

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1. Introduction
2. Purpose of Meeting
3. Background Information
4. Deed Administrators' Update
5. Settlement Proposal – Sale Process Options
6. Estimated Return to Growers per Woodlot
7. MIS Transition
  - Summary of Fees and Charges
  - Key Risks
  - Conditions Precedent
8. Deed Administrators' Comments on Proposed Resolutions
9. Resolutions
10. Questions

## 1. Introduction

- ▲ Introductions: Deed Administrators
- ▲ Corporate Regulations:
  1. Resumed Meeting convened by Notice dated 23 September 2013 pursuant to Section 252A of Corporations Act 2001.
  2. Time and place of Meeting.
  3. Quorum.
  4. Voting:
    - ▲ Poll required for Special and Extraordinary Resolutions
    - ▲ On a poll, each Grower (identified by a Grower Number) has one vote for each dollar of the value of the total interest they have in the Scheme
    - ▲ Value of each Grower's vote determined by number of woodlots held

## 2. Purpose of Meeting

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- ▶ To receive Explanatory Memorandum (“EM”) dated 23 September 2013 and Supplementary Explanatory Memorandum (“Supplementary EM”) dated 1 November 2013
- ▶ To consider the contents of both EMs and Supplementary EM and the proposed amendments to the current Scheme Constitutions as outlined therein
- ▶ For Members to consider, and if thought fit, pass the resolutions detailed below
- ▶ Any other business that may be lawfully brought forward

### 3. Background Information

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- ▲ Company into Voluntary Administration on 14 April 2010 and subsequently Deed of Company Arrangement (“DOCA”) on 14 December 2010
- ▲ From April 2010 until late 2012, protracted legal disputes between Deed Administrators representing Creditors and Growers and the Receivers
- ▲ Mediation between Deed Administrators and Banks began in October 2012
- ▲ In June 2013, Deed Administrators and Banks reached in principle commercial agreement to a Settlement Proposal
- ▲ On 28 June 2013, FEAP and FEA Varied DOCAs approved by Creditors including Growers
- ▲ On 5 September 2013, Implementation Deed executed by Banks and Deed Administrators concerning sale process and asset distribution to Growers – One-Line Sale vs MIS Transition
- ▲ On 23 September 2013, EM and Scheme Meeting Notice issued

#### **4. Deed Administrators' Update**

- ▲ 23 September 2013 to 10 October 2013, various financial advisor meetings, Grower Online Information Session, FEA Growers Group telephone conferences, and COI Meeting were held
- ▲ On 9 October 2013, ASIC in considering the application for relief regarding MIS Transition raised queries in writing about information in the EM
- ▲ On 17 October 2013, Scheme Meeting was adjourned to 11 November 2013
- ▲ ASIC subsequently indicated it did not require a Supplementary EM. However, the Deed Administrators were prepared to issue an update to Growers.
- ▲ On 29 October 2013, FEAP and FEA Creditors approved the amendments to Varied DOCAs and its extension to 29 November 2013
- ▲ On 1 November 2013, Supplementary EM issued, providing:
  - More information about the Settlement proposal;
  - Notifying Growers of the Adjourned Scheme Meeting; and
  - Outlining proposed amendments to the Resolution 2 as contained in the Original EM

## 5. Settlement Proposal – Sale Process Options

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### Option 1 – One Line Sale

- ▲ In the first instance, the Internal land owned by entities in the FEA Group and the trees planted on it will be offered for sale together, with a share of the net proceeds being paid to Growers. This is called a “One-line Sale”.

### Option 2 – MIS Transition

- ▲ A Macquarie Group entity (“Macquarie”) may become the Responsible Entity of the 1995 to 2001 Schemes and continue them until harvest, sale or wind-up, under lease arrangements with new owner/s of the Internal Land. If Macquarie is to be appointed, the Schemes will need to amend their Constitutions and related documents to provide for more commercially practical lease and management arrangements.

Buyers will be able to make an offer for the land under either or both scenarios

The outcome of the sale process will be determined by the Receivers based on the bids received and the Sale Advisor’s advice

**6. Estimated Return to Growers per Woodlot**

**Project 1996**

Projection	Estimated Return Per Woodlot					
	One Line Sale		MIS Transition Option 1		MIS Transition Option 2	
	Low	High	Low	High	Low	High
<b>Original EM</b>	512	1,398	2,255	3,915	2,255	3,915
Gross Distribution as per Original EM						
<u>Less:</u>						
Required Grower Contributions to New RE to Clear Fall Harvest	-	-	(328)	(328)	(313)	(313)
Estimated Net Distribution	\$512	\$1,398	\$1,927	\$3,587	\$1,942	\$3,602
<b>Supplementary EM</b>	<b>\$569</b>	<b>\$1,364</b>	<b>\$2,189</b>	<b>\$3,759</b>	<b>\$2,214</b>	<b>\$3,784</b>
<i>Variance</i>	\$57	(\$34)	\$262	\$172	\$272	\$182

## 6. Estimated Return to Growers per Woodlot

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- ▲ The differences between the projections in the Supplementary and Original EM arose as a result of:
  - Showing net as opposed to gross return. The net return is after deducting projected contributions to the New RE
  - Higher projected volume and prices of timber to be harvested, the result of deferral of harvesting over the past year in the face of depressed prices
  - Changes in the projected Administration and Legal fees –reduced overhead
  - Revised assumptions on financial performance of the scheme between now and the outcome of the sale process
  - More equitable allocation of scheme expenses sharing

## 7. MIS Transition – Summary of Fees and Charges

Fee Item	Unit	CPI Indexed	Amount
Initial Contribution	per woodlot	No	100.00
Management Fee	per woodlot/per annum	Yes	50.00
Lease Fee – Ongoing Members	per woodlot/per annum	Yes	100.00
Lease Fee – Prepaid Members	per woodlot/per annum	Yes	90.00
Fixed Management Fee*	per ha	Yes	900.00
Sales Proceeds Fee*	%	No	12.5%

Fixed Management Fee and Sale Proceeds Fee have been factored into the Estimated Return to Growers in the Supplementary EM.

This fee structure is based on a Grower's woodlot size being one third of a hectare.

## 7. MIS Transition – Key Risks

- 4 The following risks may adversely affect the value of your investment and the estimated return to Growers:
- Timber price risk
  - Foreign exchange risk
  - Access to infrastructure risk
  - Yield and quality risk
  - Environmental risk
  - Fire risk
  - Regulatory risk
  - Loss of investment risk
  - Risk of additional liabilities
  - Insolvency risk
  - Non-performance risk
  - Substitution of lease rights
  - Early wind up prior to harvest
  - Delay to implement Settlement Proposal
  - Other Grower actions

## 7. MIS Transition – Conditions Precedent

- ▲ There are a number of Conditions Precedent (“CP’s”) to the Macquarie entity unconditionally agreeing to become new RE
- ▲ The following CP’s have not been met:
  - CP B – Tax / duties advice obtained by Macquarie to its satisfaction
  - CP C – Macquarie entity obtaining all necessary internal approval
  - CP L – Appropriate due diligence performed by Macquarie entity to their satisfaction
- ▲ It is uncertain whether all of the CP’s will be able to be satisfied
- ▲ If CP’s are not all satisfied, Macquarie retains an ability to waive satisfaction of the CP’s. Whether Macquarie will in fact do so is uncertain

## 8. Deed Administrators' Comments on Proposed Resolutions

### ▲ Growers' approval is required for:

Resolution	Summary of Resolution	Type of Resolution Required	Vote Required
Resolution 1	Overall acceptance of the Settlement	Ordinary	50% of all woodlots voting at meeting
Resolution 2	Resolution for amendments to each of the respective Scheme's Constitution	Special	75% of all woodlots voting at meeting
Resolution 3	Resolution for the potential appointment of Mac Bank as New RE and allows for Schemes to be wound up (if One Line Sale occurs)	Extraordinary	50% of all woodlots within each Scheme voting in favour of the Resolution

### ▲ Proposed amendments to Resolution 2:

- Definition of the date on which the current Constitution is to be amended
- Percentage of the Scheme's share in the cost and net proceeds distribution as contained in clause 5.11 of the Amended Constitution

### ▲ The Settlement Proposal provides a commercial outcome for Growers. It is recommended Grower vote in favour of all Resolutions.

## 9. Resolutions

### 4 Resolution 1

*“That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) the Scheme will continue in a restructured form; or*
- (b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered, be approved.”*

## 9. Resolutions

### Amending Resolutions to Resolution 2:

#### Amendment 1

Omit "Operative Date (as that term is defined in the Explanatory Memorandum)" and replace it with "date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional"

#### Amendment 2

In clause 5.11 of the draft Constitution, omit the schedule, and replace it with:

Scheme	Share (%)
Tasmanian Forests Trust No 3 (ARSN 093 165 005)	1.73%
Tasmanian Forests Trust No 4 (ARSN 093 165 103)	2.90%
Tasmanian Forests Trust No 5 (ARSN 093 165 050)	2.73%
Tasmanian Forests Trust No 6 (ARSN 093 165 327)	8.41%
Tasmanian Forests Trust No 7 (ARSN 093 164 866)	60.06%
Tasmanian Forests Project 2000 (ARSN 092 500 984)	18.97%
Australian Forests Project 2001 (ARSN 094 614 678)	5.20%

## 9. Resolutions

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### ▲ Amended Resolution now becomes Resolution 2

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

## 9. Resolutions

### 4 Resolution 3

"That:

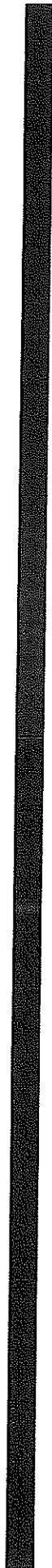
- (a) subject to and conditional upon:
- (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and
  - (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:  
then
  - (iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and
  - (iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or
- (b) if there is no MIS Disposal on or before 31 March 2014:
- (i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and
  - (ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and
  - (iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and
- the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."

# Questions



**Meeting Closed**

**Thank you for attending**



MINUTES OF THE MEETING OF MEMBERS OF TASMANIAN FORESTS TRUST NO 5 ("FEAP 1997")  
ARSN 093 165 050 HELD ON MONDAY, 11 NOVEMBER 2013 AT 9.40 AM AT THE GRAND  
CHANCELLOR, 29 CAMERON STREET LAUNCESTON TAS 7250.

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PRESENT	Person	
	Brian Silvia	Chairman and Deed Administrator of FEA Plantations Limited as Responsible Entity of FEAP 1997 (Subject to Deed of Company Arrangement) ("FEAP")
	Stephen Sawyer	Deed Administrator's Legal Advisor, from Cornwall Stodart
	Alva Zeng	Deed Administrator's Assistant
	Matthew Jacobs	Deed Administrator's Assistant
	Other Attendees	Refer to attached Attendance Schedule

**OPEN AND  
WELCOME**

Mr Brian Silvia introduced himself and his assistant to the Meeting as the Chairman and Deed Administrator of FEAP.

The Chairman advised the Meeting has been called by the Scheme's current Responsible Entity ("RE"), FEAP, pursuant to Section 252A of the Corporations Act 2001 ("the Act"). The RE appoints its Joint and Several Deed Administrator, Mr Brian Silvia, to chair the Meeting. The Chairman advised the Meeting would be assisted by a PowerPoint presentation (attached).

Mr Michael Johns of Maddocks Lawyers, representing Commonwealth Bank of Australia, Australia New Zealand Banking Group, Forest Enterprises Australia Ltd ("FEA"), FEA Carbon Pty Ltd, and Tasmanian Plantations Pty Ltd (All subject to Deed of Company Arrangement) (All with Receivers and Managers Appointed), attended the Meeting as an observer.

Ms Carol Lee and Mr Andrew McCarthy of the Macquarie Bank Limited attended the Meeting as observers.

**CONVENING OF THE  
MEETING**

The Chairman advised the Meeting is a resumption of the Meeting held on 17 October 2013 which had been convened by Notice of Meeting dated 23 September 2013, a copy of which is attached.

The Chairman noted a Supplementary Explanatory Memorandum dated 1

November 2013 had been distributed to Growers by both post and email notifying them of the resumption of the Scheme Meeting on 11 November 2013 at the same time and place as the original meeting.

**TIME AND PLACE**

The Chairman asked attendees if there was any objection to the time and place of this resumed Meeting.

No objection was raised.

The Chairman declared:

*"That the Meeting had been held at a reasonable time and place."*

**QUORUM**

Pursuant to Section 252R of the Act, the quorum for a meeting of a registered Scheme's members is two members.

The Chairman declared:

*"That a quorum was present for the Meeting".*

**PROXIES**

The Chairman tabled proxies received inviting their inspection at the conclusion of the meeting.

The Chairman explained the following:

1. **Poll** – The proposed Resolutions 2 and 3 are special and extraordinary resolutions and will be put to the vote on a poll pursuant to Section 253J(1) of the Act.
2. **Number and value of votes** – On a poll, each Grower (identified by a Grower Number) has one vote for each dollar of the value of the total interest they have in the Scheme. Pursuant to clause 18.4 of the current Scheme Constitution, the value of each Grower's vote is to be determined in accordance with the number of woodlots held by the Growers.
3. **Conduct of the Poll** – The voting cards will be counted by an external professional meeting service company, Link Market Services. Each attendee entitled to vote has been given a voting card.
4. **Proposed amendments to Resolution 2** – It is proposed Resolution 2 will be amended as detailed in the Supplementary EM.

**PURPOSE OF MEETING:**

The Chairman noted that the Meeting had been convened by Notice dated 23 September 2013 pursuant to Section 252A of the Act.

The Meeting was convened for the following purpose:

- ▲ To receive Explanatory Memorandum ("EM") dated 23 September 2013 and Supplementary Explanatory Memorandum ("Supplementary EM") dated 1 November 2013 including the proposed amended Constitution;
- ▲ To consider the contents of both the EM and Supplementary EM and the proposed amendments to the current Scheme Constitution as outlined therein;
- ▲ For Members to consider, and if thought fit, pass the resolutions detailed below; and
- ▲ Any other business that may be lawfully brought forward.

**SUPPLEMENTARY  
EXPLANATORY  
MEMORANDUM**

The Chairman tabled the EM dated 23 September 2013, which was taken to have been read. He then advised the Meeting would be supported by the attached PowerPoint presentation. Whilst dealing with each of the issues outlined in it, he made the following comments:

**Update regarding ASIC Enquiry**

- ▲ ASIC previously raised a number of queries concerning the Settlement Proposal before the Scheme Meeting held on 17 October 2013. It had also requested a Supplementary EM be issued and an additional period of notice before resumption of this meeting.  
  
As a result, the Scheme Meeting held on 17 October 2013 was adjourned to 11 November 2013 at the same time and place. The FEAP Varied DOCA was also amended and extended to 29 November 2013 at a Section 445F Meeting of Creditors held on 29 October 2013.
- ▲ The Deed Administrators' solicitors provided information to ASIC in response to its queries. However, resolution of the issues raised was delayed as a consequence of a number of issues including the relevant ASIC officer being on leave for a period of time.
- ▲ ASIC subsequently indicated it did not require a Supplementary EM. However, the Deed Administrators prepared an update to Growers on the basis of keeping them informed of developments.
- ▲ The Supplementary EM was issued on 1 November 2013 and distributed to Growers providing:
  - More information concerning the Settlement proposal;
  - Notifying Growers of the Adjourned Scheme Meeting; and
  - Outlining proposed amendments to Resolution 2 contained in the

Original EM.

#### Updated Estimated Return to Growers

- Δ The Deed Administrators have updated the financial model estimating Grower returns based on the continuing dynamics of costs incurred in the Administration process and issues attaching to the value of Growers' trees.
- Δ The variance between the estimated returns contained in the Original and Supplementary EM mainly related to:
  - Changes in projected harvesting time and hence the resulting increase in the projected timber volume and price;
  - The inclusion of the estimated net return to Growers rather than gross return; and
  - Changes in projected Scheme expenses.

#### Additional Key Risks under the MIS Transition

- Δ Additional key risks not contained in the original Prospectus mentioned in EM have been further expanded in the Supplementary EM.

#### Proposed Fees and Charges under the MIS Transition

- Δ The MIS Transition process contemplates Macquarie Alternative Assets Management Ltd ("MAAML"), becoming the replacement Responsible Entity ("replacement RE") continuing to manage the 1997 Scheme through to harvesting.
- Δ The Supplementary EM clarified proposed fees and charges as being those contained in the proposed amended Constitution. Fees and charges levied may vary subject to MAAML's discretion.

#### Conditions Precedent to MIS Transition

- Δ The Chairman noted Conditions Precedent B, C, and I contained in Schedule A of the Notice of Meeting dated 23 September 2013 have not been met.
- Δ He further noted ASIC had provided conditional relief to MAAML in respect of its normal statutory obligation on 8 November 2013. However, technically Condition Precedent A has not been satisfied as MAAML has not formally advised whether the ASIC relief is in a form to its satisfaction.

### Outstanding Milestone Events

- 4 The Chairman commented the most significant outstanding Milestones required under the Implementation Deed was the need for the three proposed Resolutions for consideration at this Meeting to be also passed at the 1995 to 2001 Scheme Meetings (excluding 1997) and the winding up order of 2002 to 2009 Schemes.
- 4 The applications for winding up the 2002 to 2009 Schemes will be filed shortly with an anticipated hearing date on 26 or 27 November 2013. If the winding up orders are not obtained before 29 November 2013, the FEAP and FEAP Varied DOCAs will "drop dead" on 29 November 2013.

### Proposed Amendments to Resolution 2

- 4 The Operative Date as defined in the Original EM refers to the meaning given to it in the Implementation Deed dated 5 September 2013. The Implementation Deed has been amended and it is possible that it may be amended in the future to facilitate the implementation of the Settlement Proposal. It is proposed the definition of 'Operative Date' as contained in Resolution 2 be amended to incorporate any future amendments to the Implementation Deed.
- 4 The percentage sharing costs contained in clause 5.11 of the amended Constitution were calculated on the previously perceived proportionate net present value for each Scheme of the projected cash flow of the 1995 to 2001 Schemes. As the proportionate net present value of the project Scheme cash flows have changed, it is proposed the cost sharing percentage as contained in clause 5.11 of the amended Constitution be changed accordingly. The Chairman noted the changes in the percentages are not material.

### DEED ADMINISTRATORS' RECOMMENDATION

The Chairman recommends Growers vote in favour of all proposed Resolutions. He noted the Settlement Proposal will "fall over" unless all Scheme Growers approve the Resolutions with their requisite majorities.

### RESOLUTIONS

The following Resolution was put to the Meeting:

#### Resolution 1

The Chairman put the following resolution to the meeting:

*"That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) *the Scheme will continue in a restructured form; or*

(b) *the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered,*

*be approved."*

The Chairman declared the resolution carried on the voices. He noted he had exercised special proxies conferred upon him in accordance with their terms.

**Amending Resolution to Resolution 2**

The Chairman proposed to combine the proposed amendments to Resolution 2 into one amending Resolution, and invited objection from the Meeting against voting on the proposed amendments to Resolution 2 simultaneously.

No objection was raised.

The Chairman put the following proposed amendment to Resolution 2 as one Resolution to the Meeting:

*"That Resolution 2 as outlined in the notice of meeting dated 23rd September 2013, be amended as follows:*

**Amendment 1**

*"Omit "Operative Date (as that term is defined in the Explanatory Memorandum)" and replace it with "date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional"*

**Amendment 2**

*In clause 5.11 of the draft Constitution, omit the schedule, and replace it with:*

<i>Scheme</i>	<i>Share (%)</i>
<i>Tasmanian Forests Trust No 3 (ARSN 093 165 005)</i>	<i>1.73%</i>
<i>Tasmanian Forests Trust No 4 (ARSN 093 165 103)</i>	<i>2.90%</i>
<i>Tasmanian Forests Trust No 5 (ARSN 093 165 050)</i>	<i>2.73%</i>
<i>Tasmanian Forests Trust No 6 (ARSN 093 165 327)</i>	<i>8.41%</i>
<i>Tasmanian Forests Trust No 7 (ARSN 093 164 866)</i>	<i>60.06%</i>
<i>Tasmanian Forests Project 2000 (ARSN 092 500 984)</i>	<i>18.97%</i>
<i>Australian Forests Project 2001 (ARSN 094 614 678)</i>	<i>5.20%"</i>

The Chairman declared the resolution carried on the voices. He noted he had exercised special proxies conferred upon him in respect of the original Resolution 2 in accordance with their terms.

**Amended Resolution now becomes Resolution 2**

The Chairman put the following resolution to the meeting:

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the date on which the Implementation Deed (as that term is defined in the Explanatory Memorandum, and as amended by the parties from time to time) becomes unconditional as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

The Chairman noted clause 5.1.1 in the amended Constitution annexed to the Notice of Meeting has been amended in accordance with the amending Resolution and marked for identification with the letter A. A copy of this amended Constitution is attached.

The Chairman announced the result of the poll as following:

Summary of Outcome as per Link Market Report			
For	Against	Abstain	Total
Woodlots	Woodlots	Woodlots	Woodlots Voted
635.00	Nil	Nil	635.00
100.00%	0.00%	0.00%	100.00%

The Chairman declared Resolution carried.

**Resolution 3**

The Chairman put the following resolution to the meeting:

*"That:*

*(a) subject to and conditional upon:*

- (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and*
- (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:*

*then*

*(iii) The Responsible Entity be directed to execute on behalf of*

members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and

(iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or

(b) If there is no MIS Disposal on or before 31 March 2014:

(i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and

(ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and

(iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and

the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."

The Chairman announced the result of the poll as following:

Summary of Outcome as per Link Market Report				
For	Against	Abstain	Total Woodlots Voted	Total Number of Woodlots Entitled to Vote
Woodlots	Woodlots	Woodlots	Woodlots	Woodlots
617.00	18.00	Nil	635.00	1,091.48
56.53%	1.65%	0.00%	58.18%	100.00%

The Chairman declared Resolution carried.

**QUESTIONS**

The Chairman invited questions from the attendees.

No further questions were raised.

**CLOSURE OF**

There being no further business, the Chairman thanked those present for

**MEETING:** attending.

The Chairman declared the Meeting Closed at 9.52 am.

Signed as a correct record.

DATED this the *21<sup>st</sup>* day of November 2013.



**BRIAN SILVIA**  
**CHAIRMAN**