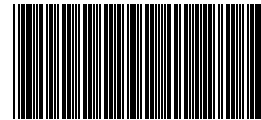




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Commercial List Response

COURT DETAILS

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

TITLE OF PROCEEDINGS

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

FILING DETAILS

Filed for	Gunns Limited (in Liquidation)(Receivers & managers Appointed), Defendant 2
Legal representative	Benjamin Renfrey
Legal representative reference	
Telephone	(08)82397158
Your reference	B8450

ATTACHMENT DETAILS

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

Commercial List Response (Commercial List Response of the Second Defendant.pdf)

[attach.]

Form 19 (version 2)
UCPR 21.10

COMMERCIAL LIST RESPONSE OF THE SECOND DEFENDANT

COURT DETAILS

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

TITLE OF PROCEEDINGS

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

PREPARATION DETAILS

Prepared for	Gunns Limited (In Liquidation) (Receivers & Managers Appointed) , the Second Defendant
Legal representative	Ben Renfrey Johnson Winter & Slattery
Legal representative reference	B8450
Contact name and telephone	Ben Renfrey Tel: 08 8239 7111
Contact email	ben.renfrey@jws.com.au

A NATURE OF DISPUTE

- 1 The First Defendant, Gunns Limited (In Liquidation) (Receivers & Managers Appointed) (**Gunns**) agrees with the general description of the nature of the dispute.
- 2 To the extent that the dispute concerns allegations made by the Plaintiffs against Gunns, Gunns disputes the Plaintiffs' allegations in the Commercial List Statement (**CLS**) as more fully set out below.

B ISSUES LIKELY TO ARISE

- 1 Gunns agrees that the issues identified by the Plaintiffs are likely to arise in the proceeding.
- 2 In addition, Gunns considers the following issues are likely to arise:
 - 2.1 Whether all or parts of the proceeding is statute barred as not having been commenced within the time prescribed by sections 1317K and 1325(4) of the *Corporations Act 2001* (Cth), section 48 of the *Limitation Act 1969* (NSW) and section 24(2) of the *Limitation Act 1974* (TAS).
 - 2.2 Whether the Plaintiffs have standing to assert claims of breaches of duties by the directors and former directors of GPL, which duties are owed to GPL.
 - 2.3 Whether the claim or parts against Gunns is an apportionable claim within the meaning of section 43A(1) of the *Civil Liability Act 2002* (TAS) or section 34(1) of the *Civil Liability Act 2002* (NSW).
 - 2.4 Whether Gunns is entitled to contribution against some or all of the other Defendants pursuant to section 3 of the *Wrongs Act 1954* (TAS) or section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) or in equity.

C DEFENDANT'S RESPONSES TO CLS

C1 THE DEFENDANTS

GPL

- 1 Gunns admits the matters alleged in paragraph 1 of the CLS.

Gunns Ltd

- 2 Gunns admits the matters alleged in paragraph 2 of the CLS.
- 3 Gunns admits the allegations in paragraph 3 of the CLS.

Directors and Officers of Gunns Ltd and Gunns Plantations Limited (GPL)

- 4 Gunns admits the matters alleged in paragraph 4 of the CLS.

- 5 Gunns admits the matters alleged in paragraph 5 of the CLS.
- 6 Gunns admits the matters alleged in paragraph 6 of the CLS.
- 7 Gunns admits the matters alleged in paragraph 7 of the CLS.
- 8 Gunns admits the matters alleged in paragraph 8 of the CLS.
- 9 Gunns admits the matters alleged in paragraph 9 of the CLS.
- 10 Gunns admits the matters alleged in paragraph 10 of the CLS.
- 11 Gunns does not plead to the matters alleged in paragraph 11 of the CLS as no allegation is made against it in that paragraph.

KPMG

- 12 As to the matters alleged in paragraph 12 of the CLS, Gunns:
 - 12.1 does not know and cannot admit whether the Tenth and Eleventh Defendants were partners of KPMG at the relevant times referred to in the CLS (the **Relevant Period**); and
 - 12.2 otherwise admits the matters alleged.
- 13 Gunns does not plead to the matters alleged in paragraph 13 of the CLS as no allegation is made against it.

C.2 OPERATION OF THE GUNNS WOODLOT SCHEMES

Background of Woodlot Schemes

- 14 Gunns admits the matters alleged in paragraph 14 of the CLS.
- 15 Gunns admits the matters alleged in paragraph 15 of the CLS.
- 16 Gunns admits the matters alleged in paragraph 16 of the CLS.
- 17 As to the matters alleged in paragraph 17 of the CLS, Gunns:
 - 17.1 admits that during the Relevant Period the respective Gunns Woodlot Scheme in a particular year was governed by the relevant:
 - (a) Constitution;

- (b) Management Agreement;
- (c) Maintenance Services Sub-contracting Agreement;
- (d) Forestry Right Deed;
- (e) Forestry Right Lease Deed; and
- (f) Compliance Plan,

(together, **Scheme Documents**) subject to reference at trial to the full terms and effect of the Scheme Documents;

17.2 says that the product disclosure statement relevant to the Gunns Woodlot Scheme in a particular year also formed part of the Scheme Documents; and

17.3 otherwise does not admit the allegations contained therein.

18 Gunns admits the matters alleged in paragraph 18 of the CLS, subject to:

18.1 the Plaintiffs and Group Members having complied with the conditions of the Scheme Documents to become Members and Growers under the Scheme Documents, which is not admitted; and

18.2 the full terms and effect of the Scheme Documents.

19 As to the matters alleged in paragraph 19 of the CLS, Gunns:

19.1 admits, but only in respect of the Gunns Woodlot Schemes established or operated during the Relevant Period, the establishment of the same on the basis alleged in paragraph 19 of the CLS, subject to reference at trial to the full terms and effect of the Prospectus or Product Disclosure statements in respect of the specific Gunns Woodlot Scheme; and

19.2 denies that the terms and conditions on which interests in the Gunns Woodlot Schemes were offered is confined to the matters alleged in paragraph 19 of the CLS and refers to the full terms and effect of the documents referred to in paragraph 19 of the CLS and the Scheme Documents.

- 20 As to the matters alleged in paragraph 20 of the CLS, Gunns:
- 20.1 admits that Gunns owned some of the land on which plantations the subject of the Gunns Woodlot Schemes were located; and
 - 20.2 otherwise does not admit the matters alleged in paragraph 20 of the CLS.
- 21 Gunns admits the matters alleged in paragraph 21 of the CLS.
- 22 As to the matters alleged in paragraph 22 of the CLS, Gunns:
- 22.1 subject to the full terms and effect of the Forestry Right Deeds, admits the matters alleged in paragraph 22 of the CLS; and
 - 22.2 otherwise does not admit the matters alleged in paragraph 22 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.
- 23 As to the matters alleged in paragraph 23 of the CLS, Gunns:
- 23.1 subject to the full terms and effect of the Forestry Right Deeds, admits the matters alleged in paragraph 23 of the CLS to the extent that the matters alleged relate to Gunns Woodlot Schemes established or operated during the Relevant Period; and
 - 23.2 otherwise does not admit the matters alleged in paragraph 23 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.
- 24 As to the matters alleged in paragraph 24 of the CLS, Gunns:
- 24.1 subject to the full terms and effect of the Forestry Right Deeds, admits the matters alleged in paragraph 24 of the CLS to the extent that the matters alleged relate to Gunns Woodlot Schemes established or operated during the Relevant Period; and
 - 24.2 otherwise does not admit the matters alleged in paragraph 24 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.

- 25 As to the matters alleged in paragraph 25 of the CLS, Gunns:
- 25.1 subject to the full terms and effect of the Forestry Right Deeds, admits the matters alleged in paragraph 25 of the CLS to the extent that the matters alleged relate to the Gunns Woodlot Schemes established or operated during the Relevant Period; and
 - 25.2 otherwise does not admit the matters alleged in paragraph 25 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.
- 26 As to the matters alleged in paragraph 26 of the CLS, Gunns:
- 26.1 subject to the full terms and effect of a document entitled Sub-Forestry Right Deed, admits the matters alleged in paragraph 26 of the CLS to the extent that documents titled Sub-Forestry Right Deeds related to the Gunns Woodlot Schemes established or operated during the Relevant Period; and
 - 26.2 otherwise does not admit the matters alleged in paragraph 26 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.
- 27 As to the matters alleged in paragraph 27 of the CLS, Gunns:
- 27.1 subject to the full terms and effect of a document entitled Sub-Forestry Right Deed, admits the matters alleged in paragraph 27 of the CLS to the extent that Sub-Forestry Right Deeds were in effect during the Relevant Period; and
 - 27.2 does not otherwise admit the matters alleged in paragraph 27 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.
- 28 As to the matters alleged in paragraph 28 of the CLS, Gunns:
- 28.1 subject to the full terms and effect of the Management Agreements, admits that GPL was required to provide the services referred to in paragraphs 28.1 and 28.2 of the CLS to the extent that Management Agreements were in effect during the Relevant Period; and

28.2 does not otherwise admit the matters alleged in paragraph 28 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.

29 As to the matters alleged in paragraph 29 of the CLS, Gunns:

29.1 subject to the full terms and effect of the Management Agreements, admits that the matters alleged in paragraph 29 of the CLS were included within the Establishment and Planting Services to be provided under the Management Agreements, to the extent that Management Agreements were in effect during the Relevant Period; and

29.2 does not otherwise admit the matters alleged in paragraph 29 of the CLS and will rely on the respective Forestry Right Deed for its full terms and effect.

30 Gunns denies the matters alleged in paragraph 30 of the CLS, and says further, subject to the full terms and effect of the Management Agreements:

30.1 in respect of the 2003, 2004, 2005, 2006 and 2008 Gunns Woodlot Schemes, GPL was required to use its best endeavours to complete the Establishment and Planting Services in the time alleged by the Plaintiffs, to the extent that Management Agreements were in effect during the Relevant Period; and

30.2 the Management Agreements provide that:

(a) in respect of the 2002 Gunns Woodlot Schemes:

- (i) GPL was required to use its best endeavours to complete the establishment services by 30 June in the year the application was made;
- (ii) GPL was required to use its best endeavours to complete the planting services before 30 June 2003 for applications made before 30 June 2002 and before 30 June 2004 for applications made after 30 June 2002; and

(iii) GPL was not liable to the Grower for any loss or damage caused to the Grower by GPL failing to perform services by the relevant time; and

(b) in respect of the 2009 Gunns Woodlot Schemes:

(i) GPL was required to use its best endeavours to complete the establishment services within 18 months of the end of the financial year in which the establishment fee was paid.

31 Gunns denies the matters alleged in paragraph 31 of the CLS, and:

31.1 subject to the full terms and effect of the Management Agreements, admits that in respect of the 2003, 2004, 2005, 2006 and 2008 Gunns Woodlot Schemes, GPL was required to use its best endeavours to complete the Establishment and Planting Services in the time alleged by the Plaintiffs, to the extent that Management Agreements were in effect during the Relevant Period; and

31.2 repeats paragraph 30.2 of this Commercial List Response.

32 As to the matters alleged in paragraph 32 of the CLS, Gunns:

32.1 subject to the full terms and effect of the Forestry Right Deeds, admits that GPL was required to keep current with a reputable insurer a public risk insurance policy covering GPL's liability in respect of its interest in the Land pursuant to clause 7(f) of the Forestry Right Deeds in effect during the Relevant Period;

32.2 says that GPL maintained the following primary \$10 million liability policies (**Liability Policy**):

Scheme	Insurer	Policy No.
2002-3	Liberty International Underwriters	400443
2003-4	Liberty International Underwriters	400443
2004-5	Liberty International Underwriters	400443

2005-6	Liberty International Underwriters	400443
2006-7	QBE Insurance Europe Limited	OM61466
2007-8	QBE Insurance Europe Limited	OM61466
2008-9	QBE Insurance Europe Limited	OM61466

32.3 says that GPL consistently maintained a Liability Policy until 30 November 2012; and

32.4 otherwise does not admit the matters alleged.

33 As to the matters alleged in paragraph 33 of the CLS, Gunns:

33.1 admits that it was appointed as GPL's sub-contractor, by GPL, in order to perform the Maintenance Services pursuant to the Maintenance Services Sub-contracting Agreements in effect during the Relevant Period; and

33.2 otherwise does not admit the matters alleged.

34 As to the matters alleged in paragraph 34 of the CLS, Gunns:

34.1 admits the matters alleged in respect of the Maintenance Services Sub-contracting Agreements in effect during the Relevant Period; and

34.2 otherwise does not admit the matters alleged.

35 As to the matters alleged in paragraph 35 of the CLS, Gunns:

35.1 admits the matters alleged in paragraph 35 of the CLS to the extent which the GPL Bank Guarantees were in effect during the Relevant Period; and

35.2 otherwise does not admit the matters alleged.

36 Gunns does not admit the matters alleged in paragraph 36 of the CLS.

RE Remuneration under the Schemes

37 As to the matters alleged in paragraph 37 of the CLS, Gunns:

37.1 subject to the full terms and effect of the Management Agreements, admits the matters alleged in paragraph 37 of the CLS, to the extent that Management Agreements were in effect during the Relevant Period; and

37.2 otherwise does not admit the matters alleged.

38 As to the matters alleged in paragraph 38 of the CLS:

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

- (a) pursuant to clauses 1.1, 7 and 8 of the Constitution, and clauses 4 and 10 of the Management Agreement in respect of each Gunns Woodlot Scheme, upon the fulfilment of conditions specified therein, GPL would release or instruct Gunns to release the Application Fee in payment of the Woodlot Establishment Expenses and the Establishment Fee in respect of each Gunns Woodlot Scheme;
- (b) says that payment of the Application Fee by a Grower constituted full payment of the Establishment Fee, being the fee payable by the Grower to GPL in consideration of the Establishment Services;
- (c) the Woodlot Establishment Expenses were agreed by the Plaintiffs to be the same amount as the Establishment Fee and were agreed and acknowledged by the Plaintiffs to be the amount of the Application Fee per Woodlot as respectively referred to in paragraph 40 of the CLS; and

Particulars

- (i) Paragraphs 1.1, 7, and 8 of the Constitution in respect of each Gunns Woodlot Scheme.
- (ii) Paragraphs 1.1, 4 and 10 of the Management Agreement in respect of each Gunns Woodlot Scheme.

- (iii) Pages 14, 16, 20 and 37 of the 2002 Gunns Woodlot Scheme Prospectus.
 - (iv) Sections 3 (Key feature – "Application Fee"), 5.2, 13, 17 and 18.6 of the 2003 Gunns Woodlot Scheme Product Disclosure Statement.
 - (v) Sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2004 Gunns Woodlot Scheme Product Disclosure Statement.
 - (vi) Sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2005 Gunns Woodlot Scheme Product Disclosure Statement.
 - (vii) Sections 4.1, 5, 8, 14, 18.1 and 18.2 of the 2006 Gunns Woodlot Scheme Product Disclosure Statement.
 - (viii) Sections 4.1, 8, 14, 18.1 and 18.2 of the 2008 Gunns Woodlot Scheme Product Disclosure Statement.
 - (ix) Sections 12 and 22.7 of the 2009 Gunns Woodlot Scheme Product Disclosure Statement.
- (d) the Plaintiffs, by entering into the Management Agreement, agreed that the full amount of the Application Fee was payable by them without any form of deduction in order to satisfy their obligations to pay the Establishment Fee under the Management Agreement.

Particulars

Paragraph 10(1)(b) of the Management Agreement.

- 38.2 admits the matters alleged in paragraph 38.2;
- 38.3 admits that GPL was entitled to be reimbursed by each grower in the circumstances prescribed in clause 11.1 of the Constitution in respect of a Gunns Woodlot Scheme, subject to the full terms and effect of the relevant Constitution;
- 38.4 says that:

- (a) in respect of the 2002 and 2003 Gunns Woodlot Schemes, GPL was entitled to the fees as alleged by the Plaintiffs;
- (b) in respect of the 2004, 2005, 2006 and 2008 Gunns Woodlot Schemes:
 - (i) GPL was entitled to the Maintenance Fee being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.2 of the Management Agreement;
 - (ii) GPL was entitled to the Sales Commission being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.4 of the Management Agreement;
 - (iii) GPL was entitled to the Rental Fee being 5.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1, 6 and Schedule 1 of the Forestry Right Lease Deed; and
 - (iv) the quantum of the fees was 9% of the Wood Sale Proceeds pursuant to clause 1.1 of the Constitution (definition of "Fees"); and
- (c) in respect of the 2009 Gunns Woodlot Scheme:
 - (i) GPL was entitled to the Maintenance Fee being 8.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.2 of the Management Agreement;
 - (ii) GPL was entitled to the Sales Commission being 2.0% of the Grower's entitlement to Wood Sale Proceeds pursuant to clauses 1.1 and 10.4 of the Management Agreement;
 - (iii) GPL was entitled to the Rental Fee being 5.0% of the Wood Sale Proceeds pursuant to clause 6 and Schedule

1 of the document entitled "Sub-Forestry Right Deed";
and

- (iv) the quantum of the fees was not limited to 12% of the Wood Sale Proceeds as that term is defined in the Scheme Documents;

38.5 admits the matters alleged in paragraph 38.5;

38.6 admits the matters alleged in paragraph 38.6;

38.7 says that GPL was entitled to additional fees including but not limited to the Baseline Pruning Fee as that term is defined in clauses 1.1 and 10.3 of the Management Agreement; and

38.8 at trial will rely on the full terms and effect of the Scheme Documents in respect of each of the Gunns Woodlot Schemes in respect of the revenue and payments to which it was entitled.

Growers' Interests in the Gunns Woodlot Schemes

39 As to the matters alleged in paragraph 39 of the CLS, Gunns:

39.1 subject to the full terms and effect of the Scheme Documents, admits the matters alleged;

39.2 says that the trust and monies impressed therewith were governed by and subject to the Scheme Documents as further particularised in paragraph 43 below; and

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

40 As to the matters alleged in paragraph 40 of the CLS, Gunns:

40.1 admits that the amount of the Application Fee per Woodlot was provided for under the Management Agreements for each of the Gunns Woodlot Schemes entered into between 2002 and 2008 (inclusive);

40.2 says that the amount of the Application Fee for the 2005 Gunns Woodlot Scheme was \$6,280 (inclusive of GST), not \$6,820 (inclusive of GST) as pleaded in the CLS; and

40.3 says that the amount of the Application Fee for the 2009 Gunns Woodlot Scheme was defined in the Constitution for that Scheme as:

(a) \$6,800 per Woodlot not chosen as part of a Blended Option; and

(b) \$25,840 for each Blended Option,

payable by an applicant seeking participation in the 2009 Gunns Woodlot Scheme in accordance with the terms of the Product Disclosure Statement, payable on application in accordance with clause 4.1 of the Constitution.

41 Gunns does not admit the matters alleged in paragraph 41 of the CLS. To the extent that the First Plaintiff invested the amounts alleged in the specific Gunns Woodlot Schemes referred to in paragraph 41:

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

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

Particulars

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

42 Gunns does not admit the matters alleged in paragraph 42 of the CLS. To the extent that the Second Plaintiff invested the amounts alleged in the specific Gunns Woodlot Schemes referred to in paragraph 42 of the CLS:

- 42.1 the cost of such investment being the Application Fees paid for each scheme was fully deductible in the years in which the Application Fees were paid by the Second Plaintiff in accordance with Product Rulings issued by the Australian Taxation Office; and
- 42.2 the Second Plaintiff for the purposes of his taxation affairs for each of the years referred to in paragraph 42 of the CLS, claimed a tax deduction equal to any of the amounts paid by him by way of Application Fees.

Particulars

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

- 43 As to the matters alleged in paragraph 43 of the CLS, Gunns:
 - 43.1 admits the matters alleged in paragraph 43 of the CLS, subject to the full terms and effect of the Scheme Documents; and
 - 43.2 says that, upon the satisfaction of the requirements of clause 7 of the Constitution of the relevant Gunns Woodlot Scheme, and the creation of the Sub Forestry Right Deed in favour of a Grower, the Application Money was required to be released by GPL, or GPL was required by clause 8 of the Constitution to instruct Gunns to release the Application Money (as the case may be), to be applied in payment of the Woodlot Establishment Expenses (as defined in the Constitution) and the Establishment Fee (as defined in the Management Agreement) payable by the Grower for the establishment of the woodlot the subject of the Sub Forestry Right Deed, and GPL was then no longer the trustee of the Application Money paid by the Grower.

Particulars

Clauses 1.1 (definition of "Woodlot Establishment Expenses"), 5.1, 7 and 8 of the Constitution and clause 10.1 of the Management Agreement in respect of each Gunns Woodlot Scheme.

- 44 As to the matters alleged in paragraph 44 of the CLS, Gunns:

- 44.1 admits that GPL was required to place the Application Moneys, or ensure that the Application Moneys were placed, in the Application Portion until they could be released in accordance with clause 8 of the Constitution; and
- 44.2 refers to and repeats paragraph 43.2 above.
- 45 As to the matters alleged in paragraph 45 of the CLS, Gunns:
- 45.1 admits the matters alleged insofar as an Application Portion was held during the Relevant Period, subject to the full terms and effect of the Scheme Documents;
- 45.2 says that once the particular Sub-Forestry Right Deed and Management Agreement were created and operative whether by virtue of the Constitution or otherwise, in favour of the Plaintiffs, they no longer had any interest in the Application Money paid by them and the Application Money became the beneficial property of GPL for it to deal with in accordance with the terms and conditions of the Scheme Documents; and
- 45.3 otherwise does not admit the matters alleged.

Particulars

Gunns refers to and repeats the particulars at paragraph 43.2 above.

- 46 As to the matters alleged in paragraph 46 of the CLS, Gunns:
- 46.1 denies the matters alleged;
- 46.2 says that the Plaintiffs were obliged pursuant to clause 10.1 of the Management Agreement to pay the Establishment Fee being an amount equivalent to the Application Fee;
- 46.3 says that upon satisfaction of the requirements of clauses 7 and 8 of the Constitution, GPL was entitled to the full amount of the Application Fee which was paid to it in order to satisfy the obligation of the Plaintiffs to pay the Establishment Fee pursuant to clause 10 of the Management Agreement and the Woodlot Establishment Expenses as defined in the Constitution;

- 46.4 repeats paragraphs 38.1 and 43 of this Commercial List Response;
and
- 46.5 otherwise refers to the full terms and effect of the Scheme Documents.
- 47 Gunns denies the matters alleged in paragraph 47 of the CLS and:
- 47.1 repeats paragraphs 38.1, 43, 45 and 46 of this Commercial List
Response; and
- 47.2 otherwise refers to the full terms and effect of the Scheme Documents.
- 48 Gunns denies the matters alleged in paragraph 48 of the CLS and says that
the payment of the Application Fee constituted full payment of the
Establishment Fee and that the Application Fee was an amount equivalent to
the Establishment Fee.

Particulars

Management Agreement clause 10.1.

- 49 Gunns denies the matters alleged in paragraph 49 of the CLS, and:
- 49.1 repeats paragraphs 38.1, 43, 45, 46, 47 and 48 of this Commercial List
Response; and
- 49.2 otherwise refers to the full terms and effect of the Scheme Documents.
- 50 Gunns denies the matters alleged in paragraph 50 of the CLS, and says that:
- 50.1 the provision of clause 12.1(b) of the Constitution relied on by the
Plaintiffs was in all respects subject to the Constitution;
- 50.2 clause 12.1(b) of the Constitution imposed no such obligation; and
- 50.3 it repeats paragraph 45 of this Commercial List Response.
- 51 As to the matters alleged in paragraph 51 of the CLS, Gunns:
- 51.1 admits, subject to the full terms and effect of the Scheme Documents,
that GPL was, on an interim basis, and in the event of it being required
to terminate the "Project", to divide the balance of the Application
Portion according to the Grower' Proportional Interests;

- 51.2 says that at no time during the Relevant Period was GPL required to do this; and
 - 51.3 otherwise refers to the full terms and effect of the Scheme Documents.
- 52 As to the matters alleged in paragraph 52 of the CLS, Gunns:
- 52.1 subject to the full terms and effect of the Scheme Documents, admits the matters alleged in paragraph 52 of the CLS; and
 - 52.2 says that at no time during the Relevant Period was GPL required to distribute the Growers' Proportional Interests in the "Wood Proceeds Portion" and the "Carbon Rights Proceeds Portion"; and
 - 52.3 otherwise refers to the full terms and effect of the Scheme Documents.

Auditor oversight and Compliance Plans

- 53 As to the matters alleged in paragraph 53 of the CLS, Gunns:
- 53.1 admits the matters alleged;
 - 53.2 says that in respect of each Gunns Woodlot Scheme, KPMG audited the accounts of GPL (**Audit Engagement**) and the relevant Compliance Plan (**Compliance Engagement**);

Compliance Engagement

- 53.3 says that KPMG pursuant to the Compliance Engagement was subject to the express terms of its engagement letters;

Particulars

Particulars of the express terms of the engagement letters will be provided after discovery.

- 53.4 says that by reason of the Compliance Engagement, KPMG owed a duty to GPL in the discharge of the Compliance Engagement to:
 - (a) pursuant to section 601HG(3) of the Act, within 3 months after the end of a financial year of the relevant Gunns Woodlot Scheme:

- (i) examine the relevant Compliance Plan;
 - (ii) carry out an audit of GPL's compliance with the relevant Compliance Plan during the relevant financial year;
 - (iii) give to GPL a report stating, inter alia, whether in KPMG's opinion GPL had complied with the relevant Compliance Plan during each relevant financial year;
- (b) pursuant to sub-sections 601HG(3)(b)-(c) of the Act, exercise reasonable care, skill and diligence in carrying out an audit of, and reporting upon, GPL's compliance with the Compliance Plans;
 - (c) pursuant to section 601HG(4A) of the Act, notify ASIC in writing as soon as practicable and in any case within 28 days after the lead auditor became aware of circumstances that provided reasonable grounds to suspect that there had been a significant contravention of the Act;
 - (d) conduct the Compliance Engagement in accordance with the relevant professional auditing principles and practices, including Accounting Professional & Ethical Standard (**APES**) 3100 and APES 013.

53.5 says that in its audit reports in relation to the Compliance Plan for each of the Gunns Woodlot Schemes KPMG reported that:

- (a) GPL had complied with the Compliance Plan of the relevant Gunns Woodlot Scheme; and
- (b) that the Compliance Plan lodged with ASIC in respect of the Gunns Woodlot Scheme continued to meet the requirements of Part 5C.4 of the Act;

Particulars

Independent auditor's report to the directors of GPL dated 30 September 2011 in respect of each of the Gunns Woodlot Schemes.

Further particulars of the independent auditor's report in respect of the Gunns Woodlot Schemes will be provided following discovery.

Audit Engagement

53.6 says that KPMG as auditors in respect of the financial accounts of GPL were required pursuant to the express terms of their audit engagement, inter alia, to:

- (a) conduct the audit as required by the Act so as to express an opinion whether the financial statements of GPL had been properly drawn up to provide a true and fair view of its financial position and performance in conformity with the Australian Accounting Standards, the Act and *Corporations Regulations 2001 (Cth)* (**Regulations**);
- (b) conduct the audit in accordance with Australian Auditing Standards issued by the AASB pursuant to section 336 of the Act (**auditing standards**);
- (c) conduct an examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial reports, and an evaluation of accounting policies and significant accounting estimates. These procedures were to be undertaken to form an opinion as to whether, in all material respects, the financial reports were presented fairly in accordance with Australian Accounting Standards, other mandatory professional reporting requirements in Australia and the Act, so as to present a view which is consistent with the company's financial position, and performance, represented by the results of its operations and its cash flows;
- (d) obtain an understanding of GPL's accounting system and the internal control structure to the extent necessary to consider their adequacy as a basis for the preparation of the financial reports, so as to establish whether sufficient accounting records have been maintained;

- (e) design procedures so as to provide reasonable assurance whether the financial statements of GPL were free from material misstatement;
- (f) form the opinions required by section 307 of the Act as to whether the financial report for the financial year or half year was in accordance with the Act, including sections 296 or 304 and section 297 or 305, whether it had been given all of the information, explanations and assistance necessary for the conduct of the audit, whether GPL had kept financial records sufficient to enable a financial report to be prepared and audited, and whether GPL had kept other records and registers as required by the Act;
- (g) issue an audit report on the annual financial report dealing with the matters required by section 308 of the Act to be dealt with in the report, and in particular if KPMG was of the opinion that the financial report did not comply with accounting standards or did not give a true and fair view of the financial performance of GPL, it was required to describe that non-compliance and, if practicable, quantify the effect that non-compliance had on the annual financial report and to describe in its report any defect or irregularity in the annual financial report;
- (h) issue a review report on the half year financial report dealing with the matters required by section 309 of the Act to be dealt with in the report; and
- (i) issue separate reports to management and the Board of GPL (**Board**) concerning recommendations in relation to internal control structures and accounting procedures of which KPMG became aware during the course of KPMG's engagement;

53.7 says that KPMG, as auditors in respect of the accounts of GPL, were required pursuant to the implied terms of the Audit Engagement, inter alia, to:

- (a) exercise reasonable skill and care in performing the engagement;

- (b) would state, in its report, its opinion as to whether the financial report of Gunns was in accordance with the Act including sections 296 and 297 of the Act;

Particulars

The terms are implied by reason of KPMG's audit personnel being members of the Institute of Chartered Accountants or CPA Australia, independent bodies that impose an obligation on their members to comply with the Code of Conduct of Standards issued by the Accounting Professional and Ethical Standards Board, and by reason of the obligations placed on KPMG as auditors under Division 3 of Part 2 M.3 of the Act.

- (c) would take reasonable steps to acquire a knowledge and understanding of the business of GPL, in particular each transaction to which GPL was a party which was of a sufficient financial size to affect materially the annual financial report, GPL's accounting records, systems and internal controls;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (d) utilise audit procedures, including:
- (i) An evaluation of accounting systems and internal controls to identify those controls upon which audit reliance could be placed in determining the nature, timing and extent of audit procedures;
 - (ii) Compliance based testing designed to obtain reasonable assurance that those internal controls on which audit reliance was to be placed were in effect;
 - (iii) Substantive procedures designed to obtain evidence as to the completeness, accuracy and validity of the data produced by Gunns' accounting systems;

- (iv) Tests of transactions by review of documentary evidence; and
- (v) Independent confirmation of assets and liabilities by observation or direct communication with third parties;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (e) in forming the statutory opinion on the Financial Reports of GPL for each of the 2002, 2003, 2004, 2005, 2006, 2008 and 2009 Financial years (**the Financial Reports**) perform sufficient tests to obtain reasonable assurance as to whether the information contained in the underlying accounting records and other source data was reliable and sufficient as a basis for the preparation of the Financial Reports;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (f) in carrying out their obligations as auditor, utilise persons with adequate training, experience and competence in auditing and ensure that all work was properly directed, supervised and reviewed;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (g) consider whether there was adequate disclosure of relevant information in the annual financial reports;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (h) form an opinion as to whether GPL had kept financial records sufficient to enable a financial report to be prepared and audited and whether GPL had kept other records and registers as required by the Act;

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (i) state in its audit report:
 - (i) if it was of the opinion that the annual financial report did not comply with sections 296 or 297 of the Act, why it did not comply and, as far as practicable to do so, the effect that such non-compliance had on the annual financial report;
 - (ii) any defects or irregularity in the annual financial report;
 - (iii) any deficiency, failure or shortcoming in respect of the financial records or other records and registers of the company;
 - (iv) any statements or disclosures required by the accounting standards; and
 - (v) whether, in its opinion, the remuneration report complies with section 300A of the Act; and

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

- (j) through the lead auditor, notify ASIC in writing as soon as practicable, but in any case within 28 days of becoming aware of circumstances that:
 - (i) gave the lead auditor reasonable grounds to suspect that a Significant Contravention within the meaning of

section 311(4) of the Act had occurred, or in the case of matters which were not a Significant Contravention of the Act, the lead auditor believed the matters would not be adequately dealt with by commenting on them in the auditor's report or bringing them to the attention of the directors of GPL; and/or

- (ii) amounted to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit or amounted to an attempt by a person to interfere in the proper conduct of the audit.

Particulars

Gunns refers to and repeats the particulars to paragraph 53.7(b) herein.

53.8 says that by reason of KPMG's engagement and duties as set out in paragraphs 53.6 and 53.7 and herein, KPMG owed a duty to GPL in the discharge of the Audit Engagement to:

- (a) carry out its work in the discharge of the Audit Engagement with reasonable care, skill and diligence; and
- (b) perform sufficient work in order to safeguard the interests of GPL and to check, and if necessary, report to the directors and management of GPL in relation to any fact or circumstance coming to the attention of KPMG:
 - (i) involving a contravention or possible contravention of accounting standards or the Act;
 - (ii) which would, or might, cause the annual financial report to present other than a true and fair view of the financial position and performance of GPL;
 - (iii) which would, or might, involve any defect, inaccuracy, or irregularity in the annual financial report;

- (iv) which would, or might, have had a material effect on the profits stated in the annual financial report;
- (v) which would, or might, have had a material effect on GPL's compliance with the terms and covenants on which the business of GPL was financed; and
- (vi) which would, or might, have had a material effect on GPL's ability to continue as a going concern.

53.9 says that KPMG knew, or ought to reasonably have foreseen, that GPL would rely on, and further intended that GPL would rely on:

- (a) KPMG exercising reasonable care and skill in the performance of the Audit Engagement;
- (b) KPMG doing each of the things referred to in paragraphs 53.6, 53.7 and 53.8 herein;
- (c) any reports whether positive or negative in nature made by KPMG arising out of the performance of the Audit Engagement;
- (d) an absence of a negative report by KPMG;
- (e) the annual financial reports as audited by KPMG; and
- (f) the statutory audit opinion required pursuant to section 307 of the Act to be provided by KPMG.

53.10 says that KPMG knew, or ought to have known, that GPL relied upon it as set out in paragraph 53.9 herein, and by reason of the terms of the Audit Engagement and the requirements of the Act.

53.11 says that KPMG foresaw or ought reasonably to have foreseen that a failure by it to exercise reasonable care and skill in the performance of the Audit Engagement could lead to GPL suffering a loss.

53.12 says that GPL was not in a position to assess the adequacy of the work carried out by KPMG and were dependent on KPMG in the manner set out in paragraph 53.9 herein.

53.13 says that the advice provided by KPMG to GPL included its audit reports in relation to the accounts of GPL, in which KPMG reported that:

- (a) the financial report of GPL was in accordance with the Act including giving a true and fair view of GPL's financial position and of its performance and complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*; and
- (b) the financial report of GPL complied with International Financial Reporting Standards;

Particulars

Independent Auditor's reports to the members of GPL dated 18 September 2003, 15 September 2004, 28 September 2005, 19 September 2006, 28 September 2007, 30 September 2008, 30 September 2009, 30 September 2010 and 30 September 2011.

Further particulars will be provided after discovery;

53.14 says that GPL relied upon the advice received from KPMG as set out in paragraph 53.13 herein and in particular the provision of an unqualified audit opinion in respect of the Financial Reports of Gunns for each year falling within the Relevant Period.

53.15 says that KPMG did not disclose to GPL or to its Board any of the matters alleged by the Plaintiffs as causing the annual reports of GPL not to be true and fair because of the matters alleged in paragraphs 73 and 74 of the CLS; and

53.16 says that had KPMG at any time disagreed with any proposed accounting treatment in respect of the annual reports of GPL, the Board of GPL would not have supported or resolved to approve and adopt the financial statements or annual report in the form it was published.

54 Gunns admits the matters alleged in paragraph 54 of the CLS.

55 Gunns admits the matters alleged in paragraph 55 of the CLS.

External Administration and Distributions

56 Gunns admits the matters alleged in paragraph 56 of the CLS.

57 Gunns admits the matters alleged in paragraph 57 of the CLS.

58 Gunns admits the matters alleged in paragraph 58 of the CLS.

59 Gunns admits the matters alleged in paragraph 59 of the CLS.

60 Gunns admits the matters alleged in paragraph 60 of the CLS.

61 As to the matters alleged in paragraph 61 of the CLS, Gunns:

61.1 admits that the Supreme Court of Victoria made Orders dated 31 May 2013 and will rely on them for their full terms and effect;

61.2 admits that the Supreme Court of Victoria made Orders dated 21 June 2013 and will rely on them for their full terms and effect; and

61.3 otherwise does not admit the matters alleged.

62 Gunns admits the matters alleged in paragraph 62 of the CLS.

63 Gunns admits the matters alleged in paragraph 63 of the CLS.

64 Gunns admits the matters alleged in paragraph 64 of the CLS.

C3. THE DEFENDANTS' DUTIES

GPL

65 As to the matters alleged in paragraph 65 of the CLS, Gunns subject to the full terms and effect of each of the Scheme Documents:

65.1 admits paragraph 65.1;

65.2 admits paragraph 65.2;

65.3 admits paragraph 65.3;

65.4 as to the matters alleged in paragraph 65.4:

- (a) admits that GPL was required by clause 6.1 of the Forestry Right Deed to do the things alleged in paragraph 65.4(a);
- (b) admits that GPL was required by clause 7(f) of the Forestry Right Deed to do the things alleged in paragraph 65.4(b); and
- (c) say that the obligations of GPL pursuant to the Forestry Right Deeds were contractual obligations owed by GPL to the Landowner (as defined in each Forestry Right Deed) and not to any of the Plaintiffs; and
- (d) denies that GPL owed any of the duties alleged in paragraph 65.4 to the Plaintiffs;

65.5 as to the matters alleged in paragraph 65.5:

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

65.6 as to the matters alleged in paragraph 65.6, Gunns:

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

66 Gunns admits that GPL owed the statutory duties alleged in paragraph 66 of the CLS.

- 67 As to the matters alleged in paragraph 67 of the CLS, Gunns:
- 67.1 denies that there were any such Growers' Trust Funds as that term is defined in paragraph 49 of the CLS;
 - 67.2 repeats its plea in paragraphs 38.1, 43, 45, 46, 47, 48, 49 and 50 of this Commercial List Response; and
 - 67.3 by reason of there being no Growers' Trust Funds, denies that GPL owed any of the obligations referred to in paragraph 67 of the CLS.

Gunns Ltd

- 68 As to the matters alleged in paragraph 68 of the CLS, Gunns:
- 68.1 admits that it had a duty to hold on behalf of GPL any "Establishment Fee" paid by a "Grower" (as those terms are defined in the Management Agreements);
 - 68.2 says that the duty was a contractual duty pursuant to the Management Agreements between Gunns and GPL;
 - 68.3 says that GPL was, subject to the terms and conditions of the Scheme Documents, the trustee of the Application Fee paid by a Grower under the terms of the Constitution; and
 - 68.4 otherwise denies the matters alleged, including but not limited to the assertion that there were any Growers' Trust Funds as that term is defined in paragraph 49 of the CLS.

The GPL Directors

- 69 As to the matters alleged in paragraph 69 of the CLS, Gunns:
- 69.1 admits that the GPL Directors owed the duties alleged in paragraphs 69.1 to 69.5 inclusive, but only during the period in which they were each directors of GPL;
 - 69.2 says that such duties were owed by the GPL Directors to GPL only and to no other person or entity, and without limitation, denies that any such duties were owed by the GPL Directors to the Plaintiffs; and

69.3 does not admit the matters alleged in paragraph 69.6.

KPMG

70 As to the matters alleged in paragraph 70 of the CLS, Gunns repeats paragraphs 53, 54, 55, 65 and 67 of this Commercial List Response.

71 Gunns admits the matters alleged in paragraph 71 of the CLS.

72 As to the matters alleged in paragraph 72 of the CLS, Gunns:

72.1 admits the matters alleged in paragraph 72.1;

72.2 admits the matters alleged in paragraph 72.2;

72.3 admits the matters alleged in paragraph 72.3;

72.4 admits the matters alleged in paragraph 72.4;

72.5 admits the matters alleged in paragraph 72.5;

72.6 admits the matters alleged in paragraph 72.6;

72.7 does not know and cannot admit the knowledge or awareness of KPMG; and

72.8 otherwise does not admit the matters alleged in paragraph 72.

C4. CONDUCT OF GPL, GUNNS LTD AND KPMG

Payments of Growers' Trust Funds to Gunns Ltd

73 As to the matters alleged in paragraph 73 of the CLS, Gunns:

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

73.2 repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49, 50 and 53 of this Commercial List Response.

74 As to the matters alleged in paragraph 74 of the CLS, Gunns:

- 74.1 does not admit that the amounts alleged in paragraph 74 were paid to Gunns by GPL;
- 74.2 says that any funds paid by Growers in respect of the Gunns Woodlot Schemes were in all respects applied and dealt with in accordance with the terms of the Scheme Documents relating to the relevant Gunns Woodlot Scheme;
- 74.3 says that the notes to the Annual Financial Reports of GPL record the following loan balances in respect of loans made by GPL to Gunns:

Year	Amount Receivable from parent Entity at 30 June (From Note 6)
2002	\$2,584,535
2003	\$36,330,410
2004	\$71,420,154
2005	\$112,797,268
2006	\$29,052,380
2007	\$0
1008	\$2,163,349
2009	\$89,825,709
2010	\$71,669,102
2011	\$70,315,348

- 74.4 denies that GPL made any loans to Gunns in the financial years ended 30 June 2006 and 30 June 2007;
- 74.5 says that all loans made by GPL to Gunns prior to 30 June 2007 were repaid in full on or before 30 June 2007;

- 74.6 admits that GPL paid the following amount to Gunns by way of dividends, as recorded in the Annual Financial Reports of GPL:
- (a) \$8,000,000 for the year ending 30 June 2004;
 - (b) \$50,000,000 for the year ending 30 June 2006;
 - (c) \$50,000,000 for the year ending 30 June 2007; and
 - (d) \$10,000,000 for the year ending 30 June 2009;
- 74.7 denies that any amounts paid to Gunns by GPL were paid without all necessary authority and entitlement to do so pursuant to the terms of the Scheme Documents and the consent of the Plaintiffs;
- 74.8 denies that any loans made or dividends paid to Gunns by GPL were made from Growers' Trust Funds;
- 74.9 says that any funds accounted for as loans to Gunns by GPL were funds to which Gunns was legally and beneficially entitled and were not held for the benefit of the Plaintiffs or any other Grower;
- 74.10 says that, in causing any payments on any account to be made to Gunns by GPL, GPL relied on KPMG at all times for the purpose of determining:
- (a) that GPL had complied with its obligations under the Compliance Plans and in particular that GPL was able to make such payments from moneys which were not held on trust for any Grower;
 - (b) the quantum of the amounts to be paid to Gunns; and
 - (c) the financial position of GPL as at the date of the approval of the Financial Report of GPL for each year during which the Gunns Woodlot Schemes were operating; and
- 74.11 repeats paragraph 53 of this Commercial List Response.

Forestry Right Fees and Insurances

- 75 As to the matters alleged in paragraph 75 of the CLS, Gunns:

- 75.1 admits that GPL did not make all required payments of the Forestry Right Fees pursuant to its obligation to do so set out in sub-paragraphs 65.1 to 65.4 of the CLS; and
- 75.2 says that to the extent that any Forestry Right Fees were not paid by GPL to any of the entities referred to in paragraph 75(a) being related parties of Gunns, the fact of non-payment enhanced the asset position of each of the Gunns Woodlot Schemes in question.
- 76 Gunns denies the matters alleged in paragraph 76 of the CLS and repeats paragraph 32.2 of this Commercial List Response.

KPMG Compliance Plan audit reports

- 77 Gunns admits the matters alleged in paragraph 77 of the CLS and:
- 77.1 says that all Compliance Plan audit reports issued by KPMG during the Relevant Period were unqualified; and
- 77.2 repeats paragraph 53 of this Commercial List Response.
- 78 As to the matters alleged in paragraph 78 of the CLS, Gunns:
- 78.1 admits that KPMG gave no notice to ASIC;
- 78.2 says that no circumstance existed which should have caused KPMG to make any such notification; and
- 78.3 says further that the allegation of KPMG's alleged knowledge is wholly unparticularised as are the alleged circumstances such that the plea is embarrassing and prejudicial and ought be struck out.

C.5 BREACHES OF DUTY BY THE DEFENDANTS

GPL

- 79 As to the matters alleged in paragraph 79 of the CLS, Gunns:
- 79.1 admits that GPL, subject to the full terms and conditions of the Constitution, had the obligations alleged in paragraph 79.1, 79.2, 79.3, 79.4, 79.7. 79.8. 79.9 and 79.10 but denies any breach of those

obligations in the manner alleged under the heading "Particulars" to each of those sub-paragraphs;

79.2 admits that GPL, subject to the full terms of the Original Compliance Plan for each of the Gunns Woodlot Schemes, had obligations prescribed by those Original Compliance Plans as alleged in paragraph 79.5, but denies any breach of those obligations by GPL; and

(a) denies each of the matters referred to as "Particulars" to that paragraph; and

(b) in respect of the matters alleged at sub-paragraphs (b), (c), (d), (e), (f) and (g) repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49, 50, 53, 73 and 74 of this Commercial List Response; and

79.3 admits that GPL, subject to the full terms and of the Amended Compliance Plan for each of the Gunns Woodlot Schemes, had obligations prescribed by those Amended Compliance Plans as alleged in paragraph 79.6, but denies any breach of those obligations by GPL; and

(a) denies each of the matters referred to as "Particulars" to that paragraph; and

(b) in respect of the matters alleged at sub paragraphs (b), (c), (d), (e), (f) and (g), repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49, 50, 53, 73 and 74 of this Commercial List Response.

80 As to the matters alleged in paragraph 80 of the CLS, Gunns:

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

80.2 denies that there were any Growers' Trust Funds as that term is defined in paragraph 49 of the CLS; and

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

Gunns

81 As to the matters alleged in paragraph 81 of the CLS, Gunns:

- 81.1 denies that it breached any duty to the Plaintiffs or at all;
- 81.2 denies that there were any Growers Trust Funds as that term is defined in paragraph 49 of the CLS; and
- 81.3 repeats paragraphs 67, 68, 73 and 74 of this Commercial List Response.

The GPL Directors

- 82 As to the matters alleged in paragraph 82 of the CLS, Gunns:
 - 82.1 denies that the GPL Directors breached section 601FD(1)(b) of the Act;
 - 82.2 denies that the GPL Directors breached section 601FD(1)(e) of the Act;
 - 82.3 denies that the GPL Directors breached section 601FD(1)(f) of the Act;
 - 82.4 says that any duties owed by the GPL Directors under the Act, were owed by them to GPL and not to the Plaintiffs;
 - 82.5 denies that the GPL Directors failed to act with the due care, skill and diligence that a reasonable person would exercise if the person were in the GPL Directors' position as the directors of the responsible entity;
 - 82.6 denies that the GPL Directors failed to ensure that GPL complied with their obligations under the Management Agreements, Forestry Rights Lease Deeds and the Forestry Right Deeds;
 - 82.7 denies that the GPL Directors have any liability in respect of any of the matters alleged by the Plaintiffs as a breach of duty which are alleged by the Plaintiffs; and
 - 82.8 repeats paragraphs 53, 69, 79 and 80 of this Commercial List Response.
- 83 As to the matters alleged in paragraph 83 of the CLS, Gunns:
 - 83.1 denies that the GPL Directors breached section 601FD(1)(b) of the Act;
 - 83.2 denies that the GPL Directors breached any duty in respect of section 601LC of the Act;

- 83.3 denies that the GPL Directors breached section 601FD(1)(c) of the Act;
- 83.4 denies that the GPL Directors breached section 601FD(1)(e) of the Act;
- 83.5 denies that the GPL Directors breached section 601FD(1)(f) of the Act;
- 83.6 says that any duties owed by the GPL Directors under the Act, were owed by them to GPL and not to the Plaintiffs;
- 83.7 denies that the GPL Directors failed to act with the due care, skill and diligence that a reasonable person would exercise in their position;
- 83.8 denies that the GPL Directors failed to ensure that GPL complied with its obligations as a trustee;
- 83.9 denies that the GPL Directors have any liability in respect of any of the matters alleged by the Plaintiffs as a breach of duty; and
- 83.10 repeats paragraphs 53, 69, 79 and 80 of this Commercial List Response.

- 84 Gunns denies the matters alleged in paragraph 84 of the CLS and says that the GPL Directors have no such liability under s 197 of the Act or otherwise.

The Fourth Defendant's liability for Gunns

- 85 Gunns denies the matters alleged in paragraph 85 of the CLS and repeats paragraph 81 above.

KPMG

- 86 Gunns does not plead to the matters alleged in paragraph 86 of the CLS as they do not relate to it and says that it had no knowledge of any breach of duty by KPMG whether in the manner pleaded or otherwise.

C6. CAUSATION AND LOSS

GPL

- 87 Gunns denies the matters alleged in paragraph 87 of the CLS and repeats paragraph 79 above.

88 Gunns denies the matters alleged in paragraph 88 of the CLS and repeats paragraph 79 above.

89 Gunns denies the matters alleged in paragraph 89 of the CLS and repeats paragraph 79 above.

90 Gunns denies the matters alleged in paragraph 90 of the CLS and without limitation:

90.1 denies that the Plaintiffs had any entitlement to the return of their Proportional Interest in the manner alleged; and

90.2 denies that there were at any time after the execution of the Sub-Forestry Right Deed and Management Agreement for any Woodlot, any Growers' Trust Funds (as that term is defined in the CLS) and further repeats paragraphs 38.1, 43, 45, 46, 47, 48, 49 and 50.

GPL Directors

91 Gunns denies the matters alleged in paragraph 91 of the CLS and without limitation repeats paragraphs 69, 82 and 83 of this Commercial List Response.

92 Gunns denies the matters alleged in paragraph 92 of the CLS and without limitation repeats paragraphs 69, 82 and 83 of this Commercial List Response.

93 Gunns denies the matters alleged in paragraph 93 of the CLS and repeats paragraph 91 of this Commercial List Response.

94 Gunns denies the matters alleged in paragraph 94 of the CLS and repeats paragraph 91 of this Commercial List Response.

Gunns

95 Gunns denies the matters alleged in paragraph 95 of the CLS and repeats paragraph 81 above.

96 Gunns denies the matters alleged in paragraph 96 of the CLS and repeats paragraph 81 above.

KPMG

- 97 Gunns in answer to the matters alleged in paragraph 97 of the CLS repeats paragraphs 53, 71, 72 and 86 of this Commercial List Response.
- 98 Gunns does not plead to the matters alleged in paragraph 98 of the CLS as no allegation is made against it.
- 99 Gunns does not plead to the matters alleged in paragraph 99 of the CLS as no allegation is made against it.
- 100 Gunns does not plead to the matters alleged in paragraph 100 of the CLS as no allegation is made against it.

The Plaintiffs' Loss

- 101 Gunns denies the matters alleged in paragraph 101 of the CLS.
- 102 Gunns denies the matters alleged in paragraph 102 of the CLS and repeats paragraphs 90, 94, 96, 97 and 98 above.
- 103 Gunns denies the matters alleged in paragraph 103 of the CLS.

Further issues

Limitation period exceeded

- 104 The Plaintiffs' claim is subject to the following legislation (**Limitation Acts**) to the extent which the Limitation Acts are applicable to a Group Member:
- 104.1 sections 1317K and 1325(4) of the Act;
- 104.2 section 24(2) of the *Limitation Act 1974* (TAS);
- 104.3 section 48 of the *Limitation Act 1969* (NSW);
- 104.4 section 21 of the *Limitation of Actions Act 1958* (VIC);
- 104.5 sections 31 and 32 of the *Limitation of Actions Act 1936* (SA);
- 104.6 section 27 of the *Limitation Act 2005* (WA);
- 104.7 section 27 of the *Limitation of Actions Act 1974* (QLD);
- 104.8 section 11 of the *Limitation Act 1985* (ACT); and

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

- 105 The causes of action alleged in the Plaintiffs' Contentions occurred more than 6 years prior to the Plaintiffs commencing the current proceeding.
- 106 The Plaintiffs' claims are barred by operation of the Limitation Acts.

Apportionment of liability

- 107 The Plaintiffs' claims are apportionable claims within the meaning of section 34(1) of the *Civil Liability Act 2003* (NSW) or alternatively section 43A(1) of the *Civil Liability Act 2002* (TAS).
- 108 Solely for the purpose of this paragraph, Gunns says that if the Plaintiffs suffered loss and damage as alleged, the acts or omissions of KPMG and the persons alleged by it to be partners of KPMG, being Andrew Gray (the Tenth Defendant) and Mathew Gary Wallace (the Eleventh Defendant) caused the loss and damage claimed by the Plaintiffs within the meaning of section 34(2) of the *Civil Liability Act 2002* (NSW) or alternatively section 43A(2) of the *Civil Liability Act 2002* (TAS).

Particulars

Gunns repeats paragraph 53 of this Commercial List Response.

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

Particulars

Gunns repeats paragraph 82, 83, 84 of the CLS.

Relief from liability

- 110 The Plaintiffs allege contravention of a civil penalty provision in that the Plaintiffs allege that GPL contravened paragraphs 601FC(1)(b), 601FC(1)(c), 601FC(1)(h), 601FC(1)(i), 601FC(1)(k), 601FC(1)(l), 601FC(2) and 601LC of the Act.

- 111 Gunns has acted honestly and having regard to all the circumstances of the case ought fairly to be excused for the contravention pursuant to sub-section 1317S(2) of the Act.

Particulars

111.1 In complying with its duties, Gunns at all times relied on reports provided to it by the management of GPL, including from the Third Defendant, which reports indicated that GPL as Responsible Entity of the Gunns Woodlot Schemes was complying with:

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

111.2 In complying with its duties, Gunns at all times relied on audit reports provided to it GPL, which GPL had received from KPMG, in respect of the financial reports of GPL and the Compliance Plans and Amended Compliance Plans, which reports indicated that:

- (a) the financial reports of GPL were in accordance with:
 - (i) the Act, including:
 - (I) giving a true and fair view of GPL's financial position as at 30 June in the year in which the financial report was published and of its performance for the financial year ended on that date; and
 - (II) complying with Accounting Standards and Corporations Regulations 2001;
 - (ii) in respect of the financial reports in the financial years ending 30 June 2002, 2003, 2004, 2005 and 2006, other mandatory professional reporting requirements; and

- (iii) in respect of the financial reports in the financial years ending 30 June 2008, 2009, 2010 and 2011, International Financial Reporting Standards as disclosed in note 1(a) to the financial reports; and
- (b) GPL as Responsible Entity of the Gunns Woodlot Schemes was complying with:
 - (i) the Act;
 - (ii) any conditions imposed on GPL's Australian Financial Services Licence;
 - (iii) the Constitutions of the Gunns Woodlot Schemes; and
 - (iv) the Compliance Plans or Amended Compliance Plans (as applicable).

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

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

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

D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1 None.

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

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

SIGNATURE

Signature of legal representative

Capacity

Date of signature



Ben Renfrey, Solicitor

20 July 2018

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

First Plaintiff

Geoffry Edward Underwood

Second Plaintiff

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

First Defendant

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

Second Defendant

Wayne Leonard Chapman

Third Defendant

John Eugene Gay

Fourth Defendant

Rodney John Loone

Fifth Defendant

Leslie Ralph Baker

Sixth Defendant

Robert Henry Graham

Seventh Defendant

Robin Gray

Eighth Defendant

Paul Desmond Teisseire

Ninth Defendant

Andrew Gray (KPMG Partner)

Tenth Defendant

Mathew Gary Wallace

Eleventh Defendant