

Western Australia

Wood Processing (WESFI) Agreement Act 2000

As at 04 Dec 2000

No. 66 of 2000

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Western Australia

Wood Processing (WESFI) Agreement Act 2000

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Western Australia

Wood Processing (WESFI) Agreement Act 2000

No. 66 of 2000

An Act to ratify, and authorise the implementation of, an agreement between the State and WESFI Limited relating to the continued supply of plantation softwood for the manufacture of wood based panel products.

[Assented to 4 December 2000]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Wood Processing (WESFI) Agreement Act 2000*.

s. 2

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Interpretation

(1) In this Act —

“**the Agreement**” means the Wood Processing (WESFI) Agreement, a copy of which is set out in Schedule 1, and includes that Agreement as varied from time to time, in accordance with its provisions.

(2) The notes following plans A and B of the Agreement do not form part of this Act or the Agreement.

4. Agreement ratified and implementation authorised

(1) The Agreement is ratified.

(2) The implementation of the Agreement is authorised.

(3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other Act or law.

Schedule 1 — Wood Processing (WESFI) Agreement

[s. 3(1)]

THIS AGREEMENT is made this eighth day of August 2000

BETWEEN

THE HONOURABLE RICHARD FAIRFAX COURT, B. Com., M.L.A.,
Premier of the State of Western Australia acting for and on behalf of the said
State and instrumentalities thereof from time to time (hereinafter called “the
State”) of the first part, and

WESFI LIMITED ACN 008 672 740 a company incorporated in the State of
Western Australia and having its registered office at 1-27 Somersby Road,
Welshpool (hereinafter called “the Company”) of the second part

WHEREAS:

- A. The State has established substantial softwood plantations in the vicinity of the Perth Metropolitan area and in the South West of the State. Approved forestry practice requires that these softwood plantations be periodically thinned. Such thinning produces substantial quantities of softwood timber that is not suitable for sawlogs. Softwood thinnings (together with softwood plantation and pine sawmill residues) are raw materials used in the production of wood based panel products of the nature currently manufactured by the Company at its Welshpool and Dardanup factories.
- B. It is in the interests of the State that plantation softwood thinnings be fully utilised and processed within the State and accordingly the State has encouraged the establishment by the Company of a particleboard factory in the Dardanup area and a medium density fibreboard factory at Welshpool.
- C. The original design capacity of the factories was predicated on the assumption that the volumes of plantation softwood thinnings (together with softwood plantation residues, sawmill residues and other industrial wood suitable for the manufacture of wood based panel products) available within economic distances of the factories would progressively increase. Accordingly in the interests of economy of operation and in recognition of the need for world-scale competitiveness the factories were built with a design capacity considerably in excess of the markets for their products.

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D. The Company before establishing the factories required (*inter alia*) to be assured of the availability of certain facilities and services to operate the factories and that it would be able to procure a continuous supply of softwood resource within economic distances of the factories and requested the State to assist in these matters.

E. The State recognising that:

- (a) the Company's undertaking promotes and assists the State's policy of decentralization of industry;
- (b) wood based panel products manufacture promotes the efficient development of the softwood plantations; and
- (c) there are other factors peculiar to the nature of the Company's undertaking which require special rights—

agreed to give effect to the Company's requirements by entering into the 1975 Agreement for an initial term of 25 years from 23 May 1975.

F. Clause 32 (1) of the 1975 Agreement provides that (subject to the terms of the Clause) the State will if satisfied that the Company needs to have supplies of softwood resource suitable for the manufacture of wood based panel products assured to it by a further agreement enter into negotiations with the Company for that purpose.

G. Having satisfied itself that the Company needs to have assured to it:

- (a) the continued supply of adequate volumes of softwood resource suitable for the manufacture of wood based panel products within economic distances from the factories; and
- (b) the intentions of the State to use all reasonable endeavours to ensure that a continuous supply of softwood resource suitable for the manufacture of wood based panel products is available within economic distances from the factories throughout the term and that the Company has the opportunity to purchase volumes of softwood resource in addition to those volumes provided for under this Agreement where such softwood resource becomes available,

the State desires in pursuance of the obligations undertaken by it in the 1975 Agreement and for the purpose of continuing to promote employment opportunity and industrial development especially in regional areas of Western Australia to assist by extending the supply

arrangements under the 1975 Agreement upon and subject to the terms and conditions of this Agreement.

- H. The Company in recognition of the State's commitment to continue its support for industry in Western Australia based on plantation softwoods has agreed as a discrete agreement (having no impact on the terms and conditions of this Agreement) to negotiate in good faith with the State to secure an arrangement whereby the Company will contribute a minimum of \$1,000,000 per annum during the term of this Agreement to a scheme for the creation and management by the State on Crown Reserves of softwood plantations of the species *Pinus radiata* on commercial terms acceptable to the Company and the State.

NOW THIS AGREEMENT WITNESSES:

1. In this Agreement subject to the context -

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notice”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notice, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“**CALM**” means the Department of Conservation and Land Management established under the Public Service Act 1978;

“**CALM Act**” means the Conservation and Land Management Act 1984;

“**Clause**” means a clause of this Agreement;

“**Commonwealth**” means the Commonwealth of Australia and includes the Government for the time being thereof;

“**Company**” means **WESFI LIMITED** ACN 008 672 740 a company incorporated in the State of Western Australia and having its registered office at 1-27 Somersby Road Welshpool and includes its controlled entities;

“**cubic metre**” means cubic metre of resource true volume under bark;

“**Dardanup factory**” means the Company's factory at Dardanup and all necessary ancillary buildings works plant and equipment and services for the production of panel products;

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“date of commencement” means the date on which the Bill referred to in Clause 3 of this Agreement commences to operate as an Act;

“EP Act” means the Environmental Protection Act 1986;

“Executive Director” means the Executive Director of CALM;

“factories” mean the Dardanup factory and the Welshpool factory and any other factory as may be agreed to by the Minister;

“factory sites” means:

- (i) the Dardanup factory site being Boyanup Agricultural Area Lots 353 and 354 and being part of Lot 2 on diagram 46933 the whole of the land in certificate of title volume 1729 folio 657; and
- (ii) the Welshpool factory site being Lot 5 on Diagram 77208 the whole of the land in certificate of title volume 1867 folio 996 together with part of Lot 96 on Plan 2653 the whole of the land in certificate of title volume 1549 folio 869;

“forest officer” means any officer of CALM designated as a forest officer under the CALM Act;

“forest produce and timber” have the same respective meanings as in the CALM Act;

“LA Act” means Land Administration Act 1997;

“loading points” means such places within the softwood plantations as shall be selected by the **Executive Director** after consultation with the Company and which so far as possible shall be selected so as to minimise distance between them and the places where the trees are felled whilst providing reasonable access to and use by vehicles transporting the resource to the factories;

“local government” means the council of a municipality that is a city, town or shire constituted under the Local Government Act 1995;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“Minister for Planning” means the Minister in the Government of the State for the time being responsible for the administration of the Town Planning and Development Act 1928;

“month” means calendar month;

“panel products” means reconstituted wood based panel products including particle board and medium density fibreboard and such other allied products as the Minister may approve from time to time for the purpose of this definition;

“person” or **“persons”** includes bodies corporate;

“public road” means a road as defined by the Road Traffic Act 1974;

“related bodies corporate” means bodies corporate related within the meaning of that term under the Corporations Law of the Commonwealth;

“resource” means softwood logs and woodchips, suitable for the manufacture of panel products, obtained from softwood plantation harvesting operations;

“said State” means the State of Western Australia;

“softwood” means timber of the genus Pinus;

“softwood plantations” means the existing plantations of softwood timber coloured either green or blue on the CALM map plan A attached hereto and initialled by or on behalf of the parties hereto for the purposes of identification and all future plantations of softwood timber under the control of the Executive Director where those plantations are located on State forest or land which is held or occupied by the Executive Director under the CALM Act or in respect of which an agreement for harvesting and selling softwood from that land has been made between the Executive Director and another person under or pursuant to the CALM Act and all future plantations established by the Executive Director either as principal or agent for which the Executive Director has control over the marketing of resource;

“subclause” means subclause of the Clause in or in relation to which the term is used;

“term” means the term defined in Clause 21 of this Agreement;

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“the 1975 Agreement” means the agreement defined in section 2 of the Wesply (Dardanup) Agreement Authorisation Act 1975;

“this Agreement” “hereof” and “hereunder” refer to this Agreement (including the Schedules) whether in its original form or as from time to time added to varied or amended;

“Trade Practices Act” means the Commonwealth Trade Practices Act 1974;

“Welshpool factory” means the Company’s factory at 1-27 Somersby Road, Welshpool or such other factory or factories as agreed to by the Minister (other than the Dardanup factory) which uses resource supplied under this Agreement;

“year” means a financial year.

Interpretation

2. (1) In this Agreement –
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any Clause other than Clause 13 to extend any period or date shall be without prejudice to the power of the Minister under Clause 13;
 - (c) Clause headings do not affect interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other gender;
 - (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder; and

- (g) reference to the Executive Director includes the person or body for the time being exercising the statutory powers and functions relevant to this Agreement exercised by the Executive Director at the date of this Agreement.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to, any law relating to native title or any lawful obligation or requirement imposed on the State or the Company, as the case may be, pursuant to any law relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

Ratification and Operation

- 3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2000 or such later date as may be agreed between the parties hereto.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If by 31 March 2001 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. Upon and subject to the said Bill commencing to operate as an Act the 1975 Agreement is hereby cancelled and the rights and obligations of the parties thereunder are hereby terminated.

5. (1) (a) For each year of this Agreement the State shall ensure that the Executive Director makes available for supply to the Company not less than 330,000 cubic metres of resource to the factories (except to the extent that a lesser aggregate requirement is specified in the statement of the Company's requirements for resource provided by the Company to the Executive Director for any such year in accordance with subclause (5) of this Clause).
- (b) Except as otherwise agreed by the Minister the Executive Director shall not be obliged to supply to the Company in any year a quantity of resource in excess of 330,000 cubic metres. Nothing in this paragraph prevents the Executive Director in his discretion from supplying to the Company in any year a quantity of resource in excess of 330,000 cubic metres by agreement with the Company.
- (c) The Executive Director shall:
 - (i) supply to the Company from time to time details of its best estimates of the availability of resource from the softwood plantations for each year of this Agreement; and
 - (ii) notify to the Company prior to 31 December in each year the maximum quantity of resource available for supply to the Company during the next ensuing year.
- (d) During the term the State shall ensure that the Executive Director shall supply to the Company (without the Company being under any obligation to obtain any permit or licence from the Executive Director) the quantity of resource from the softwood

plantations agreed upon or determined in respect of each year pursuant to the provisions of subclause (6) of this Clause.

(e) For the purposes of giving effect to the obligations of the State under paragraph (a) of this subclause the State shall ensure that the Executive Director:

- (i) replants to *Pinus radiata* or *Pinus pinaster* such suitable areas of State forest and fee simple land held in the name of the Executive Director which have previously been planted to *Pinus* species and have been clearfelled, except for those softwood plantations occurring in State forest 65 (Gnangara), 70 (Peel) and 3 (Hamel); and
- (ii) causes to be planted to *Pinus pinaster* within as close a proximity to the Welshpool factory as is reasonably possible such areas of available land

as may be necessary to endeavour to ensure that sufficient volumes of resource can be made available to the Company.

- (2) On or before 31 December in each year during the continuance of this Agreement the Company shall deliver to the Executive Director an estimate of its resource requirements for each of the next ensuing 6 years.
- (3) With due regard for sound forest practice, the Executive Director's other log supply commitments and the aim of minimising the haulage distance to the factories the Executive Director shall by 28 February in each year advise the Company of the softwood plantations from which it is planned to supply the Company's estimated requirements for resource for each of the factories for each of the next ensuing 6 years notified pursuant to subclause (2) of this Clause.
- (4) Within 60 days of being advised by the Executive Director of the softwood plantations from which resource is planned to be supplied in accordance with subclause (3) of this Clause, the Company may advise the Executive Director if the Company

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considers the volume weighted average haulage distance from the nominated softwood plantations to the factories to be uneconomic. If the Company advises the Executive Director that it considers the volume weighted average haulage distance is uneconomic then the Executive Director will consider the basis on which the Company has reached that conclusion and if the Executive Director agrees then the Executive Director will use all reasonable endeavours in a responsible manner to reduce the volume weighted average haulage distance.

- (5) On or before 15 May in each year during the continuance of this Agreement the Company shall provide to the Executive Director a statement of the Company's requirements for resource for each of the factories for the ensuing year.
- (6) On or before 31 May in each year agreement shall be reached between the Company and the Executive Director as to the quantity of resource to be supplied by the Executive Director to the Company during the next ensuing year. In default of agreement the matter shall be determined by arbitration.
- (7) The State shall ensure that the Executive Director shall as far as is practicable control the softwood plantations so as to ensure that (consistent with in his opinion approved forestry practice) the quantity of resource agreed between the Executive Director and the Company or determined (pursuant to subclause (6) of this Clause) is available to the Company in priority to other prospective uses of resource of a specification which would ordinarily be intended for supply to the Company.

Specifications of Resource

- (8) The Executive Director shall provide to the Company resource, which is in accordance with the specifications in the Second Schedule which may be varied from time to time by agreement between the Executive Director and the Company.

Suspension if plantation damaged

- (9) If any of the softwood plantations are damaged or destroyed by fire disease or other cause to such an extent that it is impracticable for the State to comply with the provisions of

subclause (1)(a) of this Clause or if by reason of anything beyond its reasonable control the State is prevented from complying with those provisions the Company shall have no claim against the Crown in right of the State or the Executive Director for the nonfulfilment of their obligations under those provisions so far as nonfulfilment is due to any such cause.

Executive Director's commitments

- (10) (a) As it is agreed that it is in the best interest of the Executive Director and the Company to encourage economy in felling and extraction to loading points and (where applicable) chipping of resource, the State undertakes that the Executive Director shall from time to time as occasion requires (after consultation with the Company as to the terms and conditions thereof) call tenders for such felling and extraction and chipping. The Executive Director shall not accept any tender for the felling and extraction and (where applicable) chipping of resource that is to be supplied to the Company unless before acceptance the tender has been considered jointly by the Executive Director and the Company.
- (b) The State shall ensure that the Executive Director will construct and maintain roads suitable for transport of the resource by the Company and its contractors from loading points to the boundaries of land controlled by the Executive Director.

Price of resource

- (11) As to all resource made available to and accepted by the Company, the Company shall pay to the Executive Director in respect thereof:
 - (a) the several rates of stumpages set out in the First Schedule hereto provided always that the Minister may from time to time if he considers it appropriate so to do vary any of the said several rates of stumpages set out in the First Schedule hereto to such amount or amounts and for such period or periods as he may determine;

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- (b) the costs and expenses of felling and extraction of resource to the loading points and chipping of logs at the rates or prices set out in the contracts of sale resulting from tenders called pursuant to subclause (10)(a) of this Clause respectively accepted therefor but if such tender includes logs other than resource then as otherwise agreed or failing agreement as determined by arbitration to be fair and equitable;
 - (c) the cost of haulage from the loading point to the factories where the Executive Director is responsible for the haulage of the resource;
 - (d) 5 per centum of the costs and expenses referred to in subclauses (b) and (c) of this subclause representing:
 - (i) the costs directly incurred in controlling and supervising the work of contractors engaged in the felling and extraction to the loading points and (where applicable) chipping of resource; and
 - (ii) 15 per centum of the costs referred to in subclause (d)(i) of this subclause to cover overheads and other indirect costs associated with such work; and
 - (e) a charge for the construction use and maintenance of roads in the softwood plantations and State forests levied at a rate as set out in the First Schedule hereto.
- (12) At intervals of not less than three years either party may request that the provisions of either or both paragraphs (d) and (e) of subclause (11) be reviewed. If under the review the parties fail to agree as to whether an adjustment is required or on the amount of the adjustment then the matter shall be referred to arbitration.
- (13) (a) In this subclause (13) “GST” and “supply” have the meanings given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth and “GST” includes GST equivalents made payable by the law of Western Australia.

- (b) Notwithstanding anything express or implied in this Agreement (other than this subclause (13)) to the contrary, if GST is imposed or is payable on or in respect of any supply of goods, services, or other things, (including without limitation the licensing of any right) by the State under or in connection with this Agreement, or if the amount of GST is calculated by reference to any such supply, or if GST is imposed or is payable on or in respect of or by reference to any amount payable to the State under or in connection with this Agreement, then the Company must pay the State an extra amount equal to the amount of that GST.
- (c) The Company must pay the State all amounts payable under this subclause (13) at the time of the payment to which they relate, or otherwise on demand.
- (d) The obligations of the Company under this subclause (13) only apply if the State has provided the Company with a valid tax invoice for the relevant supply which:-
 - (i) meets the requirements of the legislation and any regulations governing the GST and any relevant requirements of the Australian Taxation Office (or other relevant administering body or person); and
 - (ii) sets out the amount in respect of which GST is payable and the amount of that GST.
- (e) If after the date of this Agreement there is any abolition or reduction of taxes duties or statutory charges (including but not limited to sales tax, fuel excise, stamp duty, financial institutions duty, debits tax and any impost in lieu of any of the foregoing under any tax equivalent regime) the amounts otherwise payable by the Company under this subclause (13) will be reduced so that the full benefit of any such abolition or reduction applicable to the performance of this Agreement is passed on to the Company.

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Company's commitments

6. (1) (a) Subject to the provisions of Clause 12 hereof the Company shall be bound in each year to take delivery of the quantity of resource agreed or determined pursuant to subclause (6) of Clause 5 hereof provided that if it takes less than 90 per centum of such quantity in any year, the Company shall pay stumpage to the Executive Director on the quantity less than 90% (**deficiency**) at a rate equal to the stumpage rate payable in that year under subclause (11)(a) of Clause 5 hereof; and
- (b) if the Company during either or both of the two years immediately following any year in respect of which it is required to make a payment to the Executive Director pursuant to paragraph (a) of subclause (1) of this Clause takes resource in excess of the lesser of:
- (i) 90% of the quantity of resource notified by the Executive Director to the Company pursuant to subclause (1)(c)(ii) of Clause 5 as available for supply to the Company during the relevant year; or
- (ii) 330,000 cubic metres,
- then the stumpage payable on such excess (**excess**) shall be reduced by the amount of stumpage which had been paid in respect of the deficiency, but such that if the amount payable on the deficiency is greater than the amount payable on the excess, then the stumpage payable on the excess will be nil. Under no circumstances will the reduction in stumpage payable on the excess, whether occurring in either or over both of the two years immediately following any year in which the deficiency occurs, be greater than the amount of the payment made in respect of the deficiency.

- (2) The following provisions shall apply with respect to stumpage rates and costs and expenses payable under this Agreement:
 - (a) the stumpage rates shall be payable at such times after the amounts have been ascertained as provided for in subclause (11)(a) of Clause 5 and in such manner as the Executive Director from time to time determines; and
 - (b) if any sum in respect of stumpage rates or any of the costs and expenses referred to in subclauses (11)(b) (11)(c) (11)(d) and (11)(e) of Clause 5 hereof remains unpaid for 30 days after the due date the Executive Director may, without limiting the obligations of the Company under subclause (1) of Clause 6 hereof by not less than 7 days notice in writing to the Company suspend its right to obtain resource under this Agreement until payment is made.
- (3) (a) The quantity of resource upon which the stumpage is payable shall be:
 - (i) measured in such manner and by such method (allowance being made for bark) as may be agreed upon from time to time by the Executive Director and the Company provided that such methods are consistent with the Regulations made under the CALM Act; and
 - (ii) accurately recorded in writing by the Company in such manner as the Executive Director reasonably directs and no resource shall be removed from the place referred to in subclause (3)(b) of this Clause until the measurement has been completed and so recorded and within 3 business days following the date of delivery of the resource the Company shall furnish to the Executive Director a return in writing showing the quantity of resource upon which stumpage is payable.

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- (b) The place at which the quantity of resource is to be measured shall be as fixed by the Executive Director from time to time after consultation with the Company and no resource shall be removed therefrom until such measurement has been completed and recorded.
- (c) If the stumpage so payable is to be determined by weight:
 - (i) the Company shall provide a weighbridge of a pattern which meets the requirements of the Weights and Measures Act 1915 and shall while this Agreement remains in force have the weighbridge maintained and periodically verified and stamped in accordance with the provisions of that Act;
 - (ii) at all times while the weighbridge is in accurate working order the quantity of resource upon which stumpage is payable under this Agreement shall be measured by weighing in on the weighbridge; and
 - (iii) at all times while the weighbridge is not in accurate working order the quantity of resource upon which stumpage is payable under this Agreement shall be determined in such manner as may be agreed upon by the Executive Director and the Company or failing agreement within 14 days as the Executive Director may direct.
- (4) Save as varied or modified by this Agreement the Company shall comply with the provisions of the CALM Act.

Maintenance of public roads

- 7. (1) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local government which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local government as the case may be.

Upgrading of public roads

- (2) (a) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (1) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) then the Company shall pay to the State or the local government as the case may require an equitable part as reasonably determined by the Commissioner of Main Roads of the total cost of any upgrading required or of making good the damage or deterioration having regard to the use of such public road by others.
- (b) It is declared and agreed for the purposes of this subclause that the Executive Director supplying resource to the factories pursuant to this Agreement is not a person engaged by the Company referred to in paragraph (a) of this subclause.

No discriminatory charges

8. Except as provided in this Agreement the State shall not impose nor shall it permit or authorise any of its agencies or instrumentalities or any local government or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets, products, materials or services used or produced by or through the factories' operations nor will the State take or permit to be taken by any such authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Zoning and other issues

Zoning

9. (1) The State shall ensure after consultation with the local governments having jurisdiction in respect of the factory sites that the factory sites shall be and remain zoned for use or otherwise protected during the term so that the activities of the

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Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local government or other authority of the State on the ground that such activities are contrary to any provision of a regional planning scheme, town planning scheme or local law.

Surrounding land

- (2) Provided the Company implements a reasonable ongoing improvement program in its operations at the Dardanup factory to the satisfaction of the Minister:
 - (a) the State will make reasonable endeavours to use expeditiously provisions contained in the EP Act, the Western Australian Planning Commission Act 1985 and other relevant legislation after consultation with the Company and the relevant local government to define a buffer boundary and apply suitable planning and zoning controls to land within the buffer boundary to preclude land uses and development incompatible with the approved operations of the Dardanup factory so that the Company will be able to operate on a continuous basis at the Dardanup factory;
 - (b) the State agrees to have regard to existing noise emission contours shown on plan B attached hereto when creating the buffer boundary; and
 - (c) the State agrees that zoning and planning controls that may be put into place pursuant to subclause 9(2)(a) shall not be changed during the term in any manner that is determined by the Minister for Planning after consultation with the Company the Minister and the relevant local government to be incompatible with or likely to restrict or adversely affect the activities of the Company at the Dardanup factory.

Resumption for the purposes of this Agreement

- (3) (a) The State is hereby empowered, as and for a public work under the Public Works Act 1902 and Parts 9 and 10 of the LA Act, to take or resume for the purposes of this Agreement any land which in the

reasonable opinion of the Company is necessary for the operation of the factories and which the Minister determines is appropriate to be taken or resumed for the operation of the factories and notwithstanding any other provisions of those Acts may grant leases, licences or easements in respect of the whole or portions of that land to the Company.

- (b) In applying the Public Works Act 1902 and Parts 9 and 10 of the LA Act for the purposes of this Clause -
 - (i) "land" in those Acts shall be read as extending to any land or to any portion of any land or to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, native title right or interest or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of the LA Act do not apply; and
 - (iii) the LA Act shall be deemed modified in section 177(2) by inserting -
 - (A) after "railway" the following -

"or land is being taken pursuant to a Government agreement as defined in section 2 of the Government Agreements Act 1979"; and
 - (B) after "that Act" the following -

"or that Agreement may be".
- (c) The Company shall pay to the State on demand the costs of and incidental to any taking or resumption of land pursuant to this Clause including but not limited to any compensation payable to any person including any holder of native title or of native title rights and interests in the land.

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Other

- (4) If the Minister in his discretion believes it is reasonable to do so he will at the Company's request make submissions to any relevant State agency or instrumentality in respect of applications made by the Company to obtain relief or exemption from specific legislation or regulations subject to the Company demonstrating to the Minister's satisfaction that the Company is making all reasonable endeavours to comply with the legislation or regulations the subject of the applications.

Assignment

10. (1) Subject to the provisions of this Clause the Company may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of its rights hereunder and of its obligations hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to a release from such liability where the Minister considers such release will not be contrary to the interests of the State.

Variation

11. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

- (2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

- 12. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors or inability (common in the panel products industry) to sell profitably panel products or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

- 13. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this

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Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

14. (1) In any of the following events namely if –

- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement; or
- (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement

and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 10,

the State may by notice to the Company determine this Agreement.

(2) The notice to be given by the State to the Company in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination.

(3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.

- (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) of this Clause shall not have been remedied after receipt of the notice referred to in that subclause within the period specified in that paragraph or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

15. On the cessation or determination of this Agreement:

- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Indemnity

16. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Subcontracting

17. Without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Arbitration

18. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party under this Agreement or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of any of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

19. The Company shall during the term consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices

20. Any notice consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company shall be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address hereinbefore set forth or other address in the said State nominated by the Company to the Minister and by the Company to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Term of Agreement

21. (1) This Agreement shall remain in force for a period of 25 years commencing on the date of commencement and expiring on the day next preceding the twenty fifth anniversary thereof or until sooner determination in accordance with the provisions hereof.

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- (2) For the purpose of subclause (1) subsection (2) of section 91 of the CALM Act shall be deemed to be modified by the deletion of “15 years” and the substitution of “25 years”.
- (3) The parties will confer 10 years after ratification of this Agreement and each subsequent 10 years on the Company’s intentions with respect to the continuance of the factories’ operations.
- (4) Within 5 years before the expiration of the term the State will confer with the Company with respect to the parties agreeing to commence negotiations for a new Agreement.

Applicable law

- 22. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

FIRST SCHEDULE

(Supply and Price of Resource – Clause 5)

1. During the several periods set out or referred to in this First Schedule the stumpage rates and roading charges referred to in Clause 5(11) of this Agreement shall be payable at the relevant rates set out and calculated in accordance with the provisions of this First Schedule subject to the conditions and in the manner set out in this Agreement. The rates for resource for the Welshpool factory shall continue to be agreed or determined and be applicable with respect to the rates for resource for the Dardanup factory notwithstanding that the Company may not from time to time be carrying on operations at the Welshpool factory.

2. **Stumpage rates for resource for the Welshpool factory**

- (1) Subject always to the provisions of Clause 5(11)(a) of this Agreement the stumpage rate for resource for the Welshpool factory shall be:

- (a) for the period from the date of commencement to 30th April 2001:

\$12.90 per cubic metre of logs with the price for resource of other specifications or measured by weight being equivalent to this rate but varied by conversion factors as agreed from time to time by the Company and the Executive Director;

- (b) for each successive period of 3 years commencing on 1st May 2001:

the rate agreed upon by the Executive Director and the Company pursuant to subparagraph (4) of this paragraph or failing agreement within the time therein provided at the rate calculated by varying the rate payable during the relevant preceding period in the same proportion as the proportional variation in the relative figures published or otherwise provided by the Australian Bureau

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of Statistics as the Consumer Price Index for Perth (All Groups)(CPI)for the quarter immediately preceding the commencement of the relevant preceding period (which, for the purposes of any determination to be made for the period commencing 1 May 2001 shall be deemed to be 1 May 1998) and for the quarter immediately preceding the end of the relevant preceding period.

- (2) (a) If the figures for the CPI cease to be published by or to be available from the Australian Bureau of Statistics or become immutable or if the CPI has its reference base changed so that its use becomes inappropriate for the purposes of subparagraph (1)(b) a new method of calculating any variation in the real value of money over time which most accurately reflects the role performed by the CPI at the date of this Agreement will be agreed between the State and the Company (or failing agreement within 30 days of one party giving notice to the other invoking the provisions of this paragraph) will be determined by the Minister in his reasonable discretion and such new method will be applied for the purposes of subparagraph (1)(b) in lieu of applying proportional variations in the CPI;
 - (b) The provisions of subparagraph (2) (a) will apply, mutatis mutandis, to any new method of calculating variations determined pursuant to such subparagraph from time to time if the use of such new method becomes inappropriate for the purposes of subparagraph (1)(b).
- (3) If any variation in the stumpage rate for a period is not agreed or determined prior to the commencement of that period the Company will continue to pay stumpage at the rate payable during the relevant preceding period and as soon as any new rate has been agreed or determined an adjustment shall be made retrospectively to the commencement of that period.
- (4) The parties hereto shall confer within 90 days preceding the expiry of each of the periods referred to in

subparagraphs (1)(a) and (1)(b) of this paragraph in a bona fide effort to reach agreement within such 90 days (or thereafter within such extended time as the Minister may allow as provided in Clause 13 of this Agreement) as to the stumpage rate to be payable for the succeeding period and in so doing shall give full consideration to the economies of growing resource in the softwood plantations and processing and marketing the panel products and all matters incidental thereto including roading and other charges and the extent if any to which during the immediately preceding period the Minister in exercise of his discretion under subclause (11)(a) of Clause 5 of this Agreement or subclause (1)(a) of Clause 7 of the 1975 Agreement may have varied any of the several rates of stumpage set out in this First Schedule for a period or periods.

3. Stumpage rates for resource for the Dardanup factory:

- (1) Subject to paragraph 4 of this First Schedule the stumpage rate payable for resource for the Dardanup factory shall be five sixths of the rate from time to time applicable (pursuant to paragraph 2 of this First Schedule) in respect of resource for the Welshpool factory.
- (2) The provisions of paragraph 2(3) of this First Schedule shall apply mutatis mutandis to stumpage rates payable under this paragraph.
- (3) It is acknowledged and agreed by the parties hereto that the stumpage rates provided for in this First Schedule in respect of resource used in the Dardanup factory are of a concessional nature based on the bulk of the panel products manufactured by the Company at the Dardanup factory being delivered beyond the boundaries of the said State.
- (4) The Company shall if so requested by the Executive Director inform the Executive Director prior to the expiration of the period referred to in paragraph 2(1)(a) of this First Schedule and of each successive 3 year period calculated from 1 May 2001 of details of distribution of its panel products.

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- (5) If the Executive Director considers in respect of a period reported on by the Company pursuant to paragraph 3(4) of this First Schedule that:
- (a) there has been a material reduction in the quantity of panel products delivered beyond the said State compared to that in the preceding period; or
 - (b) at the end of the period the Company will be able to compete on an equal footing with its competitors in the markets for its panel products outside the State without the benefit of concessional rate of stumpage for resource used in the Dardanup factory

the parties agree that in determining the stumpage rate to apply in the succeeding period for resource used in the Dardanup factory due regard will be given to determining whether it is reasonable in the circumstances that such stumpage rate should be aligned with the rate from time to time applicable (pursuant to paragraph 2 of this First Schedule) in respect of resource for the Welshpool factory without the benefit of any concession. Failing agreement on the withdrawal of the concession the matter shall (if so required by the Executive Director) be determined by arbitration under the provisions of this Agreement.

4. Roading Charge

The roading charge referred to in subclause (11)(e) of Clause 5 of this Agreement shall (subject to subclause (12) of Clause 5) be:

- (1) for the period from the date of commencement until 30th June immediately following the date of commencement, 52 cents per cubic metre of resource where that resource is measured by volume, or 52 cents per tonne where that resource is measured by weight; and
- (2) for each ensuing year at the rate calculated by varying the rate payable during the preceding year in the same proportion as $(1+0.5(N_i-B_i)/B_i)$ bears to 1.0. where N_i refers to the Consumer Price Index for Perth (All Groups) published by the Australian Bureau of Statistics in respect of the quarter immediately preceding the particular review date and B_i is the Consumer Price Index for Perth (All Groups) published by that Bureau in respect of the corresponding quarter one year earlier.

SECOND SCHEDULE
(SPECIFICATIONS – Clause 5(8))

Log specifications

1. Industrial wood logs delivered to the Dardanup factory

Species: *Pinus radiata* (preferred species), *P. pinaster* or other *Pinus* species as available

Preparation: Logs shall be freshly cut and have all branches flush trimmed.

Dimensions:

Diameter: minimum 75 millimetres under bark
maximum 350 millimetres under bark

Length 5.4 metres and such other lengths as agreed by the Company and the Executive Director:

Defects (i) The following defects are not permitted:

- blue stain (except where delivery has been unreasonably delayed by the Company)
- abrupt changes in diameter
- sharp kinks
- massive knot whorls

(ii) The following defects are permitted to the limits shown:

- Cone holes as they occur.
- Bent or curved logs if they will pass through the debarkers at Dardanup without interfering with production
- The moisture content of the logs at the time of delivery shall not be less than 75%.
- Burnt bark provided that the timber has not been affected

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2. Oversized industrial wood logs delivered to the Dardanup factory

Species: *Pinus radiata* (preferred species), *P. pinaster* or other *Pinus* species as available

Dimensions: Diameter: maximum 550 millimetres under bark
Length: random length between 3.0 and 7.0 metres

Defects All defects will be allowed such that the whole piece can be efficiently chipped with the available chipping equipment.

Burnt bark provided that the timber has not been affected.

3. Industrial wood logs delivered to the Welshpool factory

Species: *P. pinaster* (preferred species), *Pinus radiata* or other *Pinus* species as available

Preparation: Logs shall be freshly cut and have all branches flush trimmed.

Dimensions: Diameter: minimum 75 millimetres under bark
maximum 350 millimetres under bark
Length: A minimum of 4 metres ranging to a maximum of 5.4 metres.

Defects The following defects are not permitted:

- blue stain (except where delivery has been unreasonably delayed by the Company)
- abrupt changes in diameter
- sharp kinks
- massive knot whorls

The following defects are permitted to the limits shown:

Cone holes as they occur.

Bent or curved logs if they will pass through the debarker without interfering with production.

Burnt bark provided that the timber has not been affected.

4. Woodchips delivered to the Dardanup and Welshpool factories

Species: *Pinus radiata* (preferred species for the Dardanup factory), *P. pinaster* (preferred species for the Welshpool factory) or other *Pinus* species as available.

Chip Size: Nominal size:

Minimum: 16mm x 16mm x 5mm

Maximum: 25mm x 25mm x 8mm

Sieve size	Proportion of chips delivered
>37.5 mm	maximum 10%
26.5 – 37.5mm	Maximum 30%, optimum 10%
16.0 – 26.5mm	minimum 50%
4.0 – 16.0mm	Minimum 10%, optimum 30%
<4.0mm	maximum 2%
Bark	maximum 1%

Quality limits:

- Rot: maximum 0.1% by weight
- Charcoal (carbon): maximum 0.1% by weight
- Dry (seasoned) wood: maximum 1% by weight
- Blue stain, not accepted except where delivery has been unreasonably delayed by the Company
- Free of sand

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IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE RICHARD	}	
FAIRFAX COURT, M.L.A., in the presence of:	}	RICHARD COURT
	}	

COLIN BARNETT

MINISTER FOR RESOURCES DEVELOPMENT

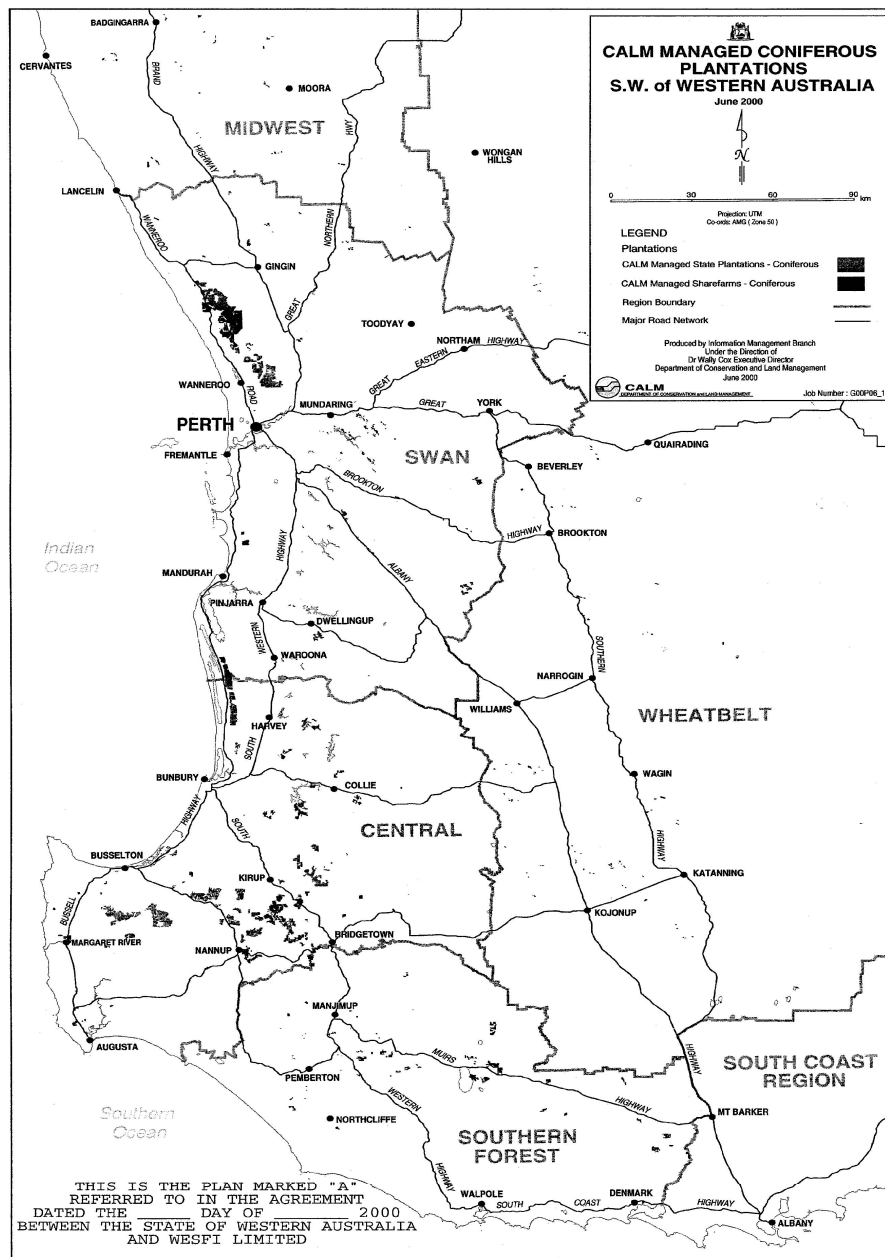
THE COMMON SEAL of WESFI LIMITED was	}	
hereunto affixed by authority of the Directors in the	}	[C.S]
presence of:	}	

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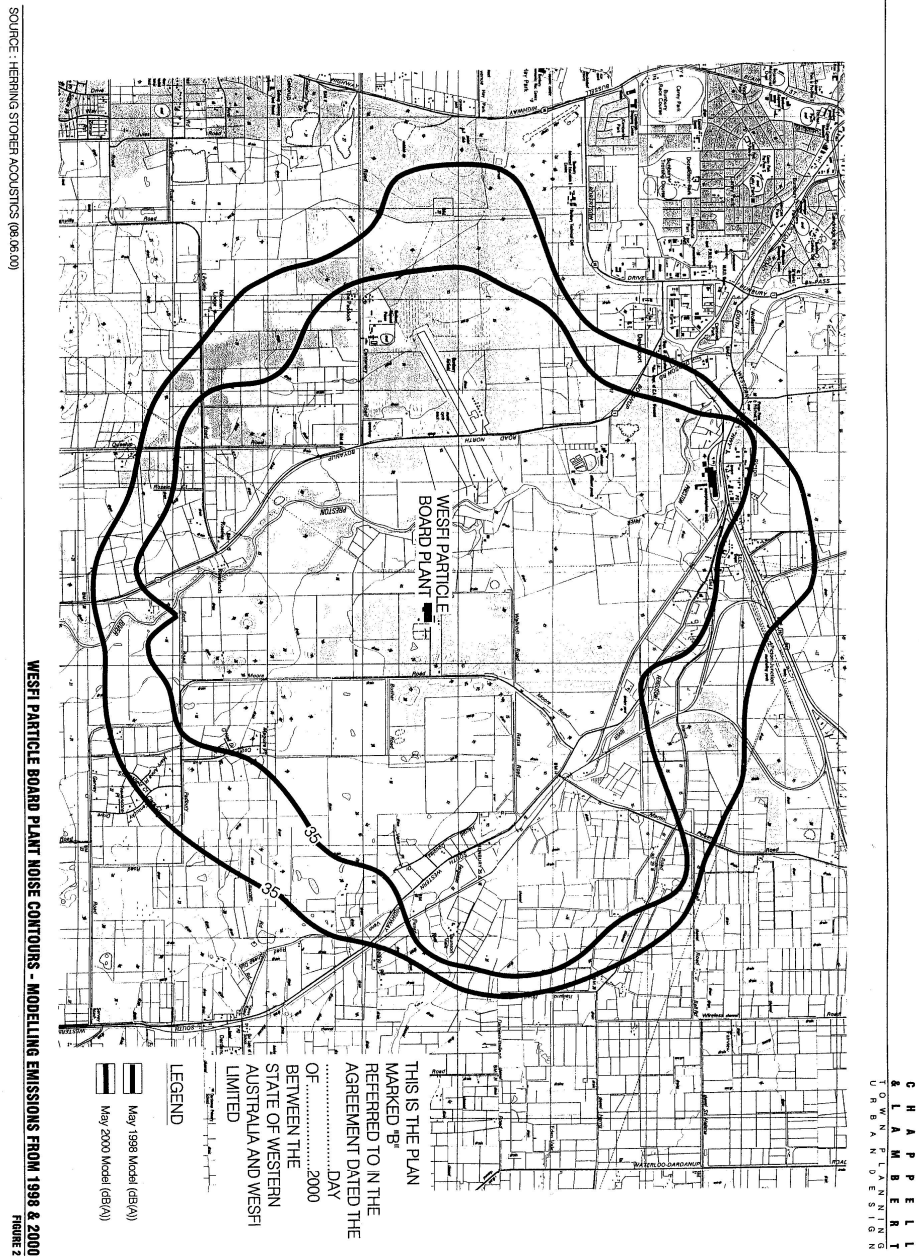
Director:

JAMES MALONE

Director:



Note: The existing plantations of softwood timber referred to in the definition of "softwood plantations" in the Agreement are shown on this plan as CALM Managed State Plantations – Coniferous and CALM Managed Sharefarms – Coniferous.



Note: The inner noise emission contour is the May 2000 Model.

