

HARDWOOD TIMBER TERM AGREEMENT

BETWEEN

THE FORESTRY COMMISSION OF NEW SOUTH WALES
(trading as State Forests of NSW)

AND

..... PTY LIMITED

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HARDWOOD TIMBER TERM AGREEMENT

THIS AGREEMENT is made the day of 1997

1. PARTIES

1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **STATE FORESTS** ('State Forests')

1.2 Pty Limited (ACN) ('Company')

1.3 **THE STATE OF NEW SOUTH WALES** ('State of NSW')

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 1916 (NSW) and all regulations made under that Act;

'Area of Supply' means an area comprising various Compartments under a Plan of Operations;

'Base Allocation' means the quantity of Timber set out in Part I of Schedule 2;

'Codes' means the State Forests' Code of Procedure and Forest Practices Code;

'Company' means the Company and includes all employees, servants and agents of the Company;

'Compartment' means an identified administrative area from which State Forests will make a supply of Timber available to the Company in accordance with a Harvesting Plan;

'Contract Harvesting' includes the felling, extraction, sorting, processing, grading, loading, hauling, delivery and distribution of Timber and Forest Residues and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by State Forests;

'Contractor' means a person under contract with either the Company or State Forests to conduct forestry operations and includes employees and agents of the Contractor;

'Force Majeure' means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

'Forest Residues' means parts of trees cut for the production of Timber which do not meet the requirements of the Specifications;

'Harvesting Approval Process' means any procedure to regulate, review or approve Harvesting Plans or draft plans of operations;

'Harvesting Plan' means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by State Forests;

'Integrated Operation' means a harvesting operation in which two or more types of

Timber are harvested and sorted into discrete categories;

‘Log Dump’ means the location specified by State Forests where felled Timber is stored and serviced before delivery to a sawmill or processing plant;

‘Management Area’ means an area of land designated as a ‘Management Area’ on the plan prepared by State Forests and attached as Schedule 3;

‘Minister’ means the Minister for Land and Water Conservation or any other Minister administering the Act;

‘Overcut’ means the amount by which the actual quantity of Timber taken by the Company in any Year is greater than the Base Allocation;

‘Plan of Operations’ means a plan scheduling the various Compartments from which State Forests intends to provide the Base Allocation reviewed and approved in accordance with a Harvesting Approval Process;

‘Price Schedule’ means a schedule for calculating the price of Timber prepared by State Forests in accordance with the principles of The Price System and annexed as Schedule 5;

‘Salvage’ means the taking of windthrown timber or damaged timber, pushed over or felled for purposes other than timber harvesting, including road construction, powerline construction and extraction of forest materials;

‘Schedule of Contract Harvesting Rates’ means a schedule for calculating the costs to State Forests of undertaking Contract Harvesting;

‘Specifications’ means the specifications for the hardwood timber set out in Schedule 1;

‘The Price System’ means a state wide system for determining the price of timber in accordance with particular methodologies and principles adopted by State Forests and as may be varied from time to time;

‘Timber’ means the timber detailed in the Specifications;

‘Total Allocation’ means the total of the Base Allocations for each Year of this Agreement as set out in Part I of Schedule 2;

‘Undercut’ means the amount by which the actual quantity of Timber taken by the Company in any Year is less than the Base Allocation;

‘Year’ means a period of twelve months commencing on 1 January in any year.

2.2 In this Agreement, unless the context requires otherwise:

2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;

2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;

2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;

2.2.4 words importing the singular include the plural and vice versa;

- 2.2.5 words importing a gender include any gender;
- 2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 2.2.7 a reference to any thing includes a part of that thing;
- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of sawmilling and the processing of hardwood timber and requires supplies of Timber to conduct its business.
- 3.2 State Forests will make available supplies of Timber to the Company and the Company must take and pay for the supplies of Timber made available upon the terms and conditions set out in this Agreement.

- 3.3 The Company must pay State Forests the prices calculated in accordance with Clause 14 for the Timber taken by the Company.
- 3.4 The State of NSW undertakes to ensure that State Forests has sufficient resources and the necessary capacity to make Timber available to the Company and will cause State Forests to perform its obligations as required by the provisions of this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this Clause if prevented from doing so by Force Majeure. For the purposes of this Clause the words 'act or omission of government or government department or instrumentality' in the context of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from 1 January 1997 and will operate for a period of five years unless determined at an earlier date under a provision of this Agreement.
- 4.2 The Company may make an application to the Minister to extend this Agreement for a further period of five years provided it is not in default under this Agreement at the time it makes the application. Written notice of its intention to make an application to the Minister for an extension must be given to State Forests not less than six months before this Agreement expires and must be accompanied by a formal application for extension. If the Minister approves the application under the provisions of Clause 25, this Agreement will then be extended in accordance with the terms and conditions of the Minister's approval. Unless agreed between the parties there will be no further right to extend this Agreement.
- 4.3 The parties agree that in the event of an extension or renewal of the term or an assignment of this Agreement as envisaged by Clauses 4.2, 24 and 25, the parties will

execute a further agreement upon the same terms as this Agreement (excluding a further right to extend this Agreement) but including provisions incorporating an obligation in Clause 16 upon the Company or any assignee to comply with any conditions imposed under Clause 25 as obligations under the agreement (and it is agreed that non-compliance with such conditions will be a material breach for the purposes of Clause 22.2).

5. BASE ALLOCATION

- 5.1 State Forests must make available to the Company the Base Allocation in each Year. In no case will State Forests be required to make available more Timber to the Company during the term of this Agreement than the Total Allocation (less any deductions under Clause 6.1).
- 5.2 Part II of Schedule 2 sets out indicative quantities of Timber which may be able to be made available from particular Management Areas for the term of this Agreement. The purpose of Part II is to provide information relating to possible sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the quantities or from the Management Areas indicated. State Forests will update this information from time to time.
- 5.3 In any Year the Company may take more or less than the Base Allocation in accordance with the following conditions:
 - 5.3.1 in any Year the quantity of Timber taken by the Company must not exceed 110 percent of the Base Allocation;
 - 5.3.2 in any Year the minimum quantity of Timber taken during that Year must not be less than 90 percent of the Base Allocation;

5.3.3 the cumulative Undercut or Overcut aggregated at the end of any Year must not be greater than 10 percent of the Base Allocation; and

5.3.4 the Company gives:

(a) not less than 6 months advance notice in writing to State Forests of an intended Overcut; and

(b) not less than 3 months advance notice in writing to State Forests of an intended Undercut.

5.4 The Company is not entitled to an Undercut or Overcut except in accordance with the conditions set out in Clause 5.3. Despite any Undercut or Overcut the Company must take no more than the Total Allocation for the term of this Agreement subject only to any deduction made under Clause 6.1.

6. **SHORTFALL**

6.1 Any quantity of Timber which the Company fails to take in any Year and which is not part of an Undercut allowed under the conditions of Clause 5.3 may be forfeited by the Company at the election of State Forests and may be sold by State Forests under a separate agreement. The quantity of Timber which the Company fails to take and which State Forests may sell will be calculated by State Forests and deducted from the Total Allocation. State Forests must notify the Company by written notice within 42 days after the end of the Year of the quantity of timber which has been deducted from the Total Allocation.

6.2 If the Company:

6.2.1 takes less than 80 per cent of the Base Allocation for two consecutive Years

during the term of this Agreement or any extension of the Agreement approved by the Minister; or

6.2.2 takes less than 70 per cent of the Base Allocation in any Year,

State Forests may terminate this Agreement under the provisions of Clause 22.

6.3 If the Company fails in any Year to take at least 90% of the Base Allocation and State Forests does not elect to have the Company forfeit Timber under Clause 6.1 and does not terminate this Agreement under Clause 6.2:

6.3.1 the Company must pay State Forests within 90 days after the end of the Year the sum of money equal to the difference between the price that would have been payable had the Company taken 90% of the Base Allocation and the price paid or payable for the quantity of Timber actually taken by the Company for that Year. Any sum payable by the Company under this Clause is payable as pre-estimated and liquidated damages and not as a penalty;

6.3.2 in any Year following a Year in which the Company makes a payment under Clause 6.3.1 if the Company takes a quantity of Timber in excess of 90% of the Base Allocation, the price payable by the Company for the quantity of Timber above 90% for that Year will be reduced to take account of any sum paid or payable under Clause 6.3.1; and

6.3.3 the amount of any reduction in price allowed under Clause 6.3.2 must not exceed the sum that would have otherwise been payable for the quantity of Timber above 90% at the price applicable for that Year.

7. PLAN OF OPERATIONS

- 7.1 No later than 31 October in each Year, State Forests will prepare and supply to the Company a draft plan of operations for the next two Years. Any draft plan of operations will:
- 7.1.1 specify the various Compartments intended to be made available for supply;
 - 7.1.2 specify the forest types in the various Compartments and the expected yields of Timber; and
 - 7.1.3 provide details of the proposed type of operations to be conducted and other relevant planning information.
- 7.2 State Forests will lodge the draft plan of operations for approval in accordance with the required Harvesting Approval Process applicable from time to time.
- 7.3 State Forests will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be varied from time to time.
- 7.4 State Forests must use its best endeavours to implement the Plan of Operations in accordance with its terms.
- 7.5 From time to time during the term of this Agreement the Company may request State Forests by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any Timber. If State Forests is satisfied that the requested modification or changes are necessary it may amend or vary the Plan of Operations and seek approval through the Harvesting Approval Process
- 7.6 Where any Timber in a Compartment has been damaged or destroyed by fire, disease or

other natural cause State Forests must review any Plan of Operations to evaluate whether it is possible to harvest Timber from the damaged forest by way of Salvage operations or whether any other Compartments are able to be made available.

- 7.7 If State Forests considers a variation of a Plan of Operations is necessary, State Forests will consult with the Company and take into account its views and may modify or vary the Plan of Operations and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations.

8. HARVESTING PLAN

- 8.1 State Forests must prepare and issue to the Company Harvesting Plans to meet the Base Allocation including any intended Undercut or Overcut permitted under the conditions of Clause 5.3. A Harvesting Plan must detail conditions relevant to the supply of Timber under this Agreement as determined by State Forests.
- 8.2 The Company must not conduct any harvesting operations except in accordance with a Harvesting Plan issued by State Forests.

9. CONTRACT HARVESTING

- 9.1 At any time during the term of this Agreement State Forests may elect to undertake Contract Harvesting.
- 9.2 If State Forests elects to undertake Contract Harvesting it must prior to commencing these operations give the Company not less than 3 months written notice of its intention and the details and extent of the prospective operations.
- 9.3 The Company must not engage the services of a Contractor to harvest Timber for a period in excess of 3 months during the term of this Agreement or any extension without

first obtaining the written consent of State Forests.

- 9.4 Any decision by State Forests to undertake Contract Harvesting will be subject to the policies and directions of the State of NSW. State Forests will provide the Company with an opportunity for comment and consultation and will take into account any comments of the Company before commencement of Contract Harvesting operations.
- 9.5 State Forests may after consultation with the Company vary any Plan of Operations to allow it to undertake Contract Harvesting operations and must where necessary or appropriate to do so submit any varied Plan of Operations to the Harvesting Approval Process for approval or endorsement.
- 9.6 Prior to commencing Contract Harvesting State Forests must provide a copy of any Plan of Operations as varied to the Company and State Forests may commence the Contract Harvesting operations at any date after the expiration of the period of notice given to the Company under Clause 9.2.

10. METHOD OF SUPPLY

- 10.1 State Forests will issue licences enabling the Company or a Contractor to take Timber or may elect to make Timber available by conducting Contract Harvesting operations.
- 10.2 The Company must take the Timber as directed by State Forests from time to time from any source including (without limitation):
- 10.2.1 standing trees;
 - 10.2.2 Log Dumps;
 - 10.2.3 Integrated Operations;

10.2.4 Contract Harvesting; and

10.2.5 Salvage.

10.3 All timber taken by the Company must be removed from the point of supply as directed by State Forests.

11. TITLE AND RISK

11.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber by the Company to State Forests.

11.2 The risks of ownership of the Timber will pass to the Company:

11.2.1 where the Timber is harvested by the Company or a Contractor engaged by the Company, when the Timber has been felled; and

11.2.2 where the Timber is harvested by Contract Harvesting, when the Company takes delivery in its own right or through the agency of its Contractor; and

11.2.3 where the Timber is harvested by Integrated Operations when the Company or its Contractor takes delivery.

11.3 The Company will not be entitled to dispute that it has taken delivery of the Timber if:

11.3.1 the Company or its Contractor loads the Timber onto a vehicle for haulage purposes; or

11.3.2 the Timber is accepted by the Company at the gate of the Company's sawmill.

12. SPECIFICATIONS

- 12.1 The Company must accept any Timber which conforms with the Specifications and in case of any dispute the determination of conformity by an officer of State Forests will be final and binding on the Company.
- 12.2 If the ownership or the risks of ownership of the Timber have passed to the Company under the provisions of Clause 11 the Timber will be deemed to conform with the Specifications.
- 12.3 If quantities of Timber which conform to the Specification are not available in a Year for any reason including Force Majeure the Company and State Forests must confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications. State Forests must give written notice to the Company within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with State Forests and details of other timber which could be supplied. In any circumstances where but for this Clause State Forests would have committed a breach or a material breach of this Agreement, the Company will not be entitled to invoke the provisions of Clause 22.6.1 or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from timber available from State Forests but outside the scope of the Specifications.
- 12.4 Other timber supplied to the Company under the provisions of Clause 12.3 will be deemed to be Timber supplied under this Agreement subject to the price for the timber being determined under The Price System.

13. DETERMINATION OF QUANTITY OF TIMBER

- 13.1 The method of determination of the quantity of Timber upon which price is payable

under this Agreement will be as set out in the Code of Procedure annexed as Schedule 4. The Code of Procedure may be amended by State Forests as may be considered necessary by State Forests from time to time but State Forests will consult with and take into account any comments of the Company before any amendments are effected or implemented.

- 13.2 If the Company provides a weighbridge or other measuring device approved by State Forests, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 13.3 State Forests may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device.

14. PRICE

- 14.1 The prices payable under this Agreement from 1 January 1997 will be the prices calculated by reference to the categories and quantities of Timber taken by the Company applied to the rates and factors set out in the Price Schedule.
- 14.2 If at the date this Agreement is executed by the parties a Price Schedule has not been prepared by State Forests and is not able to be annexed as Schedule 5:
 - 14.2.1 an interim price formula will apply and govern the prices payable under this Agreement ('Interim Price Formula') in substitution for the Price Schedule;
 - 14.2.2 the Interim Price Formula is annexed as Schedule 7;
 - 14.2.3 State Forests acknowledges that the Interim Price Formula is only intended to apply for a short period during the first Year;

- 14.2.4 State Forests must use its best endeavours to prepare the Price Schedule by not later than 3 March 1997;
 - 14.2.5 when State Forests has prepared the Price Schedule, State Forests must as soon as possible supply a copy of the Price Schedule to the Company duly signed by State Forests and the State of NSW;
 - 14.2.6 when the Company receives a copy of the Price Schedule in accordance with Clause 14.2.5 the Price Schedule will be deemed to be the Price Schedule and to be annexed as Schedule 5; and
 - 14.2.7 from the date the Company receives the Price Schedule the prices payable under this Agreement must from that date be calculated under the Price Schedule as required under Clause 14.1.
- 14.3 State Forests may amend or vary the Price Schedule from time to time following a review by State Forests of the various components of the Price Schedule.
- 14.4 In conducting a review of the Price Schedule State Forests:
- 14.4.1 will be subject at all times to the requirements of the Act;
 - 14.4.2 must conform with the methodologies and principles set out in The Price System; and
 - 14.4.3 may consider various pricing elements including (without limitation) the commercial value and best prices reasonably obtainable for various types and categories of available timber.
- 14.5 A Price Schedule which is varied or amended by State Forests following a review may

be implemented at any time during a Year provided State Forests gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.

- 14.6 State Forests may review and vary The Price System from time to time. In performing any review of The Price System State Forests will at all times be subject to the policies and directions of the State of NSW.
- 14.7 State Forests will provide to the Company a copy of The Price System as it applies at the effective date of this Agreement and will promptly forward a copy of The Price System to the Company if varied or amended following a review.
- 14.8 If State Forests delivers or causes Timber to be delivered to the Company under a Contract Harvesting operation the Company must pay State Forests' costs of undertaking the Contract Harvesting in addition to the price payable for Timber.
- 14.9 State Forests must prepare and provide the Company with a copy of the Schedule of Contract Harvesting Rates prior to commencing any Contract Harvesting.
- 14.10 The Schedule of Contract Harvesting Rates will comprise:
 - 14.10.1 a detailed schedule of rates for various items of work to be performed by the Contractor;
 - 14.10.2 State Forests' service and management charges; and
 - 14.10.3 State Forests' administrative and overhead expenses.
- 14.11 State Forests must ensure that the Schedule of Contract Harvesting Rates is reasonable, fair and competitive.

- 14.12 State Forests' costs of undertaking Contract Harvesting will be determined by State Forests in accordance with the Schedule of Contract Harvesting Rates. The costs so ascertained will be applied against the quantity of Timber delivered to the Company from the Contract Harvesting operations and a separate invoice may be issued to the Company by State Forests.

15. PAYMENT

- 15.1 State Forests will issue monthly invoices.

- 15.2 The Company must pay any invoice within fourteen (14) days of the date of issue. The Company is liable to pay an invoice and any interest accrued on that invoice as a debt due and payable to State Forests.

- 15.3 If the Company fails to pay an invoice on the due date for payment of that invoice:

- 15.3.1 State Forests may give written notice to the Company of its intention to suspend the Company's right to take Timber if payment is not made within 7 days after the date of the notice; and

- 15.3.2 State Forests may suspend the Company's right to take Timber under this Agreement if the Company has not made payment within the 7 day period.

16. COMPLIANCE AND WARRANTIES

- 16.1 The Company must comply with:

- 16.1.1 the provisions of the Act and other Acts of the State of NSW;

- 16.1.2 conditions of licences issued to the Company under the Act;

- 16.1.3 the Harvesting Plans;
- 16.1.4 the Codes;
- 16.1.5 Acts of the Commonwealth of Australia; and
- 16.1.6 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.

16.2 The Company must ensure that:

- 16.2.1 its agents, Contractors or other persons under the Company's control or direction engaged in obtaining Timber pursuant to this Agreement comply with Clause 16.1;
- 16.2.2 no person under the control or direction of the Company is engaged in a harvesting operation without a current Contractor's or Operator's licence issued under the Act; and
- 16.2.3 the Company's Contractors and their employees or subcontractors are insured and are kept insured under an insurance policy pursuant to the Workers' Compensation Act 1987.

16.3 State Forests and the Company:

- 16.3.1 warrant their respective capacity and authority to enter into this Agreement;
- 16.3.2 warrant their respective capacity to perform their obligations under this Agreement; and

- 16.3.3 covenant to use reasonable endeavours to obtain all approvals required under any legislation necessary to enable the performance of their respective obligations under this Agreement.

17. INDEMNITY AND INSURANCE

- 17.1 The Company indemnifies State Forests against all actions, proceedings, claims, demands and expenses by any person in respect of or arising out of the performance by the Company of its obligations under this Agreement other than any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of State Forests.
- 17.2 The Company will take out and maintain Public Liability Insurance under a policy approved by State Forests in an amount not less than \$10 million.

18. SALE OF TIMBER TO OTHER PERSONS

- 18.1 State Forests reserves the right to:
- 18.1.1 supply Timber and other timber from within the Area of Supply; or
- 18.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of supply;
- to any other person.
- 18.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 18.3 If the Company sells Timber under clause 18.2 the Company must provide State

Forests with details in writing of the volume by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

19. SECURITY

- 19.1 State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement.
- 19.2 If State Forests requires the Company to provide security the Company must provide the security ('security') in the amount determined by State Forests which must not exceed a sum equivalent to 15% of the price of the Base Allocation in the first Year ('secured amount').
- 19.3 After the first Year, the Company must maintain the secured amount in an amount equal to the amount determined by State Forests for that Year provided the secured amount does not exceed a sum equivalent to 15% of the price of the Base Allocation for that Year.
- 19.4 If State Forests undertakes Contract Harvesting operations in any Year the secured amount may at State Forests sole discretion be increased by an amount determined by State Forests. The amount determined by State Forests must not exceed a sum equivalent to 15% of State Forests' costs for undertaking Contract Harvesting for that Year.
- 19.5 State Forests will give the Company written notice of any amount determined:
 - 19.5.1 under Clause 19.2 for the first Year;
 - 19.5.2 under Clause 19.3 for any subsequent Year;

- 19.5.3 under Clause 19.4 if State Forests undertakes Contract Harvesting operations in any Year; and
- 19.5.4 any adjustment to or variation of the secured amount that may be determined by State Forests under the provisions of Clause 19.
- 19.6 The Company must adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under Clause 19.5.
- 19.7 The security must:
 - 19.7.1 be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, an unconditional undertaking (in the form set out in Schedule 6) given by a financial institution or insurance company approved by State Forests or in any other form approved by State Forests;
 - 19.7.2 be lodged within fourteen (14) days of the execution of this Agreement.
- 19.8 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 19.9 State Forests may at any time and without notice to the Company, draw upon the secured amount to meet any loss or damages arising from the Company's failure to perform any of its obligations under this Agreement.
- 19.10 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level determined

under Clause 19.5.

- 19.11 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required by any notice to the Company under Clause 19.
- 19.12 State Forests must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to State Forests or any earlier date that may be otherwise agreed.

20. FORCE MAJEURE

- 20.1 If the Company is prevented from taking or accepting Timber or from carrying on production of sawn timber by Force Majeure and:
 - (a) the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
 - (b) the Company had taken all practicable precautions to prevent the Force Majeure; and
 - (c) the Company has made all reasonable efforts to contain the effect of the Force Majeure;

then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.

- 20.2 Where the Company makes an application under Clause 20.1, State Forests will negotiate with the Company in good faith to review the Base Allocation taking into

account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.

- 20.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
 - 20.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;
 - 20.3.2 if State Forests is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard time will be of the essence; and
 - 20.3.3 State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister.
- 20.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

21. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

- 21.1 Where the Company is prevented from taking Timber as a result of any breach of this Agreement:
- 21.1.1 by an act or omission of State Forests, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or
 - 21.1.2 by an act or omission of the State of NSW, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or
 - 21.1.3 by an act or omission or law of the Commonwealth of Australia, then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.
- 21.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.

22. DEFAULT OR INSOLVENCY

- 22.1 If the Company or State Forests breaches or repudiates this Agreement, nothing in this Clause will prejudice the right of either party to recover damages or exercise any other right.
- 22.2 If the Company commits a material breach of this Agreement and State Forests considers that damages may not be an adequate remedy, State Forests may give the

Company a written notice to show cause. Material breaches include without limitation:

- 22.2.1 failing to take the quantities of Timber set out in Clause 6.2;
- 22.2.2 commencing any harvesting operations prior to receipt of a Harvesting Plan or a Plan of Operations in breach of Clause 8.2;
- 22.2.3 failing to take Timber as directed in breach of Clause 10.2;
- 22.2.4 failing to accept Timber in breach of Clause 12;
- 22.2.5 failing to make payments in breach of Clause 15;
- 22.2.6 failing to take out and maintain any insurance in breach of Clauses 16.2.3 or 17.2;
- 22.2.7 failing to meet the requirements of Clause 16;
- 22.2.8 failing to provide security or to adjust or vary the secured amount in breach of Clause 19;
- 22.2.9 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of Clauses 24 and 25;
- 22.2.10 failing to comply with conditions imposed by the Minister pursuant to Clause 25 of this Agreement.

22.3 A notice under Clause 22.2 must:

- 22.3.1 state that it is a notice under Clause 22.2 of this Agreement;
 - 22.3.2 specify the alleged material breach;
 - 22.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under Clause 22.4;
 - 22.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
 - 22.3.5 specify the place at which cause must be shown.
- 22.4 If by the time specified in a notice under Clause 22.2 the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.
- 22.5 If the Company:
- 22.5.1 informs State Forests in writing or its creditors generally that it is insolvent;
 - 22.5.2 commits an act of bankruptcy;
 - 22.5.3 has a bankruptcy petition presented against it;
 - 22.5.4 is made bankrupt;
 - 22.5.5 a meeting of creditors of the Company is called with a view to:
 - (a) entering a scheme of arrangement or composition with creditors; or

(b) placing the Company under official management;

- 22.5.6 the Company enters a scheme of arrangement or composition with creditors;
- 22.5.7 a resolution is passed at a meeting of creditors to place the Company under official management;
- 22.5.8 the Company is placed under official management;
- 22.5.9 a receiver of the property or part of the property of the Company is appointed;
- 22.5.10 an application is made to a Court for the winding up of the Company and not stayed within 14 days;
- 22.5.11 a winding up order is made in respect of the Company; or
- 22.5.12 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.

State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.

22.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:

- 22.6.1 failing to make available the Base Allocation for each Year in breach of Clause 5;

22.6.2 failing to process an application for an extension of this Agreement in breach of Clauses 4.2 and 25;

22.6.3 failing to process any application requesting an assignment of this agreement in breach of Clauses 24 or 25.

22.7 A notice by the Company under Clause 22.6 must:

22.7.1 state that it is a notice under Clause 22.6 of this Agreement;

22.7.2 specify the alleged material breach;

22.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;

22.7.4 specify the time and date by which State Forests must show cause (which must not be less than 14 days); and

22.7.5 specify the place at which cause must be shown.

22.8 If by the time specified in a notice under Clause 22.6 State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.

23. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

23.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement (except Clauses 11.3, 12.1 and 14) which cannot be settled by the parties

within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

The mediator must conduct proceedings under this Clause in accordance with the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 23.2 In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

- 23.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

- 23.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be

represented by a legal practitioner.

24. ASSIGNMENT

- 24.1 The Company may not without the prior approval of the Minister assign its rights and entitlements under this Agreement in whole or part to any person.
- 24.2 If the Company is a corporation, any change in control of the Company (or if the Company is a subsidiary, any change in control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement. For the purpose of this Clause 'change in control' means control of the composition of the board of directors or control of more than 50% of the shares with the right to vote in general meetings of the corporation.
- 24.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.
- 24.4 Upon receipt of any request for an assignment of the whole or any part of this Agreement, State Forests must process the application in accordance with Clause 25 provided the Company has supplied any details and information required by State Forests under Clause 24.3.
- 24.5 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

25. MINISTER'S APPROVAL FOR AN EXTENSION OR ASSIGNMENT

- 25.1 State Forests must consider any application made in relation to an extension or requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation.
- 25.2 The Minister may determine an application for an extension or requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in Clause 25.3) or by refusing the application. An application may only be refused on the following grounds:
- 25.2.1 the Company fails to satisfy such value added criteria as have been adopted by the Minister;
 - 25.2.2 such grounds as may be prescribed by regulations under the Act; or
 - 25.2.3 such grounds as the Minister considers relevant having regard to the need to promote a competitive timber industry and to prevent misuse of market power.
- 25.3 The Minister may impose (without limitation) the following kinds of conditions on an application for an extension or an application requesting an assignment of the whole or part of this Agreement:
- 25.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy value added criteria as have been adopted by the Minister;
 - 25.3.2 a condition requiring the Company or any assignee to prepare, and submit to the Minister, a business plan ('designated business plan') setting out the

Company's or any assignee's policies, practices and procedures for the implementation or maintenance of any value added criteria; and

- 25.3.3 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any value added criteria or is conducting its business in accordance with a designated business plan.

26. VARIATION

- 26.1 This Agreement comprises the entire understanding of the parties.
- 26.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

27. INTEREST

- 27.1 In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).

28. NOTICE

- 28.1 Any notice required to be served under this Agreement may be served:

(a) in the case of the Company:

[name, address, telephone and facsimile numbers of recipient]

(b) in the case of State Forests:

[name, address, telephone and facsimile numbers of recipient]

28.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.

29. GOVERNING LAW

29.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

30. SEVERABILITY

30.1 If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

31. GENERAL

31.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.

32. CONFIDENTIALITY

- 32.1 No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:
- 32.1.1 the information is available to the public generally;
 - 32.1.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;
 - 32.1.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorization, approval or licence from any public body or authority;
 - 32.1.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
 - 32.1.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) for the purpose of obtaining advice in relation to this Agreement or the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers; or
 - 32.1.6 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

I)
 the Commissioner for Forests)
 have hereunto affixed the)
 Seal of the **FORESTRY COMMISSION**)
OF NEW SOUTH WALES)
 in the presence of:)

.....
 Secretary

THE COMMON SEAL of)
)
 was hereunto affixed in accordance)
 with its Articles of Association in the)
 presence of:)
 Director

.....
 Secretary

SIGNED SEALED AND DELIVERED)
 by **THE HONOURABLE**)
JEFFREY WILLIAM SHAW Acting)
 Minister for Land and Water Conservation)
 in and for the State of New South Wales)
 for and on behalf of the Crown (but not)
 so as to incur any personal liability) in the)
 presence of:)
 Acting Minister for
 Land and Water Conservation

.....

SCHEDULE 1

Specifications (Clause 12)

SCHEDULE 2**Base Allocation (Clause 5)****Part I****Base Allocation****Part II****Indicative Quantities of Timber**

SCHEDULE 3

Plan of Management Areas

SCHEDULE 4

State Forests' Code of Practice and Code of Procedure

SCHEDULE 5

Price Schedule (Clause 14)

Part I

Part II

SCHEDULE 6

Approved form of Unconditional Undertaking (Clause 19)

At the request ofACN('the Company')
 and in consideration of State Forests('the Principal')
 accepting this undertaking in respect of the Hardwood Timber Term Agreement for
('the Agreement')
ACN.....('the Financial Institution')
 unconditionally undertakes to pay on demand any sum or sums which may from time to time be
 demanded by the Principal to a maximum aggregate sum of \$.....
 (.....).

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by a delegate for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Company and notwithstanding any notice given by the Company not to make payment.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$.....
 (.....)
 less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

This undertaking will expire on theday of 19

DATED atthisday of19

SCHEDULE 7

Interim Price Formula

HARDWOOD TIMBER TERM AGREEMENT

BETWEEN

**THE FORESTRY COMMISSION OF NEW SOUTH WALES
(trading as State Forests of NSW)**

AND

..... PTY LIMITED

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Schedule 7	Interim Price Formula

HARDWOOD TIMBER TERM AGREEMENT

THIS AGREEMENT is made the day of 1997

1. PARTIES

1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **STATE FORESTS** ('State Forests')

1.2 Pty Limited (ACN) ('Company')

1.3 **THE STATE OF NEW SOUTH WALES** ('State of NSW')

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 1916 (NSW) and all regulations made under that Act;

'Area of Supply' means an area comprising various Compartments under a Plan of Operations;

'Base Allocation' means the quantity of Timber set out in Part I of Schedule 2;

'Codes' means the State Forests' Code of Procedure and Forest Practices Code;

‘Company’ means the Company and includes all employees, servants and agents of the Company;

‘Compartment’ means an identified administrative area from which State Forests will make a supply of Timber available to the Company in accordance with a Harvesting Plan;

‘Contract Harvesting’ includes the felling, extraction, sorting, processing, grading, loading, hauling, delivery and distribution of Timber and Forest Residues and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by State Forests;

‘Contractor’ means a person under contract with either the Company or State Forests to conduct forestry operations and includes employees and agents of the Contractor;

‘Force Majeure’ means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

‘Forest Residues’ means parts of trees cut for the production of Timber which do not meet the requirements of the Specifications;

‘Harvesting Approval Process’ means any procedure to regulate, review or approve Harvesting Plans or draft plans of operations;

‘Harvesting Plan’ means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by State Forests;

‘Integrated Operation’ means a harvesting operation in which two or more types of

Timber are harvested and sorted into discrete categories;

‘Log Dump’ means the location specified by State Forests where felled Timber is stored and serviced before delivery to a sawmill or processing plant;

‘Management Area’ means an area of land designated as a ‘Management Area’ on the plan prepared by State Forests and attached as Schedule 3;

‘Minister’ means the Minister for Land and Water Conservation or any other Minister administering the Act;

‘Overcut’ means the amount by which the actual quantity of Timber taken by the Company in any Year is greater than the Base Allocation;

‘Plan of Operations’ means a plan scheduling the various Compartments from which State Forests intends to provide the Base Allocation reviewed and approved in accordance with a Harvesting Approval Process;

‘Price Schedule’ means a schedule for calculating the price of Timber prepared by State Forests in accordance with the principles of The Price System and annexed as Schedule 5;

‘Salvage’ means the taking of windthrown timber or damaged timber, pushed over or felled for purposes other than timber harvesting, including road construction, powerline construction and extraction of forest materials;

‘Schedule of Contract Harvesting Rates’ means a schedule for calculating the costs to State Forests of undertaking Contract Harvesting;

‘Specifications’ means the specifications for the hardwood timber set out in Schedule 1;

‘The Price System’ means a state wide system for determining the price of timber in accordance with particular methodologies and principles adopted by State Forests and as may be varied from time to time;

‘Timber’ means the timber detailed in the Specifications;

‘Total Allocation’ means the total of the Base Allocations for each Year of this Agreement as set out in Part I of Schedule 2;

‘Undercut’ means the amount by which the actual quantity of Timber taken by the Company in any Year is less than the Base Allocation;

‘Year’ means a period of twelve months commencing on 1 January in any year.

2.2 In this Agreement, unless the context requires otherwise:

2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;

2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;

2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;

2.2.4 words importing the singular include the plural and vice versa;

- 2.2.5 words importing a gender include any gender;
- 2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 2.2.7 a reference to any thing includes a part of that thing;
- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of sawmilling and the processing of hardwood timber and requires supplies of Timber to conduct its business.
- 3.2 State Forests will make available supplies of Timber to the Company and the Company must take and pay for the supplies of Timber made available upon the terms and conditions set out in this Agreement.

- 3.3 The Company must pay State Forests the prices calculated in accordance with Clause 14 for the Timber taken by the Company.
- 3.4 The State of NSW undertakes to ensure that State Forests has sufficient resources and the necessary capacity to make Timber available to the Company and will cause State Forests to perform its obligations as required by the provisions of this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this Clause if prevented from doing so by Force Majeure. For the purposes of this Clause the words 'act or omission of government or government department or instrumentality' in the context of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from 1 January 1997 and will operate for a period of five years unless determined at an earlier date under a provision of this Agreement.
- 4.2 The Company may make an application to the Minister to extend this Agreement for a further period of five years provided it is not in default under this Agreement at the time it makes the application. Written notice of its intention to make an application to the Minister for an extension must be given to State Forests not less than six months before this Agreement expires and must be accompanied by a formal application for extension. If the Minister approves the application under the provisions of Clause 25, this Agreement will then be extended in accordance with the terms and conditions of the Minister's approval. Unless agreed between the parties there will be no further right to extend this Agreement.
- 4.3 The parties agree that in the event of an extension or renewal of the term or an assignment of this Agreement as envisaged by Clauses 4.2, 24 and 25, the parties will

execute a further agreement upon the same terms as this Agreement (excluding a further right to extend this Agreement) but including provisions incorporating an obligation in Clause 16 upon the Company or any assignee to comply with any conditions imposed under Clause 25 as obligations under the agreement (and it is agreed that non-compliance with such conditions will be a material breach for the purposes of Clause 22.2).

5. BASE ALLOCATION

- 5.1 State Forests must make available to the Company the Base Allocation in each Year. In no case will State Forests be required to make available more Timber to the Company during the term of this Agreement than the Total Allocation (less any deductions under Clause 6.1).
- 5.2 Part II of Schedule 2 sets out indicative quantities of Timber which may be able to be made available from particular Management Areas for the term of this Agreement. The purpose of Part II is to provide information relating to possible sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the quantities or from the Management Areas indicated. State Forests will update this information from time to time.
- 5.3 In any Year the Company may take more or less than the Base Allocation in accordance with the following conditions:
 - 5.3.1 in any Year the quantity of Timber taken by the Company must not exceed 110 percent of the Base Allocation;
 - 5.3.2 in any Year the minimum quantity of Timber taken during that Year must not be less than 90 percent of the Base Allocation;

5.3.3 the cumulative Undercut or Overcut aggregated at the end of any Year must not be greater than 10 percent of the Base Allocation; and

5.3.4 the Company gives:

(a) not less than 6 months advance notice in writing to State Forests of an intended Overcut; and

(b) not less than 3 months advance notice in writing to State Forests of an intended Undercut.

5.4 The Company is not entitled to an Undercut or Overcut except in accordance with the conditions set out in Clause 5.3. Despite any Undercut or Overcut the Company must take no more than the Total Allocation for the term of this Agreement subject only to any deduction made under Clause 6.1.

6. SHORTFALL

6.1 Any quantity of Timber which the Company fails to take in any Year and which is not part of an Undercut allowed under the conditions of Clause 5.3 may be forfeited by the Company at the election of State Forests and may be sold by State Forests under a separate agreement. The quantity of Timber which the Company fails to take and which State Forests may sell will be calculated by State Forests and deducted from the Total Allocation. State Forests must notify the Company by written notice within 42 days after the end of the Year of the quantity of timber which has been deducted from the Total Allocation.

6.2 If the Company:

6.2.1 takes less than 80 per cent of the Base Allocation for two consecutive Years

during the term of this Agreement or any extension of the Agreement approved by the Minister; or

6.2.2 takes less than 70 per cent of the Base Allocation in any Year,

State Forests may terminate this Agreement under the provisions of Clause 22.

6.3 If the Company fails in any Year to take at least 90% of the Base Allocation and State Forests does not elect to have the Company forfeit Timber under Clause 6.1 and does not terminate this Agreement under Clause 6.2:

6.3.1 the Company must pay State Forests within 90 days after the end of the Year the sum of money equal to the difference between the price that would have been payable had the Company taken 90% of the Base Allocation and the price paid or payable for the quantity of Timber actually taken by the Company for that Year. Any sum payable by the Company under this Clause is payable as pre-estimated and liquidated damages and not as a penalty;

6.3.2 in any Year following a Year in which the Company makes a payment under Clause 6.3.1 if the Company takes a quantity of Timber in excess of 90% of the Base Allocation, the price payable by the Company for the quantity of Timber above 90% for that Year will be reduced to take account of any sum paid or payable under Clause 6.3.1; and

6.3.3 the amount of any reduction in price allowed under Clause 6.3.2 must not exceed the sum that would have otherwise been payable for the quantity of Timber above 90% at the price applicable for that Year.

7. PLAN OF OPERATIONS

- 7.1 No later than 31 October in each Year, State Forests will prepare and supply to the Company a draft plan of operations for the next two Years. Any draft plan of operations will:
- 7.1.1 specify the various Compartments intended to be made available for supply;
 - 7.1.2 specify the forest types in the various Compartments and the expected yields of Timber; and
 - 7.1.3 provide details of the proposed type of operations to be conducted and other relevant planning information.
- 7.2 State Forests will lodge the draft plan of operations for approval in accordance with the required Harvesting Approval Process applicable from time to time.
- 7.3 State Forests will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be varied from time to time.
- 7.4 State Forests must use its best endeavours to implement the Plan of Operations in accordance with its terms.
- 7.5 From time to time during the term of this Agreement the Company may request State Forests by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any Timber. If State Forests is satisfied that the requested modification or changes are necessary it may amend or vary the Plan of Operations and seek approval through the Harvesting Approval Process
- 7.6 Where any Timber in a Compartment has been damaged or destroyed by fire, disease or

other natural cause State Forests must review any Plan of Operations to evaluate whether it is possible to harvest Timber from the damaged forest by way of Salvage operations or whether any other Compartments are able to be made available.

- 7.7 If State Forests considers a variation of a Plan of Operations is necessary, State Forests will consult with the Company and take into account its views and may modify or vary the Plan of Operations and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations.

8. HARVESTING PLAN

- 8.1 State Forests must prepare and issue to the Company Harvesting Plans to meet the Base Allocation including any intended Undercut or Overcut permitted under the conditions of Clause 5.3. A Harvesting Plan must detail conditions relevant to the supply of Timber under this Agreement as determined by State Forests.
- 8.2 The Company must not conduct any harvesting operations except in accordance with a Harvesting Plan issued by State Forests.

9. CONTRACT HARVESTING

- 9.1 At any time during the term of this Agreement State Forests may elect to undertake Contract Harvesting.
- 9.2 If State Forests elects to undertake Contract Harvesting it must prior to commencing these operations give the Company not less than 3 months written notice of its intention and the details and extent of the prospective operations.
- 9.3 The Company must not engage the services of a Contractor to harvest Timber for a period in excess of 3 months during the term of this Agreement or any extension without

first obtaining the written consent of State Forests.

- 9.4 Any decision by State Forests to undertake Contract Harvesting will be subject to the policies and directions of the State of NSW. State Forests will provide the Company with an opportunity for comment and consultation and will take into account any comments of the Company before commencement of Contract Harvesting operations.
- 9.5 State Forests may after consultation with the Company vary any Plan of Operations to allow it to undertake Contract Harvesting operations and must where necessary or appropriate to do so submit any varied Plan of Operations to the Harvesting Approval Process for approval or endorsement.
- 9.6 Prior to commencing Contract Harvesting State Forests must provide a copy of any Plan of Operations as varied to the Company and State Forests may commence the Contract Harvesting operations at any date after the expiration of the period of notice given to the Company under Clause 9.2.

10. METHOD OF SUPPLY

- 10.1 State Forests will issue licences enabling the Company or a Contractor to take Timber or may elect to make Timber available by conducting Contract Harvesting operations.
- 10.2 The Company must take the Timber as directed by State Forests from time to time from any source including (without limitation):
 - 10.2.1 standing trees;
 - 10.2.2 Log Dumps;
 - 10.2.3 Integrated Operations;

10.2.4 Contract Harvesting; and

10.2.5 Salvage.

10.3 All timber taken by the Company must be removed from the point of supply as directed by State Forests.

11. TITLE AND RISK

11.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber by the Company to State Forests.

11.2 The risks of ownership of the Timber will pass to the Company:

11.2.1 where the Timber is harvested by the Company or a Contractor engaged by the Company, when the Timber has been felled; and

11.2.2 where the Timber is harvested by Contract Harvesting, when the Company takes delivery in its own right or through the agency of its Contractor; and

11.2.3 where the Timber is harvested by Integrated Operations when the Company or its Contractor takes delivery.

11.3 The Company will not be entitled to dispute that it has taken delivery of the Timber if:

11.3.1 the Company or its Contractor loads the Timber onto a vehicle for haulage purposes; or

11.3.2 the Timber is accepted by the Company at the gate of the Company's sawmill.

12. SPECIFICATIONS

- 12.1 The Company must accept any Timber which conforms with the Specifications and in case of any dispute the determination of conformity by an officer of State Forests will be final and binding on the Company.
- 12.2 If the ownership or the risks of ownership of the Timber have passed to the Company under the provisions of Clause 11 the Timber will be deemed to conform with the Specifications.
- 12.3 If quantities of Timber which conform to the Specification are not available in a Year for any reason including Force Majeure the Company and State Forests must confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications. State Forests must give written notice to the Company within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with State Forests and details of other timber which could be supplied. In any circumstances where but for this Clause State Forests would have committed a breach or a material breach of this Agreement, the Company will not be entitled to invoke the provisions of Clause 22.6.1 or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from timber available from State Forests but outside the scope of the Specifications.
- 12.4 Other timber supplied to the Company under the provisions of Clause 12.3 will be deemed to be Timber supplied under this Agreement subject to the price for the timber being determined under The Price System.

13. DETERMINATION OF QUANTITY OF TIMBER

- 13.1 The method of determination of the quantity of Timber upon which price is payable

under this Agreement will be as set out in the Code of Procedure annexed as Schedule 4. The Code of Procedure may be amended by State Forests as may be considered necessary by State Forests from time to time but State Forests will consult with and take into account any comments of the Company before any amendments are effected or implemented.

13.2 If the Company provides a weighbridge or other measuring device approved by State Forests, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.

13.3 State Forests may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device.

14. PRICE

14.1 The prices payable under this Agreement from 1 January 1997 will be the prices calculated by reference to the categories and quantities of Timber taken by the Company applied to the rates and factors set out in the Price Schedule.

14.2 If at the date this Agreement is executed by the parties a Price Schedule has not been prepared by State Forests and is not able to be annexed as Schedule 5:

14.2.1 an interim price formula will apply and govern the prices payable under this Agreement ('Interim Price Formula') in substitution for the Price Schedule;

14.2.2 the Interim Price Formula is annexed as Schedule 7;

14.2.3 State Forests acknowledges that the Interim Price Formula is only intended to apply for a short period during the first Year;

- 14.2.4 State Forests must use its best endeavours to prepare the Price Schedule by not later than 3 March 1997;
 - 14.2.5 when State Forests has prepared the Price Schedule, State Forests must as soon as possible supply a copy of the Price Schedule to the Company duly signed by State Forests and the State of NSW;
 - 14.2.6 when the Company receives a copy of the Price Schedule in accordance with Clause 14.2.5 the Price Schedule will be deemed to be the Price Schedule and to be annexed as Schedule 5; and
 - 14.2.7 from the date the Company receives the Price Schedule the prices payable under this Agreement must from that date be calculated under the Price Schedule as required under Clause 14.1.
- 14.3 State Forests may amend or vary the Price Schedule from time to time following a review by State Forests of the various components of the Price Schedule.
- 14.4 In conducting a review of the Price Schedule State Forests:
- 14.4.1 will be subject at all times to the requirements of the Act;
 - 14.4.2 must conform with the methodologies and principles set out in The Price System; and
 - 14.4.3 may consider various pricing elements including (without limitation) the commercial value and best prices reasonably obtainable for various types and categories of available timber.
- 14.5 A Price Schedule which is varied or amended by State Forests following a review may

be implemented at any time during a Year provided State Forests gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.

- 14.6 State Forests may review and vary The Price System from time to time. In performing any review of The Price System State Forests will at all times be subject to the policies and directions of the State of NSW.
- 14.7 State Forests will provide to the Company a copy of The Price System as it applies at the effective date of this Agreement and will promptly forward a copy of The Price System to the Company if varied or amended following a review.
- 14.8 If State Forests delivers or causes Timber to be delivered to the Company under a Contract Harvesting operation the Company must pay State Forests' costs of undertaking the Contract Harvesting in addition to the price payable for Timber.
- 14.9 State Forests must prepare and provide the Company with a copy of the Schedule of Contract Harvesting Rates prior to commencing any Contract Harvesting.
- 14.10 The Schedule of Contract Harvesting Rates will comprise:
 - 14.10.1 a detailed schedule of rates for various items of work to be performed by the Contractor;
 - 14.10.2 State Forests' service and management charges; and
 - 14.10.3 State Forests' administrative and overhead expenses.
- 14.11 State Forests must ensure that the Schedule of Contract Harvesting Rates is reasonable, fair and competitive.

- 14.12 State Forests' costs of undertaking Contract Harvesting will be determined by State Forests in accordance with the Schedule of Contract Harvesting Rates. The costs so ascertained will be applied against the quantity of Timber delivered to the Company from the Contract Harvesting operations and a separate invoice may be issued to the Company by State Forests.

15. PAYMENT

- 15.1 State Forests will issue monthly invoices.

- 15.2 The Company must pay any invoice within fourteen (14) days of the date of issue. The Company is liable to pay an invoice and any interest accrued on that invoice as a debt due and payable to State Forests.

- 15.3 If the Company fails to pay an invoice on the due date for payment of that invoice:

- 15.3.1 State Forests may give written notice to the Company of its intention to suspend the Company's right to take Timber if payment is not made within 7 days after the date of the notice; and

- 15.3.2 State Forests may suspend the Company's right to take Timber under this Agreement if the Company has not made payment within the 7 day period.

16. COMPLIANCE AND WARRANTIES

- 16.1 The Company must comply with:

- 16.1.1 the provisions of the Act and other Acts of the State of NSW;

- 16.1.2 conditions of licences issued to the Company under the Act;

- 16.1.3 the Harvesting Plans;
 - 16.1.4 the Codes;
 - 16.1.5 Acts of the Commonwealth of Australia; and
 - 16.1.6 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.
- 16.2 The Company must ensure that:
- 16.2.1 its agents, Contractors or other persons under the Company's control or direction engaged in obtaining Timber pursuant to this Agreement comply with Clause 16.1;
 - 16.2.2 no person under the control or direction of the Company is engaged in a harvesting operation without a current Contractor's or Operator's licence issued under the Act; and
 - 16.2.3 the Company's Contractors and their employees or subcontractors are insured and are kept insured under an insurance policy pursuant to the Workers' Compensation Act 1987.
- 16.3 State Forests and the Company:
- 16.3.1 warrant their respective capacity and authority to enter into this Agreement;
 - 16.3.2 warrant their respective capacity to perform their obligations under this Agreement; and

- 16.3.3 covenant to use reasonable endeavours to obtain all approvals required under any legislation necessary to enable the performance of their respective obligations under this Agreement.

17. INDEMNITY AND INSURANCE

- 17.1 The Company indemnifies State Forests against all actions, proceedings, claims, demands and expenses by any person in respect of or arising out of the performance by the Company of its obligations under this Agreement other than any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of State Forests.
- 17.2 The Company will take out and maintain Public Liability Insurance under a policy approved by State Forests in an amount not less than \$10 million.

18. SALE OF TIMBER TO OTHER PERSONS

- 18.1 State Forests reserves the right to:
- 18.1.1 supply Timber and other timber from within the Area of Supply; or
- 18.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of supply;
- to any other person.
- 18.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 18.3 If the Company sells Timber under clause 18.2 the Company must provide State

Forests with details in writing of the volume by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

19. SECURITY

- 19.1 State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement.
- 19.2 If State Forests requires the Company to provide security the Company must provide the security ('security') in the amount determined by State Forests which must not exceed a sum equivalent to 15% of the price of the Base Allocation in the first Year ('secured amount').
- 19.3 After the first Year, the Company must maintain the secured amount in an amount equal to the amount determined by State Forests for that Year provided the secured amount does not exceed a sum equivalent to 15% of the price of the Base Allocation for that Year.
- 19.4 If State Forests undertakes Contract Harvesting operations in any Year the secured amount may at State Forests sole discretion be increased by an amount determined by State Forests. The amount determined by State Forests must not exceed a sum equivalent to 15% of State Forests' costs for undertaking Contract Harvesting for that Year.
- 19.5 State Forests will give the Company written notice of any amount determined:
- 19.5.1 under Clause 19.2 for the first Year;
 - 19.5.2 under Clause 19.3 for any subsequent Year;

- 19.5.3 under Clause 19.4 if State Forests undertakes Contract Harvesting operations in any Year; and
- 19.5.4 any adjustment to or variation of the secured amount that may be determined by State Forests under the provisions of Clause 19.
- 19.6 The Company must adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under Clause 19.5.
- 19.7 The security must:
 - 19.7.1 be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, an unconditional undertaking (in the form set out in Schedule 6) given by a financial institution or insurance company approved by State Forests or in any other form approved by State Forests;
 - 19.7.2 be lodged within fourteen (14) days of the execution of this Agreement.
- 19.8 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 19.9 State Forests may at any time and without notice to the Company, draw upon the secured amount to meet any loss or damages arising from the Company's failure to perform any of its obligations under this Agreement.
- 19.10 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level determined

under Clause 19.5.

- 19.11 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required by any notice to the Company under Clause 19.
- 19.12 State Forests must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to State Forests or any earlier date that may be otherwise agreed.

20. FORCE MAJEURE

- 20.1 If the Company is prevented from taking or accepting Timber or from carrying on production of sawn timber by Force Majeure and:
 - (a) the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
 - (b) the Company had taken all practicable precautions to prevent the Force Majeure; and
 - (c) the Company has made all reasonable efforts to contain the effect of the Force Majeure;

then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.

- 20.2 Where the Company makes an application under Clause 20.1, State Forests will negotiate with the Company in good faith to review the Base Allocation taking into

account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.

- 20.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 20.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;
 - 20.3.2 if State Forests is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard time will be of the essence; and
 - 20.3.3 State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister.
- 20.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

21. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

- 21.1 Where the Company is prevented from taking Timber as a result of any breach of this Agreement:
- 21.1.1 by an act or omission of State Forests, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or
 - 21.1.2 by an act or omission of the State of NSW, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or
 - 21.1.3 by an act or omission or law of the Commonwealth of Australia, then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.
- 21.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.
- 22. DEFAULT OR INSOLVENCY**
- 22.1 If the Company or State Forests breaches or repudiates this Agreement, nothing in this Clause will prejudice the right of either party to recover damages or exercise any other right.
 - 22.2 If the Company commits a material breach of this Agreement and State Forests considers that damages may not be an adequate remedy, State Forests may give the

Company a written notice to show cause. Material breaches include without limitation:

- 22.2.1 failing to take the quantities of Timber set out in Clause 6.2;
- 22.2.2 commencing any harvesting operations prior to receipt of a Harvesting Plan or a Plan of Operations in breach of Clause 8.2;
- 22.2.3 failing to take Timber as directed in breach of Clause 10.2;
- 22.2.4 failing to accept Timber in breach of Clause 12;
- 22.2.5 failing to make payments in breach of Clause 15;
- 22.2.6 failing to take out and maintain any insurance in breach of Clauses 16.2.3 or 17.2;
- 22.2.7 failing to meet the requirements of Clause 16;
- 22.2.8 failing to provide security or to adjust or vary the secured amount in breach of Clause 19;
- 22.2.9 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of Clauses 24 and 25;
- 22.2.10 failing to comply with conditions imposed by the Minister pursuant to Clause 25 of this Agreement.

22.3 A notice under Clause 22.2 must:

- 22.3.1 state that it is a notice under Clause 22.2 of this Agreement;
 - 22.3.2 specify the alleged material breach;
 - 22.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under Clause 22.4;
 - 22.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
 - 22.3.5 specify the place at which cause must be shown.
- 22.4 If by the time specified in a notice under Clause 22.2 the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.
- 22.5 If the Company:
- 22.5.1 informs State Forests in writing or its creditors generally that it is insolvent;
 - 22.5.2 commits an act of bankruptcy;
 - 22.5.3 has a bankruptcy petition presented against it;
 - 22.5.4 is made bankrupt;
 - 22.5.5 a meeting of creditors of the Company is called with a view to:
 - (a) entering a scheme of arrangement or composition with creditors; or

- (b) placing the Company under official management;
- 22.5.6 the Company enters a scheme of arrangement or composition with creditors;
- 22.5.7 a resolution is passed at a meeting of creditors to place the Company under official management;
- 22.5.8 the Company is placed under official management;
- 22.5.9 a receiver of the property or part of the property of the Company is appointed;
- 22.5.10 an application is made to a Court for the winding up of the Company and not stayed within 14 days;
- 22.5.11 a winding up order is made in respect of the Company; or
- 22.5.12 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.

State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.

22.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:

- 22.6.1 failing to make available the Base Allocation for each Year in breach of Clause 5;

- 22.6.2 failing to process an application for an extension of this Agreement in breach of Clauses 4.2 and 25;
 - 22.6.3 failing to process any application requesting an assignment of this agreement in breach of Clauses 24 or 25.
- 22.7 A notice by the Company under Clause 22.6 must:
- 22.7.1 state that it is a notice under Clause 22.6 of this Agreement;
 - 22.7.2 specify the alleged material breach;
 - 22.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;
 - 22.7.4 specify the time and date by which State Forests must show cause (which must not be less than 14 days); and
 - 22.7.5 specify the place at which cause must be shown.
- 22.8 If by the time specified in a notice under Clause 22.6 State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.
- 23. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION**
- 23.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement (except Clauses 11.3, 12.1 and 14) which cannot be settled by the parties

within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

The mediator must conduct proceedings under this Clause in accordance with the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 23.2 In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

- 23.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

- 23.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be

represented by a legal practitioner.

24. ASSIGNMENT

- 24.1 The Company may not without the prior approval of the Minister assign its rights and entitlements under this Agreement in whole or part to any person.
- 24.2 If the Company is a corporation, any change in control of the Company (or if the Company is a subsidiary, any change in control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement. For the purpose of this Clause 'change in control' means control of the composition of the board of directors or control of more than 50% of the shares with the right to vote in general meetings of the corporation.
- 24.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.
- 24.4 Upon receipt of any request for an assignment of the whole or any part of this Agreement, State Forests must process the application in accordance with Clause 25 provided the Company has supplied any details and information required by State Forests under Clause 24.3.
- 24.5 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

25. MINISTER'S APPROVAL FOR AN EXTENSION OR ASSIGNMENT

- 25.1 State Forests must consider any application made in relation to an extension or requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation.
- 25.2 The Minister may determine an application for an extension or requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in Clause 25.3) or by refusing the application. An application may only be refused on the following grounds:
- 25.2.1 the Company fails to satisfy such value added criteria as have been adopted by the Minister;
 - 25.2.2 such grounds as may be prescribed by regulations under the Act; or
 - 25.2.3 such grounds as the Minister considers relevant having regard to the need to promote a competitive timber industry and to prevent misuse of market power.
- 25.3 The Minister may impose (without limitation) the following kinds of conditions on an application for an extension or an application requesting an assignment of the whole or part of this Agreement:
- 25.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy value added criteria as have been adopted by the Minister;
 - 25.3.2 a condition requiring the Company or any assignee to prepare, and submit to the Minister, a business plan ('designated business plan') setting out the

Company's or any assignee's policies, practices and procedures for the implementation or maintenance of any value added criteria; and

- 25.3.3 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any value added criteria or is conducting its business in accordance with a designated business plan.

26. VARIATION

- 26.1 This Agreement comprises the entire understanding of the parties.
- 26.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

27. INTEREST

- 27.1 In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).

28. NOTICE

- 28.1 Any notice required to be served under this Agreement may be served:

(a) in the case of the Company:

[name, address, telephone and facsimile numbers of recipient]

(b) in the case of State Forests:

[name, address, telephone and facsimile numbers of recipient]

28.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.

29. GOVERNING LAW

29.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

30. SEVERABILITY

30.1 If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

31. GENERAL

31.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.

32. CONFIDENTIALITY

- 32.1 No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:
- 32.1.1 the information is available to the public generally;
 - 32.1.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;
 - 32.1.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorization, approval or licence from any public body or authority;
 - 32.1.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
 - 32.1.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) for the purpose of obtaining advice in relation to this Agreement or the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers; or
 - 32.1.6 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

I)
 the Commissioner for Forests)
 have hereunto affixed the)
 Seal of the **FORESTRY COMMISSION**)
OF NEW SOUTH WALES)
 in the presence of:)

.....
 Secretary

THE COMMON SEAL of)
)
 was hereunto affixed in accordance)
 with its Articles of Association in the)
 presence of:)
 Director

.....
 Secretary

SIGNED SEALED AND DELIVERED)
 by **THE HONOURABLE**)
JEFFREY WILLIAM SHAW Acting)
 Minister for Land and Water Conservation)
 in and for the State of New South Wales)
 for and on behalf of the Crown (but not)
 so as to incur any personal liability) in the)
 presence of:)
 Acting Minister for
 Land and Water Conservation

.....

SCHEDULE 1

Specifications (Clause 12)

SCHEDULE 2**Base Allocation (Clause 5)****Part I****Base Allocation****Part II****Indicative Quantities of Timber**

SCHEDULE 3

Plan of Management Areas

SCHEDULE 4

State Forests' Code of Practice and Code of Procedure

SCHEDULE 5

Price Schedule (Clause 14)

Part I

Part II

SCHEDULE 6

Approved form of Unconditional Undertaking (Clause 19)

At the request ofACN('the Company')
 and in consideration of State Forests('the Principal')
 accepting this undertaking in respect of the Hardwood Timber Term Agreement for
('the Agreement')
ACN.....('the Financial Institution')
 unconditionally undertakes to pay on demand any sum or sums which may from time to time be
 demanded by the Principal to a maximum aggregate sum of \$.....
 (.....).

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by a delegate for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Company and notwithstanding any notice given by the Company not to make payment.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$.....
 (.....)
 less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

This undertaking will expire on theday of 19

DATED atthisday of19

SCHEDULE 7

Interim Price Formula

ALL COMPARTMENTS WITH ACTUAL YIELD INFORMATION AVAILABLE AT DECEMBER 1996

Kim Yeadon (November) refers to a review of around 70 compartments with an overall result within 5% of actual yields.

There are 70 compartments with this result listed in Attachment 1 to a document by SFNSW printed in September 1996 as "Comments on 'Appraisal of Reliability of State forests' Wood resources Study' by Dailan Pugh". At the time of printing of this document there were in fact 104 compartments that could have been referred to. The overall result of the comparison of WRS estimates and actual yields was 13% over-estimation by WRS when all compartments were included. Not 5%.

In early December, SFNSW HO sought further Actual Yield data from the Districts.

From documents obtained under FOI there were 118 compartments potentially able to be used for comparison of Actual Yield with Wood Resource Study estimates

The NOTES below detail identified problems with data accuracy. 35 of these compartments cannot be relied upon.

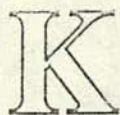
There was information on 83 compartments that could be reasonably used to compare Actual Yields with Wood Resource Study Quota Sawlog estimates

The WRS overestimation was 21% when only the most certain compartment information was used.

SFNSW, if they took a pre-cautionary approach, should have advised their Minister that the WRS could be overestimating the actual yield by 21%.

That is, there is quite possibly only 79% of what the WRS estimates really available. Not 95%.

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PROPOSED HARDWOOD TIMBER TERM AGREEMENT

MEMORANDUM OF ADVICE

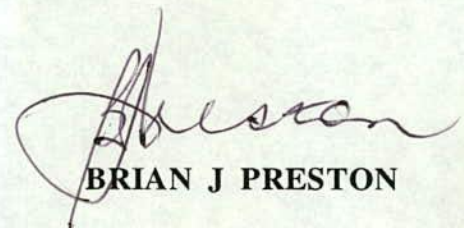
The Forestry Commission of New South Wales proposes to enter a number of contracts with various timber companies whereby the Commission will sell and the companies will purchase identified timber for a price to be calculated in accordance with a prices schedule in the contracts. The timber is to be supplied under the contracts either by permitting the companies to harvest, or by the Commission engaging independent contractors to harvest, the timber from identified State forests. The Commission promises to grant timber licences to enable the harvesting of the identified timber.

The question upon which I am asked to advise is whether the Commission has power to enter such an agreement having regard to the provisions for the payment of a royalty under ss.30A and 30B of the Forestry Act 1916.

Section 30A requires the holder of a timber licence to pay a royalty for timber taken in pursuance of the licence. The amount of that royalty is the amount determined by the Commission under s.30B.

On its face, the proposed form of contract does not suggest that the price to be paid for timber sold under the contract is the same as the amount of royalty which might have been determined by the Commission for that timber or timber of that class. I am unaware whether there is extrinsic evidence as to the relationship, if any, between the contract price and any determined royalty.

If the contract price is distinct from the determined royalty, and the effect of the contract is to require the company to pay the contractual price only and not any royalty for timber taken pursuant to a timber licence, the contract would be unlawful. The Commission cannot enter an agreement which enables the avoidance of statutory requirements, in this case the requirement to pay royalties under s.30A.



BRIAN J PRESTON

SELBORNE CHAMBERS
20 DECEMBER 1996



Legislative Council

Legislative Council Proof Hansard

Extract

08/04/97

STATE TIMBER RESOURCES

Mr Cohen asked the Attorney General, and Minister for Industrial Relations representing the Minister for Land and Water Conservation -

- (1) Will the Minister advise the House if it is true that State Forests has advised the first operating harvesting advisory boards on the north coast that no timber is left to log outside the moratorium forests in the Murwillumbah management area; by February next year nothing will be left to log outside the moratorium in the Urbenville management area; and by the middle of next year only moratorium areas in the Casino management area will be left to log?
- (2) Are Bulahdelah and Tenterfield management areas in a similar situation?
- (3) Is it true that by the end of next year at least Coffs Harbour and Dorrigo management areas will be in the same situation?
- (4) How will the Government ensure that it fulfils the commitment made to the timber industry for the 10-year timber agreements?

Answer -

(1 - 4) The Government has identified the Interim Deferred Forest Area (IDFA) as the area from which, as a result of Comprehensive Regional Assessments, additional reserves may need to be created to establish a comprehensive adequate and representative reserve system.

In accordance with the Government's decision State Forests is making every effort to meet the Government's timber supply commitment from outside the IDFA. However, where there are no alternatives harvesting will be permitted in the IDFA and the Harvesting Advisory Boards will advise State Forests on the selection of areas within the IDFA on a least sensitive area basis and taking into account the local community's interests.

In the short term the need to harvest timber in the IDFA will be influenced by the extent to which timber can be transferred between management areas to balance surpluses and deficits and the impacts which conditions of regulatory approvals have on the volume of timber harvested from outside the IDFA. There are areas of regrowth forest outside the IDFA which are approaching a suitable size for harvesting to meet commitments. This will reduce the need to harvest in the IDFA in the future.

State Forest and the National Parks and Wildlife Service are currently in the process of preparing a Plan of Operations for harvesting in the first six months of 1997. Current indications are that, during the period, as few as seven IDFA compartments will be required for harvesting representing only a small proportion of the operations planned across the State. Access to IDFA is likely to only be required in the Urbenville and Murwillumbah Management Areas. The North East Harvesting Advisory Board has approved harvesting in several IDFA compartments and it is currently evaluating the timber supply situation in the Murwillumbah and Urbenville Management Areas.

The Government has taken a number of measures to ensure that it is able to meet timber supply commitments.

These include:

- _ setting the timber supply agreements at 50% of the supply levels that existed under the previous Government.
- _ abolishing the arbitrary supply boundaries to allow flow of timber from areas of greater supply to those where supply is more restricted.
- _ bringing areas of privately owned forest into production either by joint venture arrangements, purchasing harvest rights or purchasing land.
- _ access to Interim Deferred Forest Areas in limited circumstances after consideration by a Harvesting Advisory Board where no alternative is available.

Q 3.12.96



Legislative Council

Legislative Council Proof Hansard

Extract

08/04/97

FORESTRY POLICY

Mr Jones asked the Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs -

- (1) Is it true that the Government is about to sign contracts with timber companies which will guarantee that almost all the old growth forests under moratorium in northern New South Wales will be logged and not placed in national parks as promised by the Premier?
- (2) Would this not make a mockery of the Premier's claim that he is saving the old growth forests?
- (3) Is the Premier aware that he is about to be betrayed by State Forests?
- (4) Will the Premier step in and take charge of what is rapidly becoming a farce?

Answer -

(1 - 4) The Government announced its decision on the next stage of the implementation of its forestry policy on 23 September 1996. The decision is a comprehensive and integrated package of initiatives and an outcome which balances the many competing interests of forestry reform. The announcement included a number of unprecedented initiatives to enhance the level of protection of old growth forests in NSW.

As a result of the Government's decision, nine new national parks and one nature reserve are being created including the 90,000 hectare South East Forests National Park promised in the Government's 1995 Nature Conservation Policy. The protection of wilderness will also be greatly increased in accordance with the Government's pre-election commitments. Twelve new wilderness areas will be declared totalling 153,430 ha and \$5 Million will be provided to establish the Dunphy Wilderness Fund.

The Honourable Member would be aware of the Bill recently passed by this House for the revocation of nearly 240,000 hectares of State forest and its reservation as a National Park. A large proportion of this area contains old

Page 32

growth and wilderness forests.

The final stages of the creation of the Comprehensive, Adequate and Representative Reserve System, to which the Government is committed under the National Forest Policy Statement, will be implemented following the completion of Comprehensive Regional Assessments (CRAs) in association with the Commonwealth. These CRAs are currently underway in NSW and are being coordinated through a joint Commonwealth/State/stakeholder steering committee.

In addition to the expansion of the reserve system outlined above, other forest values such as old growth, rainforest, rare forest types and endangered species will be protected during logging operations by the implementation of conservation protocols which have been developed by the National Parks and Wildlife Service and State Forests in consultation with stakeholders.

The Government also decided to grant five year tradeable term agreements to current holders of annual licences for quota sawlogs, with an option for renewal for a second five years, subject to:

- _ a supply level of 50% of 1995/96 allocations for both five year periods;
- _ criteria for value-adding (currently being prepared by the Minister for Land and Water Conservation) and other commercial criteria being met in the first five years, prior to the agreements being renewed for the second five years.

The Government is confident that the supply required under term agreements will be met and has taken a number of measures to achieve this aim. These include:

- _ setting the agreements at 50% of the supply levels that existed under the previous Government.
- _ abolishing the arbitrary supply boundaries to allow flow of timber from areas of greater supply to those where supply is more restricted.
- _ bringing areas of privately owned forest into production either by joint venture arrangements, purchasing harvest rights or purchasing land.
- _ access to Interim Deferred Forest Areas in limited circumstances after consideration by a Harvesting Advisory Board and where no alternative is available.

The September 23 announcement represents another major step forward in the Government's drive to resolve the conflict over our native forests, establish a comprehensive, adequate and representative reserve system and to create a vibrant native forest industry which generates employment opportunities and boosts regional economies.

Q 4.12.96



Legislative Council

Legislative Council Proof Hansard

Extract

08/04/97

FORESTRY POLICY

Mr Cohen asked the Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs -

(1) Since the Government now plans to issue 10 year resource security contracts by the end of this year, will the Premier now admit that his Government has abandoned his written pre-election promise contained in labor's forest policy that:

Upon completion of Regional Forest Agreements, a Carr Labor Government will guarantee a long-term timber supply in return for definite commitments from the industry to invest in value adding and downstreaming, the upgrade of plant and equipment, and investment in plantations?

(2) If so, why has the Premier permitted a published labor policy to be abandoned?

(3) If not, what specific guaranteed contractual commitments for value adding will be obtained from the timber industry before contracts are issued upon the completion of the regional forest agreements?

Answer -

(1 - 3) The Government announced its decision on the next stage of the implementation of its forestry policy of 23 September 1996. The decision is a comprehensive and integrated package of initiatives and an outcome which balances the many competing interests of forestry reform. The various initiatives involved are complementary and the successful implementation of the package as a whole is fundamental to achieving the Government's dual objectives of protecting high conservation value forests and establishing and maintaining an ecologically sustainable, high technology sawlog driven timber industry.

The implementation of this package will provide a more stable operating environment to allow the completion of Comprehensive Regional Assessments (CRAs) in association with the Commonwealth, under the National Forestry Policy Statement. The CRAs will form the basis for Regional Forest Agreements which will include the creation of the Comprehensive Adequate and Representative Reserve system and mechanisms for the ecologically sustainable management of other forested areas.

Five year tradeable term agreements will be granted to current holders of annual licences for quota sawlogs, with an option for renewal for a second five years, subject to:

_ a supply level of 50% of 1995/96 allocations for both five year periods;

_ criteria for value-adding (currently being prepared by the Minister for Land and Water Conservation) and other commercial criteria being met in the first five years, prior to the agreements being renewed for the second five years.

The timber industry has been subject to significant reductions in supply in recognition of the need for the increased protection of environmental values. However, some certainty is essential to provided industry with the incentive to invest and to enhance regional and rural employment. The renewal of term agreements for the second five years will provide the mechanism by which government can ensure that industry meets its commitment to value adding.

Q 5.12.96



Legislative Council
Legislative Council Proof Hansard
Extract

16/04/97

ENVIRONMENTAL TRUST FUNDS

The Hon. M. R. EGAN: On 5 December 1996, the Hon. I. Cohen asked me a question without notice regarding environmental trust funds. The Minister for Land and Water Conservation has provided the following response:

It is not the case that the Government has instructed the Auditor-General not to audit the money spent from the funds for the purposes of restructuring.

Section 12 of the Forestry Restructuring and Nature Conservation Act requires the audit under the Public Finance and Audit Act of the accounts relating to the Funds established under the Environmental Trusts Acts to include "an audit of the payments made from the Funds under this Act".

As the Trusts are listed on Schedule 2 of the Public Finance and Audit Act 1983, it is the opinion of the Government (and one endorsed by the Auditor-General's office and Treasury) that the requirements of section 12 of the Forestry Restructuring and Nature Conservation Act would be met by the annual audits of the three Trusts.

The accounts relating to expenditure of Trust funds for the purposes of restructuring the native forest industry in NSW will therefore be audited on an annual basis as required under section 12 of the Forestry Restructuring and Nature Conservation Act.

Clearly the Government has not broken its promise of accountability.

As the Hon. I. Cohen correctly observed, the Minister for Land and Water Conservation is on the public record as saying that; "it is my opinion, and the opinion of the Government, that the legislation (FR&NC Act) has considerable accountability mechanisms . . . Such expenditure is to be subject to full accountability. The person who will be ultimately responsible for that accountability is the Auditor-General."

As the Minister for Land and Water Conservation has already pointed out, accounts relating to the expenditure of Trust funds for the purposes of restructuring the native forest industry of NSW will be audited in accordance with section 12 of the Forestry Restructuring and Nature Conservation Act.

It is clear therefore that there has not been, nor will there be, any breach of the Forestry Restructuring and Nature Conservation Act.

To: JOHN CORKILL @ Big Scrub 066 222 676

From: Marg McLean ph 065 773105

7 Fax pages (including this one) to assist any discussion re Tim
complete documents being mailed today

↑
ie. the 'sustained yield' subset of documents

total # fol pages held
is around 500 at the moment

— further documents have been
requested.

x Marg

Forest Planning & Environment

To RACAC Attention: Rex Bowen

From Dr. Tony O'Hara
Project Manager - Wood Resources Study

Date 19 February, 1996

Subject Sustained Yield Calculations for the IAP



INTRODUCTION

The Urbenville Trial on 8 February 1996 raised some issues about the way in which "sustained yield" is treated in the IAP for definition of deferred forest areas. This memo addresses those issues and suggests a methodology for resolution.

FOREST ISSUES

The bulk of the native hardwood forest sector is in a transition period between dependence on supply from relatively mature forests dominated by large and relatively slow grown trees to dependence on smaller and faster grown trees from regrowth forests. The progressive reduction in harvesting of logs from old growth forests has accelerated this process.

Coupled with an accelerated transition to regrowth forests has been an increasingly more stringent set of harvesting protocols which have reduced the volume harvested from any given area of forest.

The net effect of these two forces has been to create a constriction in the supply of logs from managed forests over the next 10 to 15 years, as a reducing supply of mature forest logs coincides with a limited supply of logs from regrowth forests. For this period, the supply of logs meeting "quota" specifications (even if these are relaxed to include smaller logs) will be quite limited. As regrowth forests are thinned and progressively mature, the supply of "quota" logs will progressively increase.

If "sustained yield" is thought of as the maximum volume of wood that can be harvested in any year (according to a specified harvesting protocol) while restricting harvest volume

- to the maximum annual volume that the forest can grow, and
 - to a level that does not decline from one year to the next (non-declining flow),
- then the sustained yield for most native hardwood forest areas will be expected to decrease from 1995 sustained yield calculations by, say, 30% in 1996 and remain at that level for the next 10 to 15 years (ie during the transition period) and then to increase as regrowth forests mature.

It is very difficult to accelerate the growth of regrowth forests sufficiently to "bring forward" the year in which the increased volume from regrowth can be harvested. Even if growth could be accelerated, it is likely that log quality would be poorer and markets would need to be found for the pulpwood grade regrowth thinnings that were produced in the interim. As a consequence, there is considerably less flexibility in harvest scheduling over the next 10 to 15 years than is the case beyond this period.

The inflexibility in yield scheduling applies just as strongly to the likely three year period of the CRA process as to the 10 to 15 year transition period. Any action which involves harvesting above the sustained yield level for any part of the transition period has implications for the remainder of the transition period.

CONSEQUENCES FOR THE IAP

The linear programming (LP) model used by State Forests for yield scheduling sets as a constraint a non-declining flow over the first five years and then allows any level of harvest that does not fall below the harvest level in year five. This permits a substantial increase in yield to occur in later periods without the restriction that the yield *never* decreases from one year to the next after year five. Within this constraint, the LP model seeks to maximise the value of the harvest of "quota" sized sawlogs in any year - the very close link between value and volume means that effectively the maximum volume is harvested each year.

The sustained yield calculated in this way (prior to the IAP) is the *maximum* volume that can be harvested in any year over the next five years, prior to any units of the forest being included in deferred forest areas. The nature of the LP procedure is to bring forward in time the harvest of as much volume as possible within the non-declining flow constraint, but recognising the link between log size and value.

Inclusion in deferred forest areas of any units of the forest which are intended to be harvested over the next five years almost invariably leads to a decrease in the sustained yield harvest level. The reason for this is that the "pool" of areas able to supply sawlogs over the next five to ten years is quite restricted, for the reasons outlined above. Removal of areas from that "pool" cannot be replaced by harvesting regrowth stands any earlier, either because logs in the regrowth stands are not large enough or because there are insufficient of them to make a harvesting operation economically viable.

"Overcutting" during the CRA period means harvesting during that period at a rate above the sustained yield level recalculated after the IAP. *Overcutting must inevitably lead to a substantial decrease in harvest volume immediately after the CRA unless the specific forest units which were intended prior to the IAP to be harvested during the CRA period are made available for harvesting immediately after the CRA (ie are not required in a CAR reserve system).* Given the limited likelihood of this occurring, overcutting during the CRA process simply postpones the inevitable while abrogating one of the fundamental principles of sustainable forest management. This is not a position which State Forests could support.

RECOMMENDATION

That the harvest volume for quota sawlogs specified following the IAP be the recalculated sustained yield level for that part of the forest not included in the deferred forest area.

Comment is sought on this principle from the next Socio-Economic Working Group and Conservation Working Group meetings.



Dr. Tony O'Hare
Project Manager - Wood Resource and Market Study

Summary:

It is possible to operate for up to three years from available compartments subject to lifting of other constraints. However this could be at the expense of the native forest timber industry after the completion of this period. It is not clear whether total wood resourcing from these areas would be economically practicable to industry.


DR Jones
A/District Forester

4th July 1996

General Manager
NORTHERN REGION

Tony O'Hara
Marketing FPE
HEAD OFFICE

PM

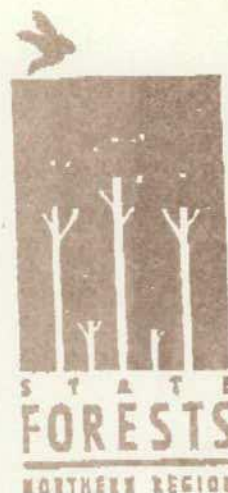
SH

SH 24/7. (I presume this was prompted by a note in letter of 31/7/96).

ist of response to T. O'Hara in coordination - A. L. J.

FACSIMILE TRANSMISSION

To	Planning Branch Northern Region		
Attention	Andrew Lugg	Date	28/6/96
Your Fax		Our Fax	066 432131
From	Bob Williams	Phone	066 432022
No of Pages	1 (including this cover page)	File No	651



Message

Log Supply During CRA

In Grafton District, there are sufficient compartments outside the Deferred Areas for the full Conservation outcome to keep logging operations going at 70% of current rate for at least three years.

Because this is not necessarily the case for adjoining Districts (e.g. Dorrigo) Grafton would probably be expected to cut at a higher Rate (the 70% being the average for all of N2). We could probably sustain the higher rate for three years, however at the end of three years if all deferred areas become reserves, then we would have very little left to harvest in the next 10 to 15 years.

The key figure in the mathematics is the difference between longer term sustained yield and current rate of cut. If long term sustained yield is 28% (conservation outcome) and we cut at 70% for 3 years, then we have over cut by 4.5 years sustained yield.

If we examine the impact over a 15 year cutting cycle, then we will have cut 50% of the 15 year sustained yield in the first three years, giving a sustained yield for the remaining 12 years of 17.5% of current cut. If Grafton District cuts at a rate of 100% for three years to help our neighbours out, then we will only have a sustained yield of 10% for the remaining 12 years. This is not acceptable from a sustainable harvesting perspective.

State Forests of
New South Wales

Grafton District

PO Box 366

Grafton NSW 2460

Phone (066) 432 022

CASINO DISTRICT

C Stapley:SB
DO:463

Log Supply During CBA - Casino District

In the time frame available only brief comment is possible.

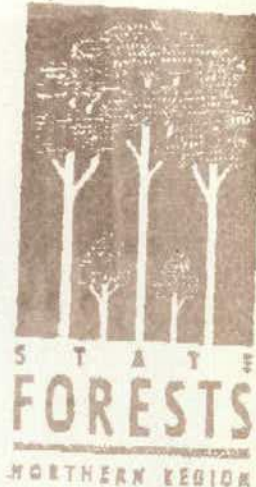
It would be possible to supply timber for three years to industry at the 70% of 1995 allocation level whilst keeping out of the conservation option compartments. However this would not be possible if the Old Growth Protocol and restrictive NFWS Section 120 licence conditions also apply. In this event the 50% or 30% wood resource allocation would need to be applied.

Despite being available under LAP, other compartments i.e. Guonengerry also continue to be not available through local protest action or ministerial direction.

To achieve the above objective operations would need to be concentrated on Ewinger State Forest. This would include the harvesting of immature timber and supply of species to industry irrespective of their order requirements. There would also be considerable additional log haulage involved.

There are few areas currently approved under this option so all sawmills, under present licensing requirements would be subject of up to a six month hiatus of State Forest log supplies.

At the end of the LAP process most non-conservation compartments would have been subject to log harvesting. The option then available for the government would be a full diet of "Conservation Value" compartments or no more timber supplies to industry.



URGENT

FACSIMILE TRANSMISSION

To	FOREST	MANAGING AND ENVIRONMENT
Attention	TONY GHARA	Date 20
Your Fax		Our Fax 066 572543
From	JOHN BALL	Phone 066 572083
No of Pages	3 (including this cover page)	File No 239D



STATE
FORESTS
NORTHERN REGION

Message

Tony,

As discussed herewith the information as best I can collate it in the absence of the Marketing forester. The 1985 Dorrigo management plan prescribed a strategy of cutting through the old growth forests of Chaelundi until about 2012 and then returning fully to the regrowth forest with some thinning of the regrowth forest occurring during the old growth cut out. The governments moratorium on old growth logging in 1990 saw all quota operations within the District move into the regrowth forest at the original "old growth" sustained yield of 58,120 cubic metres per annum and this level of cut has been maintained in the regrowth forests to this day in the forlorn hope of sometime returning to the old growth resource. Hence for the last six years we have been cutting at an unsustainable rate in the regrowth forests 20 years before they should have been heavily cut.

Accordingly the growing stock resources of the regrowth forest have been seriously depleted which is indicated by the difficulties which have now become apparent in supplying commitments from a very restricted forest area.

Because the G L Briggs quota has been terminated as at the 30/6/96 and the two remaining Boral quotas reduced by 30%, the current base quota commitment is 27958 metres. Additio to this is a undercut from 95/96 of 5812 metres, giving a total commitment from Dorrigo MA in 1996/7 of 33,770 metres. Additional total commitments from Coffs Harbour and Grafton MA's respectively are 1525 metres and 2797 m. In following years the quota commitments should be Dorrigo 27958 metres, Coffs 1745 metres, and Grafton 6000 metres. (Note: the Grafton figure needs to be checked as it depends on...

State Forests of
New South Wales

Dorrigo District

P.O. Box 160

DORRIGO 2453

Phone (066) 57 2083

Project 5: Review of Wood Resources Study

ISSUE

The Wood Resources Study (WRS) was the tool used in the Interim Assessment Process (IAP) to calculate the sustained yield of that area of State forest not included in a Deferred Forest Area (DFA).

The use of the WRS in the Interim Assessment Process (IAP) is outlined and associated issues are discussed.

BACKGROUND

The WRS was designed as a tool to enable the growth and yield of State forests to be predicted and optimised at management area level but building up from subdivisions of compartments (called resource units) which form a logical basis for growth and yield prediction. This permits the ready inclusion or otherwise of both compartments or part compartments in a Deferred Forest Area (DFA) and calculation of the sustained yield of the State forest area not included in the DFA.

The WRS was conceived and built within a time frame of around four months. The full development of a model which incorporates the accuracy and flexibility that is desired in scheduling future yields from native forests would normally take at least two years, largely because the prediction of growth within the almost infinitely variable species associations, site conditions, growth stages and historical influences is a science that is still largely in its infancy. As a consequence, simplified approaches were used for assessing growth rates, predicting extractable volumes, scheduling the timing of harvests in individual stands and tracking log size, log quality and species mix.

Notwithstanding these simplifications, the WRS gave objective and in most cases logical and predictable responses to changes in the resource base under various DFA options. This capability did not exist in State Forests prior to development of this model.

DISCUSSION

High Value Products vs Quota Sawlogs

Data gathering for the WRS began in November 1995. At that time, the intention was to track the volume of high value, low value and pulpwood products as three separate product categories. High value products included products other than quota sawlogs, in particular veneer logs, poles, piles, girders and high value small sawlogs.

The IAP assessed the impact of various DFAs on supply of quota sawlogs. The consequences of predicting the volume of high value products rather than quota sawlogs was initially believed to be minor, but proved to be significant in some management areas. This required that the volume of high value products predicted by the WRS needed to be corrected to filter out the quota sawlogs from all high value products.

The assessment of high value products focused on current stands, the bulk of which are derived from regrowth rather than light selectively logged or unlogged mature/overmature forest. As a consequence, the proportion of the total yield comprising high value products other than quota sawlog will be higher than was the case in past operations. Nonetheless, historical data were used to derive filter factors for quota sawlogs, including data from the last ten years of operations in most cases, to provide an objective if undeniably conservative filter for quota sawlogs. The volume of quota sawlogs is likely to be over-estimated for the various options reported, particularly in those management areas in which regrowth stands form the bulk of the supply area for high value products.

Management Area	State Forest	Cpt.	WRS CHARVOL (m ³)	WRS Quota Sawlogs (m ³)	Actual Quota S'logs (m ³)	Actual Small Logs (m ³)	Actual poles/piles/girders (m ³)	Actual Total (m ³)	Est. Final Quota S'log Total (m ³)
Bulahdelah	294	54	926	769	400	78	0	478	500
Wyong	924	182	896	708	365	11	0	376	400
Wyong	924	183	333	263	568	22	80	670	630
Chichester	292	78	461	438	300	3	0	303	300
Chichester	292	80	577	548	2875	96	0	2971	2875
Chichester	292	81	696	661	82	3	0	85	83
Kendall	184	38	1605	1509	1531	309	229	2069	1531
Kendall	475	3	4491	4222	987	174	7	1168	987
Kendall	475	9	900	846	2313	771	162	3246	2313
Wingham	285	12	725	703	1094	97	0	1191	1094
Wingham	285	15	688	667	1567	354	7	1928	1567
Wingham	285	49	200	194	368	84	0	452	410
Taree	298	6	2193	1645	1480	741	2	2223	1850
Coopernook	52	207	3026	2663	2782	411	71	3264	3480
Kempsey	470	75	2343	2038	4145	0	0	4145	4145
Kempsey	470	76	2985	2597	184	0	0	184	185
TOTAL			23045	20471	21041	3154	558	24753	22350

The final column pro-rates the actual quota sawlog yields for the proportion of the compartment harvesting that is complete.

This table shows that individual yields may vary significantly from that predicted as a consequence of the averaging process used in the WRS. However, the WRS prediction of quota sawlogs (with the filter factors used in the IAP) was only 8.4% below the overall estimated actual yield of quota sawlogs.

Future Development

The WRS represents a significant milestone in development of tools for forest resource management. It provides an essential basis for building the detailed resource information required for a progressive value-adding native forest industry.

Development of the WRS for more effective use within the CRA process will focus on:

- partitioning the standing volume into commercial and non-commercial components by size and quality class, to more effectively track individual log products;
- effectively tracking species mix;
- allowing the cutting cycle to vary more widely than the existing model;
- refining the growth model by forest type, structure and site condition;
- refining the impact of various harvesting options on subsequent growth and yield;
- increasing the sensitivity of the model to small changes in the resource base;
- assessing the impact of various price models on outcomes;
- substantially decreasing model execution time.

Conclusion

There are some deficiencies in the WRS in accurately predicting the sustained yield volume of quota sawlogs under a range of DFA options, particularly associated with errors in base data and prediction of growth and yield and in the estimation using historical filter factors of the proportion of high value products comprising quota sawlogs. Nonetheless, the WRS has provided an objective, defensible and generally logical solution to the required task of predicting the volume of quota sawlogs under DFA options designed to meet specified targets.

CASINO DISTRICT

C Stapley:SB
DO:463

Log Supply During CRA - Casino District

In the time frame available only brief comment is possible.

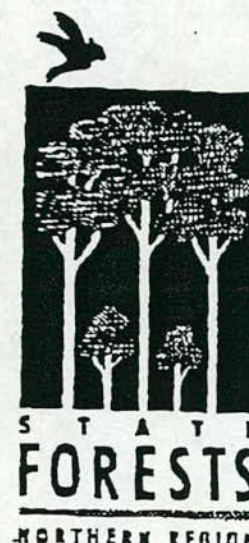
It would be possible to supply timber for three years to industry at the 70% of 1995 allocation level whilst keeping out of the conservation option compartments. However this would not be possible if the Old Growth Protocol and restrictive NPWS Section 120 licence conditions also apply. In this event the 50% or 30% wood resource allocation would need to be applied.

Despite being available under IAP, other compartments i.e. Guonengerry also continue to be not available through local protest action or ministerial direction.

To achieve the above objective operations would need to be concentrated on Ewingar State Forest. This would include the harvesting of immature timber and supply of species to industry irrespective of their order requirements. There would also be considerable additional log haulage involved.

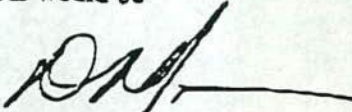
There are few areas currently approved under this option so all sawmills, under present licensing requirements would be subject of up to a six month hiatus of State Forest log supplies.

At the end of the IAP process most non-conservation compartments would have been subject to log harvesting. The option then available for the government would be a full diet of "Conservation Value" compartments or no more timber supplies to industry.



Summary:

It is possible to operate for up to three years from available compartments subject to lifting of other constraints. However this could be at the expense of the native forest timber industry after the completion of this period. It is not clear whether total wood resourcing from these areas would be economically practicable to industry.



DR Jones
A/District Forester

4th July 1996

General Manager
NORTHERN REGION

Tony O'Hara
Marketing FPE
HEAD OFFICE

PM

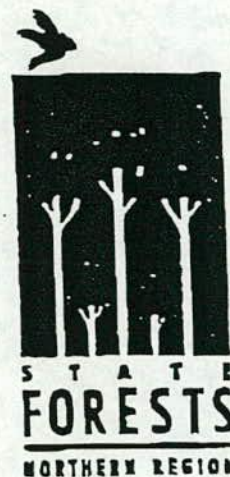
SH

GM, Q 4/7. (I presume this was prompted by * a note in letter of 3/7/96).

Set of response to T. O'Hara in coordination - A. Legg.

FACSIMILE TRANSMISSION

To	Planning Branch Northern Region		
Attention	Andrew Lugg	Date	28/6/96
Your Fax		Our Fax	066 432131
From	Bob Williams	Phone	066 432022
No of Pages	1 (including this cover page)	File No	651



Message

Log Supply During CRA

In Grafton District, there are sufficient compartments outside the Deferred Areas for the full Conservation outcome to keep logging operations going at 70% of current rate for at least three years.

Because this is not necessarily the case for adjoining Districts (e.g. Dorrigo) Grafton would probably be expected to cut at a higher Rate (the 70% being the average for all of N2). We could probably sustain the higher rate for three years, however at the end of three years if all deferred areas become reserves, then we would have very little left to harvest in the next 10 to 15 years.

The key figure in the mathematics is the difference between longer term sustained yield and current rate of cut. If long term sustained yield is 28% (conservation outcome) and we cut at 70% for 3 years, then we have over cut by 4.5 years sustained yield.

If we examine the impact over a 15 year cutting cycle, then we will have cut 50% of the 15 year sustained yield in the first three years, giving a sustained yield for the remaining 12 years of 17.5% of current cut. If Grafton District cuts at a rate of 100% for three years to help our neighbours out, then we will only have a sustained yield of 10% for the remaining 12 years. This is not acceptable from a sustainable harvesting perspective.

State Forests of
New South Wales

Grafton District

PO Box 366

Grafton NSW 2460

Phone (066) 432 022

URGENT

State Forests of
New South Wales

Dorrigo District

P.O. Box 180

DORRIGO 2453

Phone (065) 57 2083

FACSIMILE TRANSMISSION

To	FOREST	MANAGEMENT AND ENVIRONMENT	
Attention	TONY O'HARA	Date	20
Your Fax		Our Fax	066 572543
From	JOHN BALL	Phone	066 572083
No of Pages	3 (including this cover page)	File No	239D

Message

Tony,

As discussed herewith the information as best I can collate it in the absence of the Marketing forester. The 1985 Dorriggo management plan prescribed a strategy of cutting through the old growth forests of Chaelundi until about 2012 and then returning fully to the regrowth forest with some thinning of the regrowth forest occurring during the old growth cut out. The governments moratorium on old growth logging in 1990 saw all quota operations within the District move into the regrowth forest at the original "old growth" sustained yield of 58,120 cubic metres per annum and this level of cut has been maintained in the regrowth forests to this day in the forlorn hope of sometime returning to the old growth resource. Hence for the last six years we have been cutting at an unsustainable rate in the regrowth forests, 20 years before they should have been heavily cut. Accordingly the growing stock resources of the regrowth forest have been seriously depleted which is indicated by the difficulties which have now become apparent in supplying commitments from a very restricted forest area.

Because the G L Briggs quota has been terminated as at the 30/6/96 and the two remaining Boral quotas reduced by 30%, the current base quota commitment is 27958 metres. Addition to this is a undercut from 95/96 of 5812 metres, giving a total commitment from Dorriggo MA in 1996/7 of 33,770 metres. Additional total commitments from Coffs Hbr. and Grafton MA's respectively are 1525 metres and 2797 m. In following years the quota commitments should be Dorriggo 27958 metres, Coffs 1745 metres, and Grafton 6000 metres. (Note: the Grafton figure needs to be checked as it depends on some

negotiations with Grafton district and the Sales Manager in conjunction with the customers. Dorrigio district "owns" 26000 hectares of Grafton MA.)

This gives a total quota volume required for the next three years of:

Dorrigio MA	89,686 cubic metres
Grafton MA	14797 cubic metres (SEE ABOVE)
Coffs MA	5015 cubic metres

The Dorrigio district section of Coffs MA is only about 5000 hectares total and most of it is plantation, a large part was burnt severely in the Bobo fire and the remainder is 50% rainforest. The WRS indicates a standing available volume outside the conservation option of approximately 9000 metres. With reductions due to EPA and fauna licensing this is likely to just meet the required 5000 metres.

In Dorrigio MA there is about 10,000 metres available from current areas and areas where harvesting plans have been submitted for approval and which are outside the conservation option. Beyond this I have reviewed all the areas which are within the Management area and which are available to log under the conservation option. Using the WRS volumes, all of these areas are estimated to yield a total volume of 22,500 metres. However there are likely to be very significant reductions in volumes for some of these due to Hastings River Mouse prescriptions which could see the volume reduced by 20%. Hence the volume available will be about 18,000 metres. This gives a total available volume from the MA of 28000 cubic metres from July 1 1996.

In Grafton MA on the information supplied to Andrew Lugg by Flavio, the Compartment 50, 51, and 52 volumes need to be removed as they are within Dorrigio MA anyway while the current operations in Cpts 111, 114, 191, and 192 are already 50% complete and hence the volumes should be reduced to a total of 8000 metres.

Additional to this 8000 cubes and outside the conservation option, the WRS indicates that there is another 63,000 metres of standing volume in Grafton MA. This number needs to be reduced by an estimated 20% to account for losses due to fauna and EPA restrictions. These areas are prime koala habitat and additionally there are significant

areas of Hastings River Mouse habitat within Clouds Ck SF. Hence, assuming no restrictions from the current DFA, this leaves a volume of 50,400 metres as being theoretically available.

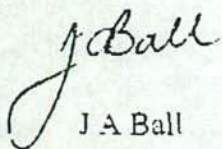
To summarise the above, for the next three years, ignoring the current DFA and operating only in compartments available under the conservation option, the following is the picture:-

	Quota	Available
	<u>Commitment</u>	<u>Standing Vol</u>
Coffs Harbour MA	5015	5000
Dorrigo MA	89686	28000
Grafton MA	<u>14797</u>	<u>50400</u>
Total Volumes	109498	83400

Of course the above scenario does not leave much in the way of growing stock for growing forward into the next cutting cycle, ie. it is totally unsustainable and very poor forestry. I guess you knew that anyway!!!

I trust that this helps answer your query. I haven't gone through these numbers to look at when we run out of volume in the various MA's as I indicated in the last report. If needed you could calculate these yourself easy enough by using average monthly cuts.

Regards,

JI


J A Ball
DF, Dorrigo

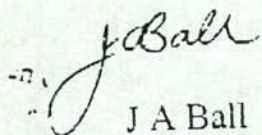
URGENT**FACSIMILE TRANSMISSION**

To	FOREST PLANNING AND ENVIRONMENT		
Attention	TONY O'HARA	Date	20/7/96
Your Fax		Our Fax	066 572543
From	JOHN BALL	Phone	066 572083
No of Pages	1 (including this cover page)	File No	239D

Message

Tony,

Re the FAX that I sent to you a short while ago, I have just realised that the standing quota available figures need to be multiplied by 0.88 filter factor as they will include volumes of thinnings, veneer and poles piles and girders. Because of the move from old growth to regrowth logging this will be a conservative number, ie. there will be more thinnings from current and future operations than is indicated in the filter factor which is an average of 10 years of data, five of which were pretty much totally old growth logging. Sorry to complicate things further,



J A Ball
DF, Dorrigo



State Forests of
New South Wales

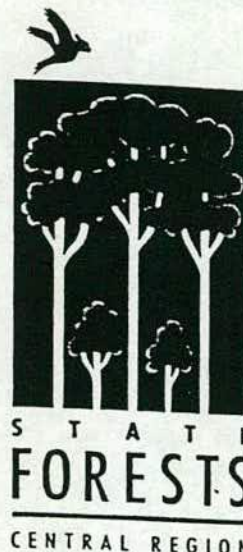
Dorrigo District

P.O. Box 160

DORRIGO 2453

Phone (066) 57 2083

Central Region



To *all Districts*

From I Elsley

Date 19 June, 1996

RO File Ref. 1768

Sustained Yield Estimates

The recent request to supply updated sustained yield estimates and their basis/relationship in/to WRMS needs some more information as regards what went into WRMS for District, and this is spelt out below.

1. MORISSET

I am not clear on what went into the "second" run, but the original data for resource units was **not** based on generalized look-up tables (eg all SG in Pokolbin has these volume values/all in Watagans, these).

Each resource unit was reduced in "area" terms to 90% to take account of areas taken up by roads and dumps etc **and** the losses due to inaccessibilities caused by cliffs (see notes for reference 3 in the WRMS definitions), ie a bit more than most Districts

At HO in the final stages, a reduction for EPA/filter strips and Section 120 effects was needed. A reduction of a further 5% (to 85% overall) was decided on, based on information from the District previously collected but not used by HO.

2. BULAHDELAH

The volume data was based on look-up tables, based on forest type/logging history. Reductions as per reference 3 were given by these combinations as well (eg 95, 90, 85%) but apparently include some allowances for EPA/fauna type reductions. These were to be reduced, initially by 15% but, at the last HO run, this may not have occurred. In fact, my most recent file shows that they were reduced by 19% which was to be the "full" figure for all remaining Districts, not a further reduction. The District is thus over-reduced.

3. ALL OTHERS

Standard reduction was gross to net area by a 5% reduction in the collected data. Before final HO runs these were to be reduced by a further 15% or a total of 19% overall, based on best figures available (Wauchope) for EPA etc losses.

I think this happened correctly for every MA, except Taree which had a conversion factor of 67% applied at HO (I cannot work out how this was derived - its not 0.95×0.81 or 0.81×0.15 etc).

DIST. FORESTER	ACTION	
FOR: MARKETING		
FOR: OPERATIONS		
ASSISTANT		
DAO		
CO1		
CO2		
CO3		
CO DUNGOG		
RESUB	TO:	CS:
N/BOARD DUNGOG		
N/BOARD GLOUC		
FILE		

SPB-6
dm
8/21

4. OTHER CONSIDERATIONS

Remember, our volumes in WRMS are standing volumes, and the sustained yields worked out in WRMS were **current harvestable**. These were set up with various constraints which varied from District to District. The only record of these are in HO SAS files. For comparison, the attached list shows a default set we were originally going to use, but because of WRMS LP problems some big variations to them were run in the end (eg Kendall had 66% of growing stock **removed** to get the final sustained yield).

Remember also, the effect of various 30, 50 and 70% options **and** the NP Wilderness Cpts **and** the NP Old Growth **and** NP rainforest definitions **all** affect sustained yield on a **compartment** basis, while all our data is at **resource unit** level.

It is **not** possible to directly compare Cpt volumes at various levels **and** areas involved since an "OG" Cpt to the NPWS may only be **part** OG to us in terms of its resource units.

There are a lot of tricky things involved and it is quite easy to make the wrong claims and conclusions.

Consequently, until much more refinement has gone into all aspects of WRMS (not least of which is error checking), the Sustained Yield figures generated by WRMS must be treated as interim. I'm not even sure how the "sustained yield" of each resource unit was calculated and over what period and involving what assumption, so don't blindly accept the WRMS version as closer to the truth until all the "ifs and buts" are sorted out.

I Elsley
INVENTORY OFFICER
CENTRAL REGION



Default Table

- NB 1. For Hi Value Prod Only, Assume Size Distrib of Prod Follows BA Breakup
eg BA = 20, 30, 40, 10, then 20% Hi Vol is in 10-30cm class
2. For Low val prod assume Vol is only avail in 30cm+ BA classes
3. For pulp assume:
- Unlogged Strata contain all vol in 50cm+ class
 - Regrowth Merch contain vol only in 30-100cm classes (none above 100cm)
 - Regrowth Submerch contain vol only in 0-30cm classes
 - Plantation contain vol (initial) in 0-50cm classes

While, Low & Pulp do not have a value differential for size, using these assumpt may make it easier to allocate pred vol using BA ratios at some stage.

Size Dist	Propor RETAINED After Log			BA Predominating		
	Hi	Low	Pulp (Curr)	<30	30-50	50+
{1	0.9	0.5	0.6	x		
Plnt {2	0.8	0.4	0.4		x	
{3	0.6	0.4	0.4			x
Mixed {4	0.5	0.2	0.5	x		x
Age {5	0.7	0.1	0.5		x	x (50-100cm)
Recut 6	0.5	0.4	0.4		x	x (mainly 100cm+)
OG 7	0.1	0.4	0.4			x (1/2 each)
OG 8	0.05	0.4	0.4			x (mainly 100cm+)
Mixed 9	0.6	0.6	0.6	33%	33%	33%

There is a case to vary these depending on Growth stage/FT

eg Even - age FG at SD = 2 or 3 may retain only half of each class shown here.

Progression

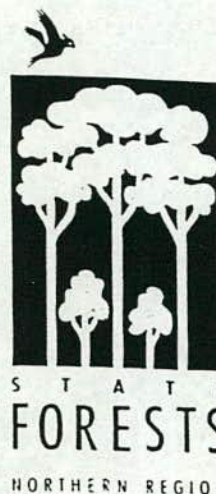
The progression should be tied to Site qual in some way as well as logg hist.								
At this stage a split between natural and plt is all that is done								
Some types may even repeat its SD at next CC and remain uncut due to slow growth								
<i>Edge User</i> SD Now	Progression-Best gr rate FT's assumed (<i>could vary for diff FT'n</i>)							
	CC1	CC2	CC3	CC4	CC5	CC6	CC7	
1 Plt	2	3	3	1	2	3	3	3
1 Nat	2	4	5	5	9	9	9	9
2 Plt	3	3	1	2	3	3	1	1
2 Nat	2	5	4	9	9	9	9	9
3 Plt	3	1	2	3	3	1	2	2
3 Nat	3	4	5	9	9	9	9	9
4	5	5	9	9	9	9	9	9
5	5	9	9	9	9	9	9	9
6	5	4	9	9	9	9	9	9
x { 7	4	1	2	4	5	5	9	9
8	8	8	8	8	8	8	8	8 (12 uncut)
9	9	9	9	9	9	9	9	9

* Some FT's may not change at all after 1st logging !!
 eg NEB types 04 = 8 - after TCI = 7 !!

URGENT

FACSIMILE TRANSMISSION

To	PLANNING MANAGER - NORTHERN		
Attention	JIM SIMMONS	Date	25/6/96
Your Fax		Our Fax	066 572543
From	JOHN BALL	Phone	066 572083
No of Pages	1 (including this cover page)	File No	239



Message

JIM,

Following herewith are responses to various IAP matters for your attention and review. The response to the provisionally identified wilderness (PIW), has been mailed direct to John Murray at Central region.

IAP Report - T O'Hara Paul Roberts who undertook all of the WRS work is currently on three weeks leave in Nth America and will not be back at work until the 15th of July. Hence I am not able to give much of an assessment of the accuracy of the RU data against actual yields. My recollection is that any compartments which we were working in at the time that the data was put together was entered as nil in any case and we wouldn't have finished any areas where logging commenced after the WRS study was undertaken. The only area which is close to being finished is Cpt 539 at Wild Cattle Ck SF for which WRS records a charvhi of 2827 cubic metres. The actual yield of high value products to date is 2698 cubic metres. There is a small area yet to be cut as a result of koala prescriptions and there are no dockets outstanding. Hence this is a very close agreement with the predicted volume from the WRS.

The filter factor which has been applied for Dorriggo of 0.88 is a fair average over the last 10 years of sales and market conditions. I don't believe that it is valid to make a judgement as to how relevant it might be to some future market which may be totally different to what has been experienced in the past.

State Forests of
New South Wales

Dorrigo District

P.O. Box 160

DORRIGO 2453

Phone (066) 57 2083

The WRS model was run and modified so many times that I do not have a copy of the last version and I do not know what final sustained yield level was indicated. The situation with sustained yield in Dorrigo management area is so difficult that it is impossible for me to give any sort of informed opinion. This is because of the large change in the resource base and the withdrawal of logging from the old growth resource in 1992 which resulted in unsustainable levels of cut in the regrowth forest at least 15 years earlier than desirable. For this reason the district has just completed a plot based inventory of the resource which is currently being processed. Until the results of this are to hand, I don't believe that anyone can make a reasonable estimate of the current sustained yield. I know that this is not the answer that is required never the less that is the situation.

Sustained yield estimates-HO letter of 15/4/96

See my comments above. The SY tabulated for Dorrigo from the WRS is 28200. As mentioned above I am unable to confirm this as I never saw the end result of the last version of the model. I have to say that this figure doesn't obviously include the volumes present in the West Chaelundi old growth as it would be much higher if it did. (There is a million cubic metres of standing volume in this area of about 8000 hectares) Hence the assumptions given to base the estimate on at the bottom of the first page of the HO FAX have already been ignored. **I very strongly believe that the recent past events in the forests of the Dorrigo MA are such that no-one can make a reasonable professional judgement on what the current SY should be. At least I refuse to commit a number to paper until the recent plot based inventory has been analysed. It is noteworthy that this will be the first opportunity to compare the WRS modelled SY with some figures from a plot based inventory undertaken using the MARVL software.**

State Forests submission on the Commonwealth targets

I only have some brief comments on this aspect as follows

1. The process ignored crown land reserves and nature reserves which were less than 200 hectares in extent. These areas would have contributed significantly to targets which were otherwise sought from State Forest and in most cases are secure reserves from logging already.

2. The excessive splitting of targets into regions and subregions together with the huge number of biological units compared with other states has greatly exceeded the reservations required by the Commonwealth and achieved in the other states.
3. The general lack of detailed biological information on the National Parks estate has led to a disproportionate reservation of State Forest. This is a difficult point to prove however some information from Narooma district where SF staff are surveying adjoining park for fauna occurrence could be used to advantage. I believe there are many associations and flora and fauna occurrences which are reserved in the National Parks estate but which are poorly known.
4. I believe that we have greatly exceeded the Commonwealth criteria for 'Old Growth' reservation however I don't have the time to put this claim into comparative figures and nor do I have access to the figures for the whole of the Northern region

Hope that this is all some sort of help. Please give me a call if I can assist further.



J A Ball

DF, Dorrigo

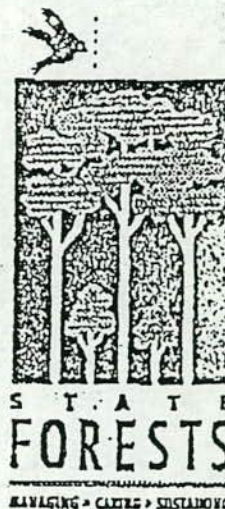
Forest Planning & Environment

To RACAC Attention: Rex Bowen

From Dr. Tony O'Hara
Project Manager - Wood Resources Study

Date 19 February, 1996

Subject Sustained Yield Calculations for the IAP



INTRODUCTION

The Urbenville Trial on 8 February 1996 raised some issues about the way in which "sustained yield" is treated in the IAP for definition of deferred forest areas. This memo addresses those issues and suggests a methodology for resolution.

FOREST ISSUES

The bulk of the native hardwood forest sector is in a transition period between dependence on supply from relatively mature forests dominated by large and relatively slow grown trees to dependence on smaller and faster grown trees from regrowth forests. The progressive reduction in harvesting of logs from old growth forests has accelerated this process.

Coupled with an accelerated transition to regrowth forests has been an increasingly more stringent set of harvesting protocols which have reduced the volume harvested from any given area of forest.

The net effect of these two forces has been to create a constriction in the supply of logs from managed forests over the next 10 to 15 years, as a reducing supply of mature forest logs coincides with a limited supply of logs from regrowth forests. For this period, the supply of logs meeting "quota" specifications (even if these are relaxed to include smaller logs) will be quite limited. As regrowth forests are thinned and progressively mature, the supply of "quota" logs will progressively increase.

If "sustained yield" is thought of as the maximum volume of wood that can be harvested in any year (according to a specified harvesting protocol) while restricting harvest volume

- to the maximum annual volume that the forest can grow, and
- to a level that does not decline from one year to the next (non-declining flow),

then the sustained yield for most native hardwood forest areas will be expected to decrease from 1995 sustained yield calculations by, say, 30% in 1996 and remain at that level for the next 10 to 15 years (ie during the transition period) and then to increase as regrowth forests mature.

It is very difficult to accelerate the growth of regrowth forests sufficiently to "bring forward" the year in which the increased volume from regrowth can be harvested. Even if growth could be accelerated, it is likely that log quality would be poorer and markets would need to be found for the pulpwood grade regrowth thinnings that were produced in the interim. As a consequence, there is considerably less flexibility in harvest scheduling over the next 10 to 15 years than is the case beyond this period.

The inflexibility in yield scheduling applies just as strongly to the likely three year period of the CRA process as to the 10 to 15 year transition period. Any action which involves harvesting above the sustained yield level for any part of the transition period has implications for the remainder of the transition period.

CONSEQUENCES FOR THE IAP

The linear programming (LP) model used by State Forests for yield scheduling sets as a constraint a non-declining flow over the first five years and then allows any level of harvest that does not fall below the harvest level in year five. This permits a substantial increase in yield to occur in later periods without the restriction that the yield *never* decreases from one year to the next after year five. Within this constraint, the LP model seeks to maximise the value of the harvest of "quota" sized sawlogs in any year - the very close link between value and volume means that effectively the maximum volume is harvested each year.

The sustained yield calculated in this way (prior to the IAP) is the *maximum* volume that can be harvested in any year over the next five years, prior to any units of the forest being included in deferred forest areas. The nature of the LP procedure is to bring forward in time the harvest of as much volume as possible within the non-declining flow constraint, but recognising the link between log size and value.

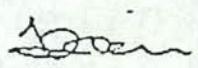
Inclusion in deferred forest areas of any units of the forest which are intended to be harvested over the next five years almost invariably leads to a decrease in the sustained yield harvest level. The reason for this is that the "pool" of areas able to supply sawlogs over the next five to ten years is quite restricted, for the reasons outlined above. Removal of areas from that "pool" cannot be replaced by harvesting regrowth stands any earlier, either because logs in the regrowth stands are not large enough or because there are insufficient of them to make a harvesting operation economically viable.

"Overcutting" during the CRA period means harvesting during that period at a rate above the sustained yield level recalculated after the IAP. *Overcutting must inevitably lead to a substantial decrease in harvest volume immediately after the CRA unless the specific forest units which were intended prior to the IAP to be harvested during the CRA period are made available for harvesting immediately after the CRA (ie are not required in a CAR reserve system).* Given the limited likelihood of this occurring, overcutting during the CRA process simply postpones the inevitable while abrogating one of the fundamental principles of sustainable forest management. This is not a position which State Forests could support.

RECOMMENDATION

That the harvest volume for quota sawlogs specified following the IAP be the recalculated sustained yield level for that part of the forest not included in the deferred forest area.

Comment is sought on this principle from the next Socio-Economic Working Group and Conservation Working Group meetings.



Dr. Tony O'Hara
Project Manager - Wood Resource and Market Study

PROPOSED HARDWOOD TIMBER TERM AGREEMENT

MEMORANDUM OF ADVICE

1. The Minister for Land and Water Conservation on behalf of the State of New South Wales proposes to enter into agreements with the Forestry Commission of New South Wales and various companies for the supply of timber. I am briefed with a contractual document referred to as "Draft (JGD2)" and I have been asked to advise on its operation on the assumption that it will be executed.
2. The contract ensures to the company the supply of timber of a particular quality and volume for five years, with the right to seek renewal for a further five years: cls.3-5, 12, 13. The contractual rights created by the agreement are marketable with the consent of the Minister: cls.24, 25.
3. The fundamental obligation assumed by both the Forestry Commission and the State of NSW is to supply the relevant quantity and quality of timber: cls.3.3, 5.1. The fundamental obligation assumed by the company is to take such timber when directed to do so and to pay the contract price for it: cls.3.1, 3.2. There are other, subsidiary obligations by both parties which it is unnecessary for me to review.
4. There is no obligation on the company to mill the timber or otherwise to add value to it: cl.18.2. The only reference to value-adding in the agreement is in cl.25, where it is one of the limited criteria on which the Minister may refuse to renew the agreement for a further five years. This provision does not, however, require the Minister to adopt any value-added criteria. In the first five years of the agreement, no contractual obligation will be imposed in the company even to mill the timber taken, let alone devote it to higher end uses. The Minister may impose a value-adding condition on any renewal of the agreement (cl. 25.3.1), but such a condition may not be enforceable against the company. The condition is not contractual as it would exist outside the four corners of the contract. The right to renew, once conceded by the Minister with or without conditions, continues the agreement (without any value-adding obligation) in force. It does not require any variation of the agreement, and variations cannot be made without the consent of all the parties: cl.26.2. Accordingly, a breach of any value-adding criteria applied by the Minister may not be capable of direct remedy. It is

possible that the failure to fulfil such a condition may operate as a breach of a condition subsequent which will bring the renewed contract to an end. This is inconsistent with the way in which the condition is imposed, which is more in the nature of a condition precedent. However, satisfaction of a value-adding criteria is highly unlikely to occur prior to the renewal of the contract. It would be misleading to claim that this agreement requires or even contemplates that the company will add value to the timber taken under the agreement.

5. The contract recognises that the obligations of all parties may be frustrated by external events over which they have no control: cl.20. Frustration of a contract brings the obligations of the parties to an end. Previous wood supply agreements on which I have advised have either provided expressly for the adjustment of quantity and supply area by reference to forest management practices, which would necessarily include conservation measures, or, on their proper construction, have treated State regulatory action which restricts timber supply as a frustrating event. This contract has been drafted specifically to overcome the problem which I have highlighted in my previous advices. The force majeure clause does not excuse either the Forestry Commission or the State from performing their obligations to supply the agreed quantity of timber where the frustrating event is an act or omission of the State or any of its authorities: cl.3.3. In other words, the contractual duty of the State and the Forestry Commission to supply the resource at the agreed quantities must be fulfilled, even if regulatory or policy decisions are taken by other decision makers to limit or remove sources of wood supply: eg. the Premier decides to implement the Intergovernmental Agreement on the Environment and the Commonwealth/State forests agreements by reserving from logging high conservation value forests; the Minister for Urban Affairs and Planning rejects logging projects or limits their area or intensity under Part 5 of the Environmental Planning and Assessment Act 1979; the Environment Protection Authority refuses pollution licences for logging activities on public and private land, or imposes conditions on those licences which severely restrict the resource which may be taken on steeply sloping land or in drinking water catchments; the Minister for the Environment exercises her powers under the Threatened Species Conservation Act 1995 or the National Parks and Wildlife Act 1974 to restrict logging of certain habitats; the Heritage Council of NSW recommends and the Minister for Urban Affairs and Planning places interim or permanent conservation orders on forest areas.
6. If any of these events occur, none will destroy the fundamental contractual obligation of the State and Forestry Commission to supply timber pursuant to the agreement.

Unlike other term agreements, however, this agreement does not restrict the source of timber to a particular area of supply. No commitment is given by the Forestry Commission that the timber will be available from any such area: cl.5.2. If supply shortages occur, timber may be imported or made available from conservation areas set aside in state forests for future reservation, Crown land which is not reserved as state forest, public reserves, wilderness areas or national parks. The Forestry Commission can log (or purchase logs taken from) wilderness areas or national parks where the park or area has been reserved over land for which an existing statutory right to take timber subsisted at the date of reservation or declaration: s.39(2), National Parks and Wildlife Act 1974; s.8(5), Wilderness Act 1987. Wilderness areas may also be logged by the Commission at any time if the Minister for the Environment agrees: s.15, Wilderness Act 1987. The Forestry Commission can also purchase private land or timber rights on private land to supply timber pursuant to contract, although it would be subject to similar potential restrictions on supply as are referred to in the previous paragraph.

7. If there is not enough timber resource to satisfy the contractual obligations of the State and the Commission, the practical effect of this provision is to foreclose those policy and regulatory options and, if necessary, to open the State's conservation reserves for logging.
8. There are usually three remedies for breach of a contract. If the breach is of a fundamental provision, the innocent party may terminate the contract. Some contracts specifically provide for a right to terminate even where a breach is not fundamental. Clause 22 is such a provision which enables either party to call upon the other to remedy the breach and if it is not remedied within a certain time the innocent party has a right to terminate the contract. The second remedy is to seek a Court order for specific performance of the contract from a court. Such an order calls upon the party in breach to perform its obligations under the contract. The third remedy is damages.
9. Government contracts which call upon the Government parties to exercise statutory powers or discretions are probably not specifically enforceable: **Ansett Transport Industries (Operations) Pty Ltd v. The Commonwealth** (1977) 139 CLR 54 at 77 per Mason J. The only Government contracts which are specifically enforceable are contracts which have statutory approval and the statute not only authorises but also requires the performance by the Government party of its obligations.

10. Damages are available for breach of this contract: cl.21, cl.22.1. However, the contract limits the liability of the Government parties for damages by reason of any failure to make timber available or to supply or deliver timber to the company. The company can only recover its direct loss and cannot claim indirect loss, including loss of profits, business opportunity or consequential loss. The company can recover past losses, but not future losses: cl.21.2. On its face, this is a highly restrictive provision in a resource security contract. Such contracts are most valuable when most of the resource remains to be extracted. If only past losses can be recovered, the Government's liability upon default will be significantly limited.
11. It may therefore be anticipated that the companies which enter these contracts will adopt business plans enabling them to maximise any past and direct loss which may be occasioned as a result of a Government default by crystallising consequential losses immediately upon breach (eg. by entering futures contracts). Alternatively, the company could create other corporations to which it would be immediately liable for damages upon breach by the Government of the timber supply contracts. The limitation of liability clause can be readily evaded by the company structuring its business so as to maximise its right to damages against the Government in the event of Government default.
12. The limitation of liability clause will be ineffective for another reason. An act by Government in its operational capacity may have most if not all of the legal consequences that the same act would have if undertaken by an individual. On the other hand, an act by Government of a policy nature may have few if any of those consequences. This distinction has been adopted in the law of public authority negligence and estoppel in the exercise of governmental power. Subject to my observations concerning specific performance, the entry into a long term timber supply agreement would be characterised as an operational rather than a policy decision. It is a commercial contract entered into by a business arm of Government for the sale of a resource. Despite the fact that it may preclude policy options relating to the conservation of high quality habitat, the contract itself is likely to be characterised by the Courts as having an operational rather than a policy flavour. Accordingly, there is no reason why the ordinary principles of the law of tort and, of course, the provisions of the Trade Practices Act and Fair Trading Act do not apply to its formation and performance.
13. The undertaking by the State of NSW in cl.3.3 to ensure that the Forestry Commission has sufficient timber resources to perform the contract is in the nature of a

representation which, if it is made fraudulently or negligently, will give rise to a right to sue for damages for misrepresentation. Consequential loss can be recovered if the company succeeds in any such action. The measure of damages is different in tort and contract. Contractual damages may be higher if the company's venture was expected to be highly profitable. Exemplary damages are available in tort but not contract even if the defendant's actions also constitute a breach of contract: **Drane v. Evangelou** [1978] 2 All ER 437. If the timber resource was not available and could not be procured, then the contractual undertaking by the State of NSW and the Forestry Commission to make resources available constitutes a representation with respect to a future matter, and if either the State or the Forestry Commission did not have reasonable grounds for making the representation, it is taken to be misleading: s.41(1), Fair Trading Act 1987. It is a breach of the Fair Trading Act to engage in misleading conduct in trade or commerce. The Fair Trading Act binds both the State and its statutory authorities when they are carrying on a business: s.3(1), Fair Trading Act 1987. Plainly this undertaking has been given in a commercial context by the State for the purposes of encouraging companies to contract with a State business enterprise with a view to profit.

14. In my opinion, the prohibition on misleading conduct in the Fair Trading Act applies to this transaction, and if the representations induced a company to enter the contract, then both the State and the Forestry Commission are potentially liable in damages for both direct and consequential loss. This will be a compelling practical incentive for the Government parties to perform their contractual obligations by supplying the guaranteed timber resource, even though the remedy of specific performance may not be available to the company.

TIM ROBERTSON

Frederick Jordan Chambers

12 December 1996

John R Corkill

Public Interest Advocate

Environmental Educator, Planner, Policy Adviser

1 Oliver Place, Lismore. 2480. (066) 224 737 w [ph & fax] (066) 21 6824 h

Mr Tim Robertson, Barrister at Law,
2nd Floor, Frederick Jordan Chambers,
53 Martin Place, Sydney. 2000.

10 January 1997

Dear Tim,

Re: Review of Timber Supply 'Term Agreements'

I refer to your written advice on this matter (6/12/1996) and to the short Memo of Advice (20/12/1996) prepared by Mr Brian Preston of counsel, on the question of the power relied on by SFNSW for entering into contracts for the sale of timber from NSW state forests.

I am advised by Dailan Pugh that he has been informed by Dr Bob Smith, Chief Exec of the SFNSW that two amendments were made to the draft 'generic' contracts which form the basis for timber 'term agreements' with individual mills:

- * to require that value adding criteria be met as a pre-condition to the renewal of the 5 year contracts
- * to limit the state government's liability to only those direct costs incurred by industry.

As you would be aware both these amendments address matters which you raised in your written advice, released by NEFA & NCC to the media and the government in early December 1996.

Please find attached a copy of this amended draft generic contract, supplied by SFNSW.

I request that you review this draft generic contract to ascertain the veracity of the claimed amendments and to determine whether this version suffers from the same defect of 'ultra vires' as did the earlier draft.

If the fundamental lack of power remains unremedied, I further request that you provide to me a short written advice on the steps necessary to prepare proceedings to challenge contracts issued in these terms. For example is it necessary to retain solicitors to prepare court documents etc?

I will attempt to obtain a copy of copies of relevant contracts, but I believe that complete signed copies may not be made available other than via a subpoena from the court. Is it essential to obtain the actual contract at this stage, before commencing proceedings?

Barry Griffith has agreed to fund this additional advice on the same terms as were agreed for the provision of your earlier memorandum. Are these terms acceptable to you? If not, please advise Barry or me as soon as possible of your preferred terms.

Thank you for your attention to this important matter.

Yours sincerely,

J. R. Corkill

PROPOSED HARDWOOD TIMBER TERM AGREEMENT*Tim Robertson***MEMORANDUM OF ADVICE**

-
1. The Minister for Land and Water Conservation on behalf of the State of New South Wales proposes to enter into agreements with the Forestry Commission of New South Wales and various companies for the supply of timber. I am briefed with a contractual document referred to as "Draft (JGD2)" and I have been asked to advise on its operation and validity on the assumption that it will be executed.
 2. Three questions arise for consideration:
 - a. how will the contract operate;
 - b. does it enjoy statutory authority or is it otherwise authorised by the State's power to contract, and
 - c. is there any constitutional principle or legislative prohibition which might affect its operation?

OPERATION OF THE CONTRACT

3. The contract ensures to the company the supply of timber of a particular quality and volume for five years, with the right to seek renewal for a further five years: cls.3-5, 12, 13. The contractual rights created by the agreement are marketable with the consent of the Minister: cls.24, 25.
4. The fundamental obligation assumed by both the Forestry Commission and the State of NSW is to supply the relevant quantity and quality of timber: cl.3.3, 5.1. The fundamental obligation assumed by the company is to take such timber when directed to do so and to pay the contract price for it: cls.3.1, 3.2. There are other, subsidiary obligations by both parties which it is unnecessary for me to review.
5. There is no obligation on the company to mill the timber or otherwise to add value to it: cl.13.2. The only reference to value-adding in the agreement is in cl.25, where it is one of the limited criteria on which the Minister may refuse to renew the agreement for a

(Name) Mrs M. MARICONIC
(Address) 11 ELLISTON PL
MENAI P/C 2234

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

Dear Mr Corbett,

Unfair Review of Child Care Regulations

The Department of Community Services' recently reviewed N.S.W.'s centre-based child care regulations. The Department had six years to prepare the review but offered industry only six weeks to absorb and respond to the significant changes.

This rush has led to needless costs, problems and confusion. There was no proper assessment of costs and benefits, and not enough time to allow proper consultation, especially with the private sector which had not been included in the Department's Advisory Reference Group (even though private services 70% of long day care).

The new regulations came into force on 1st September, 1996 but on 9th September, 1996 the Department instructed existing licensees to continue to comply with 1989 regulations while the Department seeks advice on "implementation timeframes". I can understand why the Department has effectively suspended the new regulations given the extent of the problems with them, but I question whether the Department is authorised to make these pronouncements, and whether the Department will get it right next time if left to itself.

I ask that Parliament now exercise its responsibility for correcting the problems. The Shadow Minister agrees and on or about 22nd October, 1996 will move for the disallowance of the regulations to enable the review process to be done properly. This letter seeks your support for that course.

I do not oppose the need for sensible regulation providing proper protection at reasonable cost. But the new regulations go beyond sensible; for example:

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Imposing unnecessary costs on centres, parents and taxpayers will harm the economy and weaken our community. That is what is at stake here. Please support the Shadow Minister's motion as the first step to allow proper procedures to be followed.

Yours faithfully,

1st October, 1996

6 December 1996

Page 2

further five years. This provision does not, however, require the Minister to adopt any value-added criteria. In the first five years of the agreement, no contractual obligation will be imposed in the company even to mill the timber taken, let alone devote it to higher end uses. The Minister may impose a value-adding condition on any renewal of the agreement (cl. 25.3.1), but such a condition may not be enforceable against the company. The condition is not contractual as it would exist outside the four corners of the contract. The right to renew, once conceded by the Minister with or without conditions, continues the agreement (without any value-adding obligation) in force. It does not require any variation of the agreement, and variations cannot be made without the consent of all the parties: cl.26.2. Accordingly, a breach of any value-adding criteria applied by the Minister may not be capable of direct remedy. It is possible that the failure to fulfil such a condition may operate as a breach of a condition subsequent which will bring the renewed contract to an end. This is inconsistent with the way in which the condition is imposed, which is more in the nature of a condition precedent. However, satisfaction of a value-adding criteria is highly unlikely to occur prior to the renewal of the contract. It would be misleading to claim that this agreement requires or even contemplates that the company will add value to the timber taken under the agreement.

6. The contract recognises that the obligations of all parties may be frustrated by external events over which they have no control: cl.20. Frustration of a contract brings the obligations of the parties to an end. Previous wood supply agreements on which I have advised have either provided expressly for the adjustment of quantity and supply area by reference to forest management practices, which would necessarily include conservation measures, or, on their proper construction, have treated State regulatory action which restricts timber supply as a frustrating event. This contract has been drafted specifically to overcome the problem which I have highlighted in my previous advices. The force majeure clause does not excuse either the Forestry Commission or the State from performing their obligations to supply the agreed quantity of timber where the frustrating event is an act or omission of the State or any of its authorities: cl.3.3. In other words, the contractual duty of the State and the Forestry Commission to supply the resource at the agreed quantities must be fulfilled, even if regulatory or policy decisions are taken by other decision makers to limit or remove sources of wood supply: eg. the Premier decides to implement the Intergovernmental Agreement on the Environment and the Commonwealth/State forests agreements by reserving from logging high conservation value forests; the Minister for Urban Affairs and Planning rejects logging projects or limits their area or intensity under Part 5 of the Environmental Planning and Assessment Act 1979; the

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(Address) 85 Old Illawarra Rd
Lucas Heights P/C 2234

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Macquarie Street,
SYDNEY NSW 2000

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1st October, 1996

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Page 3

Environment Protection Authority refuses pollution licences for logging activities on public and private land, or imposes conditions on those licences which severely restrict the resource which may be taken on steeply sloping land or in drinking water catchments; the Minister for the Environment exercises her powers under the Threatened Species Conservation Act 1995 or the National Parks and Wildlife Act 1974 to restrict logging of certain habitats; the Heritage Council of NSW recommends and the Minister for Urban Affairs and Planning places interim or permanent conservation orders on forest areas.

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(Address)..... 147 WYNHAM ST
ALEXANDRIA P/C 2015

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
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SYDNEY NSW 2000

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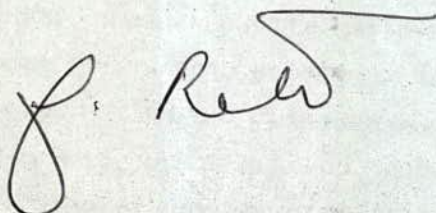
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Yours faithfully,



1st October, 1996

Page 4

specific performance of the contract from a court. Such an order calls upon the party in breach to perform its obligations under the contract. The third remedy is damages.

10. Government contracts which call upon the Government parties to exercise statutory powers or discretions are probably not specifically enforceable: **Ansett Transport Industries (Operations) Pty Ltd v. The Commonwealth** (1977) 139 CLR 54 at 77 per Mason J. The only Government contracts which are specifically enforceable are contracts which have statutory approval and the statute not only authorises but also requires the performance by the Government party of its obligations.
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12. It may therefore be anticipated that the companies which enter these contracts will adopt business plans enabling them to maximise any past and direct loss which may be occasioned as a result of a Government default by crystallising consequential losses immediately upon breach (eg. by entering futures contracts). Alternatively, the company could create other corporations to which it would be immediately liable for damages upon breach by the Government of the timber supply contracts. The limitation of liability clause can be readily evaded by the company structuring its business so as to maximise its right to damages against the Government in the event of Government default.
13. The limitation of liability clause will be ineffective for another reason. An act by Government in its operational capacity may have most if not all of the legal consequences that the same act would have if undertaken by an individual. On the other hand, an act by Government of a policy nature may have few if any of those consequences. This distinction has been adopted in the law of public authority negligence and estoppel in the exercise of governmental power. Subject to my observations concerning specific performance, the entry into a long term timber supply agreement would be characterised as an operational rather than a policy

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HWY CAMDEN P/C 2570

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A Better Life for our Children,
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Macquarie Street,
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Cherie Hau

1st October, 1996

Page 5

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(Name) MIRZI PETONIC

(Address) 56 DEBORAH CRESCENT

CAMBRIDGE PARK P/C 2747

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

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- * requiring additional space without explaining why more is needed, without analysing costs and benefits, and without proper consultation.

Imposing unnecessary costs on centres, parents and taxpayers will harm the economy and weaken our community. That is what is at stake here. Please support the Shadow Minister's motion as the first step to allow proper procedures to be followed.

Yours faithfully,

M. Petonic

1st October, 1996

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STATUTORY AUTHORITY

16. There are two possible statutory sources of power to enter into long term wood supply agreements: the Forestry Act 1916 and the Public Authorities (Financial Arrangements) Act 1987.

17. There is no doubt that the Forestry Commission may itself log (s.11(1)(b)) and then sell the timber it has logged (s.11(1)(c)(i)), and it may also downstream process the timber it has taken (s.11(1)(d)). It may enter into an agreement with any person for the sale to that person of timber or other products taken by the Commission or produced as a consequence of downstream processing (s.11(1)(m)(i)). It may enter into an agreement with any person:

"under which the Commission, with the approval of the Minister, agrees to issue to that person timber licences or products licences or timber licences and product licences for the taking, at such intervals or during such periods, of such quantities or kinds of timber or products or timber and products, as may be specified in the agreement from lands within any area so specified".
(s.11(1)(m)(ii))

18. One of the contractual obligations of the Forestry Commission is to issue licences "enabling the company or the contractor to take timber" (cl.10.1). There is clearly statutory authority for the Forestry Commission, with the approval of the Minister, to enter a contract agreeing to issue the company with a timber licence. A timber licence authorises the logging of a state forest: s.27, s.27A(1). Such an agreement would be authorised by s.11(1)(m)(ii).

19. An alternative method of taking timber is provided for in the contract, under which the Forestry Commission may itself retain contractors to log the forests: cl.9. This part of the agreement would be authorised by s.11(1)(m)(i).

20. If, however, a company or its contractors takes timber pursuant to a timber licence, then the Act provides that the licensee must pay a royalty of such amount as the Forestry Commission may from time to time determine either generally or in a particular case or class of cases: ss.30A, 30B. The contract does not make provision for the payment of a royalty. The contract price is not a royalty: rather, it is consideration which moves under the contract from the company to the Forestry Commission. A royalty is in this context a statutory charge on the holders of timber licences for the taking of timber under the licences. It is a statutory not a contractual

(Name).....

(Address).....

.....P/C.....

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

Dear Mr Corbett,

Unfair Review of Child Care Regulations

The Department of Community Services' recently reviewed N.S.W.'s centre-based child care regulations. The Department had six years to prepare the review but offered industry only six weeks to absorb and respond to the significant changes.

This rush has led to needless costs, problems and confusion. There was no proper assessment of costs and benefits, and not enough time to allow proper consultation, especially with the private sector which had not been included in the Department's Advisory Reference Group (even though private services 70% of long day care).

The new regulations came into force on 1st September, 1996 but on 9th September, 1996 the Department instructed existing licensees to continue to comply with 1989 regulations while the Department seeks advice on "implementation timeframes". I can understand why the Department has effectively suspended the new regulations given the extent of the problems with them, but I question whether the Department is authorised to make these pronouncements, and whether the Department will get it right next time if left to itself.

I ask that Parliament now exercise its responsibility for correcting the problems. The Shadow Minister agrees and on or about 22nd October, 1996 will move for the disallowance of the regulations to enable the review process to be done properly. This letter seeks your support for that course.

I do not oppose the need for sensible regulation providing proper protection at reasonable cost. But the new regulations go beyond sensible; for example:

- * the requirement that two adults be present at all times. This could mean the end of small centres run by sole operators and have great impact on larger ones.
- * requiring additional space without explaining why more is needed, without analysing costs and benefits, and without proper consultation.

Imposing unnecessary costs on centres, parents and taxpayers will harm the economy and weaken our community. That is what is at stake here. Please support the Shadow Minister's motion as the first step to allow proper procedures to be followed.

Yours faithfully,



1st October, 1996

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to pay such dividend as may be determined by the Minister (if any) under s.14A hardly suffices to convert the Commission into a statutory business enterprise. The objects of the Commission are to advance the public interest in multiple use forestry consistent with the need to preserve and improve soil and water resources, to conserve wildlife and to promote public recreation: s.8A. Despite the fact that the Forestry Commission is now managed as a business enterprise, its statutory remit is to promote the public interest, irrespective of the profit motive. Its commercial operations have outstripped the statutory authority for them.

23. For these reasons, I am of the opinion that the contract is not authorised by the Forestry Act 1916. If the State and the Forestry Commission encourage companies to enter into these contracts and capital expenditure is incurred by the industry in reliance on the validity of the contracts, the damages payable by the State will be significant.
24. The lack of contractual power arises as a result of the statutory limitations on agreements for the taking of timber from state forests. Any common law or prerogative power of the State to contract in these circumstances is necessarily displaced by the statute, if it exists at all. Dealings in public land are creatures of statute and the usual assumption applied by courts in Australia is, in the absence of specific statutory authority, that public land which is subject to statutory reservation or tenure, or is otherwise under the control or management of a statutory agency as is the case with State Forests (see s.11(1)(a), Forestry Act), may only be dealt with in accordance with statutory authority and having regard to whatever express or implied limitations are provided for in the statute: see eg. **Woollahra Municipal Council v. Minister for the Environment** (1991) 23 NSWLR 710; **Waverley Municipal Council v. Attorney General** (1979) 40 LGRA 414; **Packham v. Minister for the Environment** (1993) LGRA 205.
25. The Forestry Commission is an authority within the meaning of the Public Authorities (Financial Arrangements) Act 1987: ss.6, 19, schedule 1. The PAFA Act authorises the Forestry Commission to enter into arrangements or agreements for the purpose of obtaining financial accommodation, financial adjustments or to enter a joint financing arrangement. Generally speaking, the entry into any of these arrangements does not entitle the statutory authority to avoid express or implied limitations on its powers under any other Act with the exception that a joint financing arrangement enables a statutory authority to transfer its functions to another person and to agree not to exercise those functions to the extent that there may be exercised by the other person.

6 December 1996

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obligation. The Forestry Act does not authorise the making of an agreement with the person to take timber pursuant to a timber licence without paying a relevant royalty. On the contrary, the contract operates outside the royalty system. It does not appear that s.11(1)(m)(ii) was intended to authorise any such contract. This construction is supported by the provisions of the Act relating to the apportionment of royalty. Parts of some state forests are held under Crown leases, some of which were granted prior to the land becoming a state forest. The leases are preserved by s.25(1) of the Forestry Act after dedication of the leasehold Crown land as a state forest. The lessees use state forests for grazing during winter or drought. The Crown lessee of a state forest is entitled to an apportionment of royalty for all timber removed from the lease area: s.30E(2). If the Forestry Commission does the logging, it must pay to the leaseholder the amount that would have been payable to him or her under s.30F if the timber had been taken under a timber licence and a royalty paid for it: s.30F.

21. Any agreement that operates dehors the royalty system is not in my opinion a valid contract if it provides for the taking of timber from state forests. It does not matter whether those forests are in fact the subject of existing Crown leases but I note that the recent EISs released by State Forests for the northeast NSW management areas recorded Crown leases over parts of many state forests. This is certainly not a dead letter of the forestry law.

22. Section 11(1)(m)(iv) provides that the Forestry Commission may enter into an agreement with any person:

"... for the doing of anything for or in relation to any matter necessary for or incidental to the attainment of its objects or the exercise or performance of any of its powers, authorities, duties or functions conferred or imposed by or under this or any other Act."

There is no doubt that the Forestry Commission's objects include the utilisation of timber and the provision of adequate supplies of timber, but its functions also involve the determination of royalty which must be paid for timber by the holder of a timber licence and the apportionment of that royalty to Crown leaseholders who have a statutory right to receive it. A general agreement-making power such as this could not be used to undermine the scheme of the Forestry Act by enabling an agreement for the taking of timber to be made which does not also require the payment of a royalty for that timber. Although the Forestry Commission now operates as a State business enterprise, nowhere are commercial functions expressly conferred and the obligation

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DOES THE CONTRACT OFFEND ANY OTHER LEGAL PRINCIPLE OR PROHIBITION?

28. There is no doubt that the contract fetters future exercises of discretionary power by the Forestry Commission. Any long term contract for the sale of timber will do so, but such a contract will not be void for offending the principle against fettering power if there is statutory authority to make it. The fettering principle may deny the non-Government party to the contract the right to specifically perform its obligations, but where the contract is otherwise within the powers of the statutory authority to make, the fact that it forecloses future decision making options does not cause it to offend the fettering principle. Decisions to the contrary by courts in the UK are too wide and are unlikely to be followed in Australia: see generally, Mason J in **Ansett Transport Industries (Operations) Pty Ltd v. The Commonwealth** (1977) 139 CLR at pp.74-78; **City of Camberwell v. Camberwell Shopping Centre Pty Ltd** [1994] 1 VR 163 at 181-187 per Marks and Gobbie JJ. The matter is complicated in this case because the contract does not (with the possible exception of the issue of timber licences) directly bind the Forestry Commission not to perform a duty or exercise a discretion in a particular way in the future. I am asked to assume, by those instructing me, that the inevitable consequence of contracting to supply these quantities of timber will be the logging of forests at an unsustainable rate and that regulatory decision makers, including the Forestry Commission, must issue timber licences and other approvals for the logging of these forests to supply the resource guarantee made by the State in the contract. The fettering principle may have less of an operation where the person whose power or discretion is allegedly fettered is not a party to the contract: **Ansett Transport Industries**, *ibid* at 76-77 per Mason J. As I have concluded that the contract lacks statutory authority, it is unnecessary for me to determine whether it also offends the fettering principle, although it will more easily do so if statutory authority for it is not explicit.

29. Another significant statutory limitation on the power of the Commission to authorise logging operations in this area is to be found in s.10(1) of the Timber Industry (Interim Protection) Act 1992:

"(1) In order to promote ecologically sustainable development, a person who carries out logging operations on any land specified in Schedule 4 during the period when the application of Part 5 of the EPA Act is suspended in respect of the land must comply with:

Page 9

I doubt that a contract for the sale of timber could ever be described as "obtaining" financial accommodation or "effecting" a financial adjustment. In my opinion, the contract is not a joint financing arrangement because it is not entered into "for the purpose of the exercise of the authority's functions": s.5A, PAFA Act. Although the company may log, a power also available to the Forestry Commission, the contract itself does not transfer the Commission's power to do so to the company. The company does not exercise any Commission function under s.8A or s.11 of the Forestry Act. The contract must also be "in respect of infrastructure or other capital assets" of the Commission to constitute a joint financing arrangement. It is clearly not an infrastructure contract nor does it relate directly to the Commission's assets. On the contrary, the subject matter of the contract is on the income side of the Commission's ledger. I am of the opinion that the contract is not a joint financing arrangement and therefore the PAFA Act does not lend it any particular force. If I am wrong, I doubt whether the PAFA Act authorises a contract which undermines the royalty system in the Forestry Act 1916. The PAFA Act may well remove implicit restrictions on the power of statutory authorities to delegate their functions and to agree not to exercise those functions when exercised by the delegate, but it does not otherwise enable the Commission to contract contrary to the Forestry Act.

26. Unlike most other State and Commonwealth business enterprises, the Forestry Commission has not received a statutory make over in the last decade: see eg. State Owned Corporations Act 1989. The ultra vires rule has been abolished in some States for statutory corporations: see eg. Government Owned Corporations Act 1993 (Qld), ss.148-151; State Owned Enterprises Act 1992 (Vic), s.44. The rule continues to apply to the Forestry Commission. If a statutory corporation enters into a contract which is beyond its capacity, the contract is void: *Hazell v. Hammersmith and Fulham LBC* [1992] 2 AC 1.
27. I conclude that so much of the contract as requires the sale of timber outside the royalty system is void. Despite cl.30 of the contract which authorises severance of obligations, I doubt whether a defect as fundamental as the one that I have identified can leave in operation the remainder of the contract. Severance cannot save a contract if it produces an agreement which differs in fundamental respects from the consensual bargain of the parties. This is especially so if the purpose of entering the contract is to avoid statutory limitations on the power of one of the parties to the contract.

6 December 1996

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(a) *the management plan prepared under the Forestry Act 1916 applying, as at the date of the assent to this Act, to the land, including, in particular, the sustainable yield strategies applicable under the management plan; and*

(b) *the code of logging practices prepared under the Forestry Act 1916 applying as at the date of assent to this Act to the land."*

The Act was assented to on 12 March 1992. Schedule 4 lands are those lands outside the moratorium areas not in Schedule 1. The map to which Schedule 4 refers outlines the boundaries of Forestry Commission management areas. Included within those lands are, of course, both private and public land. The obligation in s.10 therefore relates to all logging within the relevant management area boundaries. The management areas stretch from Newcastle to the Queensland border and include the loggable resource of northeastern NSW forests.

30. The obligation to observe the sustained yield strategies set out in management plans, as they applied in 1992, only subsists for as long as the processes of Part 5 of the Environmental Planning and Assessment Act 1979 are incomplete in relation to logging programmes for those management areas. I understand that EISs have been prepared and exhibited for most of the management areas, but approvals have not yet been given under Part 5. For the time being, the requirement of s.10 must be obeyed. If any of the contracts, or the contracts as a whole, authorise logging contrary to the sustained yield strategies of the relevant management plans, then this is another ground for invalidity of the contract. No material in my brief discloses whether such a breach is likely to occur.

CONCLUSION

31. In my opinion, the contract is not authorised by the Forestry Act 1916. No other statute authorises it.



TIM ROBERTSON

Frederick Jordan Chambers
6 December 1996

Summary of main points re proposed Wood supply Agreements story:

p1
F
MEFA

①
***Even though the state government has included clauses in the wood supply agreements to try to limit their exposure and liability if the levels of sawlog

timber committed to are not available our legal advice indicates these clauses fail to protect the government and the Forestry Commission both of which are in fact vulnerable to having to pay out huge damages if the committed volumes are not available.

Reference: Tim Robertson's legal advice was faxed to you on 16/12/96
Relevant quotes from that advice are:

"The limitation of liability clause can be readily evaded by the company structuring its business so as to maximise its right to damages against the government in the event of Government default"

"The limitation of liability clause will be ineffective for another reason. The undertaking by the State of NSW to ensure the Forestry Commission has sufficient resources to perform the contract is in the nature of a representation which, if it is made fraudulently or negligently, will give rise to a right to sue for damages. In my opinion, the prohibition on misleading conduct in the Fair Trading Act applies to this transaction, and if the representations induced a company to enter the contract, then both the State and the forestry Commission are potentially liable in damages for both direct and consequential loss."

So the government ie the taxpayers, could end up compensating the timber industry for timber that never existed and/or end up having to buy back timber rights on public forests of high conservation value in order to include them in an adequate seserve system.

In Canada we have heard, where 25 year wood supply agreements were issued a few years ago, the government is now paying out \$200 million to timber companies to buy back some areas for national parks.

②
***It is clear that high conservation value moratorium areas will have to be logged to meet the promised levels of timber resource.

816,242 hectares (termed IDFA or Interim Deferred Forest Areas) was set aside by the State government on Sept 23 as "determined as likely to be required for the development of a Comprehensive, Adequate and Representative reserve system . . . (p2 Summary document of Government's decision on Interim Forestry Assessment.)

Yet the same document specifically says these areas can be logged "under limited circumstances" ie while the Wood Supply Agreements are legally binding, the IDFA areas are only set aside subject to supply requirements .

Already there are only IDFA (Interim Deferred Forest Areas) left to log in the Murwillumbah Management Area (MA). By early this year there will only be IDFAs to log in the Urbenville and Bulladelah MAs. By the middle of this year in the Casino MA and by the end of this year in Coffs Harbour, Dorrigo and Tenterfield MAs. Yet the Wood supply Agreements (WSA) promise the levels of cut for ten years.

The intensity of logging outside IDFAs is also likely to increase dramatically as can be seen by going to recent logging operations witnessed by (we can take you to a recent operation if footage of this would fit into the way you want to do the story).

(3) ***While the Wood Supply Agreements commit the government to supplying 254,760 cubic metres (50% of 1995 Quota) from northeastern NSW our estimates of the likely actual amount of resource that can be supplied sustainably outside of the high conservation value IDFAs is only 98,082 cubic metres (see chart below).

The signing away of the 50% levels is likely to entrench the gross overcutting of the past, irreparably degrade the sawlog resource within a few years, foreclose the ability to achieve conservation outcomes in many areas, and commit the government to massive compensation when the resources are later found to not exist or if it decides to meet its conservation commitments.

FOR NORTHEAST NSW

100%	_____	of 1995 Quota level . . . 509,520 cubic metres per year (from 1,465,229 hectares of State Forest)
77%	_____	of 1995 Quota level . . . 392,330 cubic metres per year (Identified as the sustained yield by the Wood Resources Study from 1,465,229 hectares of State Forest)
70%	_____	of 1995 Quota level . . . 356,664 cubic metres per year (from 1,465,229 hectares of State Forest) (This reduction came into force on July 1, 1996 to try to bring industry to a sustainable level of cutting)
50%	_____	of 1995 Quota level . . . 254,760 cubic metres per year (Promised to the timber industry for 10 years from 1/1/97)

under Wood supply Agreements)
(from 862,974 hectares of State Forest (ie approx half the area if high conservation value areas (IDFAs) are to remain in moratorium)

38.5% of 1995 Quota level . . . 196,165 cubic metres per year
(from 862,974 hectares of State Forest (ie outside IDFAs))
if the Wood Resources Study sustained yield estimates are correct (ie half of 77%)

19.25% of 1995 Quota level . . . 98,082 cubic metres per year
(from 862,974 hectares of State Forest (ie outside IDFAs))
(This is the likely actual sustainable level of logging if the Wood Resources Study is assumed to be 100% overestimated (as we submit))

(Note: Even this level is dubious as true selective logging is no longer practiced. This level is based on current harvesting intensities.)

④ ***The timber industry is well aware the government will have problems supplying volumes promised and in the Wood Supply Agreements

Col Dorber on 2KPTR radio November 1995, referring to the level of timber guaranteed "How they deliver is the government's problem. There is no doubt they will have trouble"

⑤ *** It is in industry's interest not to have resource levels at unsustainable levels so they should support review clauses in the WSA which enable adjustment of the levels after the "FRAMES" study (a redoing of the Wood Resources Study) currently underway.

If the industry was committed to sustainable levels of logging they would support a review clause . Review clauses will protect the long term sustainability of the timber industry because if the "FRAMES" study reveals a lesser amount is the sustainable amount and the levels are not lowered they will only be cutting into their future if they continue to cut at the higher levels for the ten years guaranteed by the contracts.

State Forest themselves in Feb last year recommended that only the sustained yield from the recalculated available area (ie outside IDFAs) be committed to in WSA

"overcutting during the CRA process simply postpones the inevitable while abrogating one of the fundamental principles of sustainable forest management. " therefore recommended " that the harvest volume for quota sawlogs specified following the IAP be the recalculated sustained yield level for that part of the forest not included in the deferred forest areas"

State Forests themselves also acknowledge past overcutting by calling the next 15 to 30 years a transition period "where supply will be hard/ difficult because regrowth not old enough to cut"

⑥ ***Many small sawmillers are already concerned about the intensity of logging, "flogging the bush" as they call it and its implications for the sustainability of their industry..

In our area there is a sawmiller who has been in the Forest Products Association for 45 years and who spoke out once last year when his company was forced to log Pine Creek State Forest intensively and with with clearfelled gaps. He said the overcutting was an example of an absolute disaster for the forest. I could fax a copy of his statement if you need it. He believes the State Forest foresters need to adjust down (the intensity of harvest) and start being foresters.

If you think it would be a good aspect to the story I could ask him if he would be willing to be interviewed about this.

⑦ ***The 10 year (five year with a virtually mandatory extension of another five years) delivered to industry at this time is a breach of a Labor party election promise and their own Forestry policy which states that long term timber supplies will be guaranteed "upon the completion of the Regional Forest Agreements (RFA)"

It is also a breach of the National Forest Policy Statement which sets out that the long term agreements will come at the end of the RFA process.

⑤ ***cost of the Comprehensive Regional Assessment (CRA) now underway and to take two years, leading to a Regional Forest Agreement (RFA) is in the millions. The results and recommendations from this scientific study will be compromised and not feasible to implement because of the cost of compensation payouts to buy back what has just been given away.

Why spend hundreds of thousands of dollars of taxpayers money on "FRAMES", the new version of the Wood Resources Study, if when you get it

right it is legally impossible to implement by adjusting the committed timber levels?

9

***The Wood Resources Study overestimates the available timber volumes by 100%, has been discredited and yet is being used as the basis for the promised levels of timber supply in the WSAs

The WRS is an unrefined computer model.

The model itself has not been validated - This has been acknowledged by the "FRAMES" Working group of RACAC who's job it is to redo the WRS.

According to Dr David Godden an independent economist on the RACAC Socio-Economic Working Group and Senior Lecturer in Economics at Sydney University there is "an absence of any validation of the model's predictions"

An independent forester's assessment of a compartment in Whian Whian State Forest showed the WRS estimates to be overestimated by 100% (Reference available)

The WRS gives a 100% overestimation based on comparison of over 300 compartments WRS estimates with Harvest Plan estimates given by District Foresters. (Reference: "An Appraisal of the Reliability of State Forests Wood Resources Study" by Dailan Pugh September 1996.)

In the Chichester MA the WRS estimates 8,000 cm/yr as a sustainable yield while the Environmental Impact Statement for the same area estimates 4,000 cm/yr

The WRS estimates in Murwillumbah are 300% overestimated compared to the District Forester's estimates

Dr Clive Hamilton (Australia Institute) "the model's valuation of standing timber may be seriously exxaggerated"

Signing away vast quantities of public assets on the basis of discredited info is irresponsible

ends

Since then logging has been completed in 4 compartments. Logging in one compartment began in June 1993 but was suspended a month later due to a pending court case in which an adjoining landowner is claiming logging on the steep slopes (above 25 degrees) would cause siltation of the creek from where their domestic water is pumped. The case was heard in the Supreme Court in mid July 1994, and the judgment

PROPOSED HARDWOOD TIMBER TERM AGREEMENT

MEMORANDUM OF ADVICE

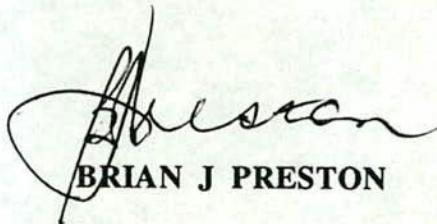
The Forestry Commission of New South Wales proposes to enter a number of contracts with various timber companies whereby the Commission will sell and the companies will purchase identified timber for a price to be calculated in accordance with a prices schedule in the contracts. The timber is to be supplied under the contracts either by permitting the companies to harvest, or by the Commission engaging independent contractors to harvest, the timber from identified State forests. The Commission promises to grant timber licences to enable the harvesting of the identified timber.

The question upon which I am asked to advise is whether the Commission has power to enter such an agreement having regard to the provisions for the payment of a royalty under ss.30A and 30B of the Forestry Act 1916.

Section 30A requires the holder of a timber licence to pay a royalty for timber taken in pursuance of the licence. The amount of that royalty is the amount determined by the Commission under s.30B.

On its face, the proposed form of contract does not suggest that the price to be paid for timber sold under the contract is the same as the amount of royalty which might have been determined by the Commission for that timber or timber of that class. I am unaware whether there is extrinsic evidence as to the relationship, if any, between the contract price and any determined royalty.

If the contract price is distinct from the determined royalty, and the effect of the contract is to require the company to pay the contractual price only and not any royalty for timber taken pursuant to a timber licence, the contract would be unlawful. The Commission cannot enter an agreement which enables the avoidance of statutory requirements, in this case the requirement to pay royalties under s.30A.



BRIAN J PRESTON

SELBORNE CHAMBERS

20 DECEMBER 1996

PROPOSED HARDWOOD TIMBER TERM AGREEMENT

MEMORANDUM OF ADVICE

The Forestry Commission of New South Wales proposes to enter a number of contracts with various timber companies whereby the Commission will sell and the companies will purchase identified timber for a price to be calculated in accordance with a prices schedule in the contracts. The timber is to be supplied under the contracts either by permitting the companies to harvest, or by the Commission engaging independent contractors to harvest, the timber from identified State forests. The Commission promises to grant timber licences to enable the harvesting of the identified timber.

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BRIAN J PRESTON

SELBORNE CHAMBERS
20 DECEMBER 1996

John R Corkill
Public Interest Advocate; Environmental Educator, Planner, Policy Adviser
1 Oliver Place, Lismore. 2480. (066) 224 737 w [ph & fax] (066) 21 6824 h

FAX COVER SHEET

Date: 9/ 1 / 1997 To: John Connor, Exec Officer

At: Nature Conservation Council of NSW

Fax No. 02 9247 5945

No. of Pages include. this: one only!

MESSAGE:

Please photocopy the revised draft generic contract for timber term agreements, as supplied by SFNSW, attach the following letter, and forward to Tim Robertson at the address shown on the letter.

I would appreciate it if this could happen as soon as possible. Thanks a million mate!

Cheers!

JRC

If this fax message is imperfect please contact the sender on : 066 877 248

Greens demand action on coastline

By MARK RILEY

Environmental groups accuse the Carr Government of having an "unashamedly pro-development" record on coastal protection and stalling on election commitments.

A "coastal crisis" meeting of more than 100 conservation, recreation and fishing groups yesterday called on the Government to issue its long-awaited coastal policy platform urgently. The groups warned of increased community action along the coast unless the Government outlined its timetable for change.

A spokesman for the Minister for Planning, Mr Knowles, accused the groups of grandstanding. He said the Government had already told them its full coastal policy would be released within weeks.

The draft policy was put before Cabinet late last year and the final policy document is likely to be sent back for its approval this month.

But yesterday's meeting criticised the Government's failure to conduct a comprehensive environmental survey of coastal lands to identify protection priorities.

"What concerns us most is the gap between the Government's rhetoric on coastal policy and the reality," said the executive officer of the Nature Conservation Council, Mr John Connor.

"Green groups campaigned for the Carr Government on the basis of its excellent policies on coastal lands, and now it is time to deliver."

Mr Knowles's spokesman said the Government had begun establishing a new system of marine parks, with the first at Jervis Bay, and had knocked back several coastal developments because they did not meet ecologically sustainable development requirements.

92302603 John C

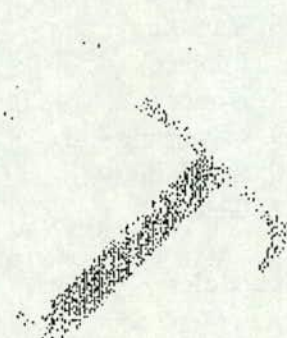
HARDWOOD TIMBER TERM AGREEMENT

BETWEEN

THE FORESTRY COMMISSION OF NEW SOUTH WALES
(trading as State Forests of NSW)

AND

..... **PTY LIMITED**



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DRAFT (JGD2) - FOR DISCUSSION PURPOSES ONLY**HARDWOOD TIMBER TERM AGREEMENT**

THIS AGREEMENT is made the day of 1997

1. PARTIES

1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **STATE FORESTS** ('State Forests')

1.2 Pty Limited (ACN) ('Company')

1.3 **THE HONOURABLE KIM YEADON** Minister for Land and Water Conservation in the State of New South Wales for and on behalf of the Crown in right of the State of New South Wales ('State of NSW')

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 1916 (NSW) and all regulations made under that Act;

'Area of Supply' means an area comprising various Compartments under a Plan of Operations;

'Base Allocation' means the quantity of Timber which State Forests undertakes to make available to the Company in each Year as set out in Part I of Schedule 2;

'Codes' means the State Forests' Code of Procedure and Forest Practices Code;

'Contractor' means a person under contract with either the Company or State Forests to conduct forestry operations and includes employees and agents of the Contractor;

'Company' means the Company and includes all employees, servants and agents of the Company;

'Compartment' means an identified administrative area from which State Forests will make a supply of Timber available to the Company in accordance with a Harvesting Plan;

'Contract Harvesting' includes the felling, snigging, sorting, servicing, grading, loading, hauling, delivery and distribution of Timber and Forest Residues by a Contractor engaged by State Forests;

'Schedule of Contract Harvesting Rates' means a schedule for calculating the contract harvesting rate prepared by State Forests.

'Force Majeure' means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

'Forest Residues' means parts of trees cut for the production of Timber which do not meet the requirements of the Specifications;

'Harvesting Approval Process' means any procedures to regulate, review or approve Harvesting Plans or draft plans of operations;

'Harvesting Plan' means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by State Forests and which is consistent with the Plan of Operations;

'Integrated Operation' means a harvesting operation in which two or more types of Timber are harvested and sorted into discrete categories during harvesting operations;

'Log Dump' means the location specified by State Forests where felled Timber is stored and serviced before delivery to a sawmill or processing plant;

'Management Area' means an area of land designated as a 'Management Area' on the plan prepared by State Forests and attached as Schedule 3;

'Minister' means the Minister for Land and Water Conservation or any other Minister administering the Act;

'Overcut' means the amount by which the actual quantity of Timber taken by the Company in any Year is greater than the Base Allocation;

'Plan of Operations' means a plan scheduling the various Compartments from which State Forests intends to provide the Base Allocation reviewed and approved in accordance with a Harvesting Approval Process;

'Price Schedule' means a schedule for calculating the price of Timber prepared by State Forests in accordance with the principles of The Price System and annexed as Schedule 5;

'Salvage' means the taking of windthrown timber or damaged timber pushed over or felled for purposes other than timber harvesting, including road construction, powerline construction and extraction of forest materials;

'Specifications' means the specifications for the hardwood timber set out in Schedule 1;

'The Price System' means a state wide system for determining the price of timber in accordance with particular methodologies and principles adopted by State Forests and as may be varied from time to time;

'Timber' means the timber detailed in the Specifications;

'Total Allocations' means the total of the Base Allocations for each Year of this Agreement as set out in Part I of Schedule 2;

'Undercut' means the amount by which the actual quantity of Timber taken by the Company in any Year is less than the Base Allocation;

'Year' means a period of twelve months commencing on 1 January in any year.

2.2 In this Agreement, unless the context requires otherwise:

2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;

2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;

2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;

2.2.4 words importing the singular include the plural and vice versa;

2.2.5 words importing a gender include any gender;

2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;

2.2.7 a reference to any thing includes a part of that thing;

- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.

3. SCOPE OF AGREEMENT

- 3.1 State Forests will make available supplies of Timber to the Company and the Company must take and pay for the supplies of Timber made available upon the terms and conditions set out in this Agreement.
- 3.2 The Company must pay State Forests the prices calculated in accordance with Clause 14 for the Timber taken by the Company.
- 3.3 The State of NSW undertakes to ensure that State Forests has sufficient resources and the necessary capacity to make Timber available to the Company and will cause State Forests to perform its obligations as required by the provisions of this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this Clause if prevented from doing so by Force Majeure. For the purposes of this Clause the words 'act or omission of government or government department or instrumentality' in the context of Force Majeure will be deemed to mean 'act or omission of a

government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from 1 January 1997 and will operate for a period of five years unless determined at an earlier date under a provision of this Agreement.
- 4.2 The Company may, if there has been no default under this Agreement on the part of the Company, make an application to the Minister to extend this Agreement for a further period of five years. Written notice of its intention to make an application to the Minister for an extension must be given to State Forests not less than six months before this Agreement expires and must be accompanied by a formal application for extension. If the Minister approves the application under the provisions of Clause 25, this Agreement will then be extended in accordance with the terms and conditions of the Minister's approval. Unless agreed between the parties there will be no further right to extend this Agreement.

5. BASE ALLOCATION

- 5.1 State Forests must make available to the Company the Base Allocation for each Year. In no case will State Forests be required to make available more Timber to the Company during the term of this Agreement than the Total Allocations.
- 5.2 Part II of Schedule 2 sets out indicative quantities of Timber which may be able to be made available from particular Management Areas for the term of this Agreement. The purpose of Part II is to provide information relating to possible sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the quantities or from the Management Areas indicated. State Forests will update this information from time to time.

5.3 In any Year the Company may take more or less than the Base Allocation in accordance with the following conditions:

5.3.1 in any Year the quantity of Timber taken by the Company must not exceed 110 percent of the Base Allocation;

5.3.2 in any Year the minimum quantity of Timber taken during that Year must not be less than 90 percent of the Base Allocation; and

5.3.3 the cumulative Undercut or Overcut aggregated at the end of any Year must not be greater than 10 percent of the Base Allocation.

5.4 The Company is not entitled to an Undercut or Overcut except in accordance with the conditions set out in Clause 5.3. Despite any Undercut or Overcut the Company must take no more than the Total Allocation for the term of this Agreement subject only to any deduction made under Clause 6.1.

6. SHORTFALL

6.1 Any quantity of Timber which the Company fails to take in any Year and which is not part of an Undercut allowed under the conditions of Clause 5.3 is forfeited by the Company and may be sold by State Forests under a separate agreement. The quantity of Timber which the Company fails to take and which State Forests may sell will be calculated by State Forests and deducted from the Total Allocations. State Forests must notify the Company by written notice within 42 days after the end of the Year of the quantity of timber which has been deducted from the Total Allocation.

6.2 If the Company:

6.2.1 takes less than 80 per cent of the Base Allocation for two consecutive Years during the term of this Agreement or any extension of the Agreement approved by the Minister; or

6.2.2 takes less than 70 per cent of the Base Allocation in any Year,

State Forests may terminate this Agreement under the provisions of Clause 22.

6.3 If the Company fails in any Year to take 90% of the Base Allocation plus any Overcut or less any Undercut allowed under the conditions of Clause 5.3 (the 'chargeable quantity') the Company must pay State Forests within 56 days after the end of the Year the sum of money equal to the difference between the price that would have been payable had the Company taken the chargeable quantity and the price paid or payable for the quantity of Timber taken by the Company for that Year. Any sum payable by the Company under this Clause is payable as pre-estimated and liquidated damages and not as a penalty.

6.4 If in any Year following a Year in which the Company makes a payment under Clause 6.3 the Company takes a quantity of Timber in excess of 90% of the Base Allocation plus any Overcut or less any Undercut, the price payable by the Company for the quantity of Timber above 90% will be reduced to take account of any sum paid or payable under Clause 6.3. The amount of any reduction under this Clause must not exceed the price that would have been due and payable for the quantity of Timber above 90%.

7. PLAN OF OPERATIONS

7.1 No later than 31 October in each Year, State Forests will prepare and supply to the Company a draft plan of operations for the next two Years. Any draft plan of operations will:

7.1.1 specify the various Compartments intended to be made available for supply;

- 7.1.2 specify the forest types in the various Compartments and the expected yields of Timber; and
- 7.1.3 provide details of the proposed type of operations to be conducted and other relevant planning information.
- 7.2 State Forests will lodge the draft plan of operations for approval in accordance with the required Harvesting Approval Process applicable from time to time.
- 7.3 State Forests will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be varied from time to time.
- 7.4 State Forests must use its best endeavours to implement the Plan of Operations in accordance with its terms.

8. HARVESTING

- 8.1 State Forests must prepare and issue to the Company Harvesting Plans to meet the Base Allocation including any Undercut or Overcut allowed by the conditions of Clause 5.3. A Harvesting Plan must detail conditions relevant to the supply of Timber under this Agreement as determined by State Forests.
- 8.2 The Company must not conduct any harvesting operations except in accordance with a Harvesting Plan issued by State Forests.
- 8.3 From time to time during the term of this Agreement the Company may request State Forests by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any Timber. If State Forests is satisfied that the requested modification or changes are

necessary it may amend or vary the Plan of Operations and seek approval through the Harvesting Approval Process.

- 8.4 Where any Timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause State Forests must review any Plan of Operations to evaluate whether it is possible to harvest Timber from the damaged forest by way of Salvage operations or whether any other Compartments are able to be made available. If State Forests considers a variation of a specified order of working is necessary or alternative Compartments are available, State Forests will modify or vary the Plan of Operations or seek approval through the Harvesting Approval Process for an approved variation of the Plan of Operations as may be necessary.

9. CONTRACT HARVESTING

- 9.1 At any time during the term of this Agreement State Forests may elect to conduct Contract Harvesting.
- 9.2 If State Forests elects to conduct any Contract Harvesting it must prior to commencing these operations give the Company not less than 3 months written notice of its intention and the details and extent of the prospective operations.
- 9.3 The Company must not engage the services of a Contractor to harvest Timber for a period in excess of 3 months without first obtaining the written consent of State Forests.
- 9.4 Any decision by State Forests to conduct Contract Harvesting will be entirely within the discretion of State Forests but State Forests will provide the Company with an opportunity for comment and consultation before commencement of any Contract Harvesting operations.

- 9.5 State Forests may vary any Plan of Operations to allow it to conduct Contract Harvesting operations and must where necessary or appropriate to do so submit any varied Plan of Operations to the Harvesting Approval Process for approval or endorsement.
- 9.6 Prior to commencing Contract Harvesting State Forests must provide a copy of any Plan of Operations as varied to the Company and State Forests may commence the Contract Harvesting operations at any date after the expiration of the 12 month period of notice given to the Company.

10. METHOD OF SUPPLY

- 10.1 State Forests will issue licences enabling the Company or a Contractor to take Timber or may elect to make Timber available by conducting Contract Harvesting operations.
- 10.2 The Company must take the Timber as directed by State Forests from time to time from any source including (without limitation):
- 10.2.1 standing trees;
 - 10.2.2 Log Dumps;
 - 10.2.3 Integrated Operations;
 - 10.2.4 Contract Harvesting; and
 - 10.2.5 Salvage.
- 10.3 All timber taken by the Company must be removed from the point of supply as directed by State Forests.

11. TITLE AND RISK

- 11.1 Ownership of the Timber forming part of the Base Allocation will pass to the Company on payment for the Timber by the Company to State Forests.
- 11.2 The risks of ownership of the Timber forming part of the Base Allocation will pass to the Company:
- 11.2.1 where the Timber is harvested by the Company or a Contractor engaged by the Company, when the Timber has been felled; and
 - 11.2.2 where the Timber is harvested by Contract Harvesting, when the Company takes delivery in its own right or through the agency of a Contractor; and
 - 11.2.3 where the Timber is harvested by Integrated Operations when the Company or its Contractor takes delivery.

12. SPECIFICATIONS

- 12.1 The Company must accept any Timber which conforms with the Specifications.
- 12.2 If quantities of Timber which conform to the Specification are not available in a Year for any reason including Force Majeure the Company and State Forests must confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications. State Forests must give written notice to the Company within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with State Forests and details of other timber which could be supplied. In any circumstances where but for this Clause State Forests would have committed a breach or a material breach of this Agreement, the Company will not be entitled to invoke the provisions of Clause 22 or to claim any damages for breach against State Forests unless every effort has been made to meet the

Company's needs for Timber from other timber available but outside the scope of the Specifications.

- 12.3 The Timber will be deemed to conform with the Specifications and the Company will be deemed to have accepted delivery of the Timber:

12.3.1 if the Company or its Contractor loads the Timber onto a vehicle for haulage purposes; or

12.3.2 the Timber is accepted by the Company at the gate of the Company's sawmill.

13. DETERMINATION OF QUANTITY OF HARDWOOD TIMBER

- 13.1 The method of determination of the quantity of Timber upon which price is payable under this Agreement will be as set out in the Code of Procedure annexed as Schedule 4. The Code of Procedure may be amended by State Forests as may be considered necessary by State Forests from time to time but State Forests will provide the Company with an opportunity to consult with State Forests before any amendments are effected or implemented.

- 13.2 If the Company provides a weighbridge or other measuring device approved by State Forests, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.

- 13.3 State Forests may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device.

14. PRICE

- 14.1 The prices payable under this Agreement from 1 January 1997 will be the prices calculated by reference to the categories and quantities of Timber taken by the Company applied to the rates and factors set out in the Price Schedule.

- 14.2 State Forests may amend or vary the Price Schedule from time to time following a review by State Forests of the various components of the Price Schedule.
- 14.3 In conducting a review of the Price Schedule State Forests:
- 14.3.1 will be subject at all times to the requirements of the Act;
 - 14.3.2 must conform with the methodologies and principles set out in The Price System; and
 - 14.3.3 may consider various pricing elements including (without limitation) the commercial value and best prices reasonably obtainable for various types and categories of available timber.
- 14.4 A Price Schedule which is varied or amended by State Forests following a review may be implemented at any time during a Year provided State Forests gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.
- 14.5 State Forests may review and vary The Price System from time to time. In performing any review of The Price System State Forests will at all times be subject to the policies and directions of the State of NSW.
- 14.6 State Forests will provide to the Company a copy of The Price System as it applies at the effective date of this Agreement and will promptly forward a copy of The Price System to the Company if varied or amended following a review.
- 14.7 If State Forests delivers or causes Timber to be delivered to the Company under a Contract Harvesting operation the Company must pay State Forests for Contract Harvesting in addition to the price payable for timber.

14.8 In relation to any Contract Harvesting, State Forests must provide the Company with a copy of the Schedule of Contract Harvesting Rates prior to commencing any Contract Harvesting.

14.9 The Company must pay State Forests for the Contract Harvesting which will be determined by State Forests in accordance with the Schedule of Contract Harvesting Rates. The Contract Harvesting rates so ascertained by State Forests will be applied against the quantity of Timber delivered to the Company from the Contract Harvesting operations and a separate invoice may be issued to the Company by State Forests.

15. PAYMENT

15.1 State Forests will issue monthly invoices.

15.2 The Company must pay any invoice within fourteen (14) days of the date of issue. The Company is liable to pay an invoice and any interest accrued on that invoice as a debt due and payable to State Forests.

15.3 If the Company fails to pay an invoice on the due date for payment of that invoice then State Forests may suspend the Company's right to take Timber under this Agreement until payment is made.

16. COMPLIANCE

16.1 The Company must comply with:

16.1.1 the provisions of the Act and other Acts of the State of NSW;

16.1.2 conditions of licences issued to the Company under the Act;

16.1.3 the Harvesting Plans;

16.1.4 the Codes;

16.1.5 Acts of the Commonwealth of Australia; and

16.1.6 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.

16.2 The Company must ensure that:

16.2.1 its agents, Contractors or other persons under the Company's control or direction engaged in obtaining Timber pursuant to this Agreement comply with Clause 16.1;

16.2.2 no person under the control or direction of the Company is engaged in a harvesting operation without a current Contractor's or Operator's licence issued under the Act; and

16.2.3 the Company's Contractors and their employees or subcontractors are insured and are kept insured under an insurance policy pursuant to the Workers' Compensation Act 1987.

17. INDEMNITY AND INSURANCE

17.1 The Company indemnifies State Forests against all actions, proceedings, claims, demands and expenses by any person under its control or direction in respect of or arising out of the performance by the Company of its obligations under this Agreement.

17.2 The Company will take out and maintain Public Liability Insurance with an insurance company approved by State Forests and under a policy approved by State Forests in an

amount not less than \$10 million. The Company will also take out and maintain any other policy of insurance which is deemed necessary by State Forests from time to time.

18. SALE OF TIMBER TO OTHER PERSONS

18.1 State Forests reserves the right to:

18.1.1 supply Timber from within the Area of Supply; or

18.1.2 issue licences to obtain Timber, products or forest materials within the Area of supply;

to any other person.

18.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.

18.3 The Company must provide State Forests with details in writing of the volume by log category of sales to other persons within 30 days after the end of each Year.

19. SECURITY

19.1 The Company must provide security ('security') in a sum equivalent to one quarter of the price of the Base Allocation in the first Year ('secured amount'), for the purpose of ensuring the due and proper performance of its obligations under this Agreement.

19.2 The security must:

19.2.1 be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, an unconditional undertaking (in the form set out in Schedule 6) given by an

approved financial institution or insurance company or in any other form approved by State Forests;

19.2.2 be lodged within fourteen (14) days of the execution of this Agreement.

- 19.3 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 19.4 After the first Year, the Company must maintain the secured amount in an amount equal to not less than the highest total of payments made by the Company during any two consecutive months for Timber taken by the Company during the term of this Agreement.
- 19.5 If State Forests commences Contract Harvesting operations the secured amount will be increased by an amount equal to the likely costs of Contract Harvesting estimated by State Forests for the first two months of operation. State Forests will notify the Company by written notice of the estimated costs and the Company must increase the secured amount within 14 days.
- 19.6 State Forests may at any time and without notice to the Company, draw upon the secured amount to meet any loss of revenue or damages arising from the Company's failure to perform any of its obligations under this Agreement.
- 19.7 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level determined under clause 19.3.
- 19.8 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or vary the secured amount when requested to do so.

- 19.9 State Forests must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to State Forests.

20. FORCE MAJEURE

- 20.1 If the Company is prevented from taking or accepting Timber or from carrying on production of Timber by Force Majeure and:

- (a) the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
- (b) the Company had taken all necessary or practicable precautions to prevent the Force Majeure; and
- (c) the Company has made all reasonable efforts to contain the effect of the Force Majeure;

then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.

- 20.2 Where the Company makes an application under Clause 20.1, State Forests will negotiate with the Company in good faith to review the Base Allocation taking into account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things necessary or practicable to mitigate the effect of the Force Majeure.

- 20.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:

- 20.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure; and
- 20.3.2 if State Forests is unable to resume the performance of its obligations within a period of 6 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 12 months from the relevant date and in this regard time will be of the essence.
- 20.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.
- 20.5 If the Company fails to comply with the notice requirements under Clause 20.4, State Forests will be entitled to take the consequences of this failure into account in assessing the Company's application under Clause 20.2.
- 20.6 If State Forests fails to comply with the notice requirements under Clause 20.4 the Company may require State Forests to supply details of any alternate supplies of Timber which may be made available to the Company to mitigate the consequence of late notification.
- 20.7 If Force Majeure causes a significant reduction in the quantity of Timber, State Forests will allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister.

21. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

21.1 Where the Company is prevented from taking Timber as a result of any breach of this Agreement:

21.1.1 by an act of State Forests, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or

21.1.2 by an act of the State of NSW, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or

21.1.3 by an act or law of the Commonwealth of Australia, then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.

21.2 Where State Forests or the State of NSW is liable for any loss by reason of any failure to make Timber available or to supply or deliver Timber under this Agreement any loss suffered by the Company will be limited to any direct loss, damage or expense (which the Company must establish has been incurred by the Company) and will not include any indirect loss, damage or expense including (without limitation) any loss of profits, loss of business opportunity or consequential loss.

22. DEFAULT OR INSOLVENCY

22.1 If the Company or State Forests breaches or repudiates this Agreement, nothing in this Clause will prejudice the right of the other party to recover damages or exercise any other right.

22.2 If the Company commits a material breach of this Agreement and State Forests considers that damages may not be an adequate remedy, State Forests may give the Company a written notice to show cause. Material breaches include without limitation:

- 22.2.1 failing to take the quantities of Timber set out in Clause 6.2;
 - 22.2.2 commencing any harvesting operations prior to receipt of a Harvesting Plan or a Plan of Operations in breach of Clause 8.2;
 - 22.2.3 failing to take Timber as directed in breach of Clause 10.2;
 - 22.2.4 failing to accept Timber in breach of Clause 12;
 - 22.2.5 failing to make payments in breach of Clause 15;
 - 22.2.6 failing to take out and maintain any insurance in breach of Clauses 16.2.3 or 17.2;
 - 22.2.7 failing to meet the requirements of Clause 16;
 - 22.2.8 failing to provide security in breach of Clause 19;
 - 22.2.9 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of Clauses 24 and 25;
- 22.3 A notice under Clause 22.2 must:
- 22.3.1 state that it is a notice under Clause 22.2 of this Agreement;
 - 22.3.2 specify the alleged material breach;
 - 22.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under Clause 22.4;

- 22.3.4 specify the time and date by which the Company must show cause (which must not be less than seven days); and
- 22.3.5 specify the place at which cause must be shown.
- 22.4 If by the time specified in a notice under Clause 22.2 the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.
- 22.5 If the Company:
- 22.5.1 informs State Forests in writing or its creditors generally that it is insolvent;
- 22.5.2 commits an act of bankruptcy;
- 22.5.3 has a bankruptcy petition presented against it;
- 22.5.4 is made bankrupt;
- 22.5.5 a meeting of creditors of the Company is called with a view to:
- (a) entering a scheme of arrangement or composition with creditors; or
- (b) placing the Company under official management;
- 22.5.6 the Company enters a scheme of arrangement or composition with creditors;
- 22.5.7 a resolution is passed at a meeting of creditors to place the Company under official management;
- 22.5.8 the Company is placed under official management;

22.5.9 a receiver of the property or part of the property of the Company is appointed;

22.5.10 an application is made to a Court for the winding up of the Company and not stayed within 14 days;

22.5.11 a winding up order is made in respect of the Company; or

22.5.12 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.

State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.

22.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:

22.6.1 failing to make available the Base Allocation for each Year in breach of Clause 5;

22.6.2 failing to process an application for an extension of this Agreement in breach of Clauses 4.2 and 25;

22.6.3 failing to process any application requesting an assignment of this agreement in breach of Clauses 24 or 25.

22.7 A notice by the Company under Clause 22.6 must:

22.7.1 state that it is a notice under Clause 22.6 of this Agreement;

- 22.7.2 specify the alleged material breach;
- 22.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;
- 22.7.4 specify the time and date by which State Forests must show cause (which must not be less than seven days); and
- 22.7.5 specify the place at which cause must be shown.
- 22.8 If by the time specified in a notice under Clause 22.6 State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.

23. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

- 23.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement (except Clause 14) which cannot be settled by the parties within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

The mediator must conduct proceedings under this Clause in accordance with the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 23.2 In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

- 23.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

- 23.4 Any mediation or arbitration must be held in Sydney, NSW.

24. ASSIGNMENT

- 24.1 The Company may not without the prior approval of the Minister assign its rights and entitlements under this Agreement in whole or part to any person.

- 24.2 If the Company is a corporation, any change in control of the Company (or if the Company is a subsidiary, any change in control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement. For the purpose of this Clause 'change in control' means control of the composition of the board of directors or control of more than 50% of the shares with the right to vote in general meetings of the corporation.

24.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.

24.4 Upon receipt of any request for an assignment of the whole or any part of this Agreement, State Forests must process the application in accordance with Clause 25 provided the Company has supplied any details and information required by State Forests under Clause 24.3.

24.5 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

25. MINISTER'S APPROVAL FOR AN EXTENSION OR ASSIGNMENT

25.1 State Forests must consider any application made in relation to an extension or requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation.

25.2 The Minister may determine an application for an extension or requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in Clause 25.3) or by refusing the application. An application may be refused on the following grounds:

25.2.1 the Company fails to satisfy such value added criteria as have been adopted by the Minister;

- 25.2.2 such grounds as may be prescribed by regulations under the Act; or
- 25.2.3 such grounds as the Minister considers relevant having regard to the need to promote a competitive timber industry, to prevent misuse of market power and to ensure the availability of Timber and the security of supply.
- 25.3 The Minister may impose (without limitation) the following kinds of conditions on an application for an extension or an application requesting an assignment of the whole or part of this Agreement:
- 25.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy value added criteria as have been adopted by the Minister;
- 25.3.2 a condition requiring the Company or any assignee to meet specified guidelines or subject to specified restrictions;
- 25.3.3 a condition requiring the Company or any assignee:
- (a) to prepare, and submit to the Minister, a business plan setting out the Company's or any assignee's policies, practices and procedures in relation to the conduct of its timber business; and
 - (b) to conduct the business the subject of the application in accordance with that business plan;
- 25.3.4 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any value added criteria or other condition.

26. VARIATION

- 26.1 This Agreement comprises the entire understanding of the parties.
- 26.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

27. INTEREST

- 27.1 In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable on 10 year Commonwealth bonds.

28. NOTICE

- 28.1 Any notice required to be served under this Agreement may be served:

- (a) in the case of the Company:

[name, address, telephone and facsimile numbers of recipient]

- (b) in the case of State Forests:

[name, address, telephone and facsimile numbers of recipient]

- 28.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.

29. GOVERNING LAW

- 29.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

30. SEVERABILITY

- 30.1 If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

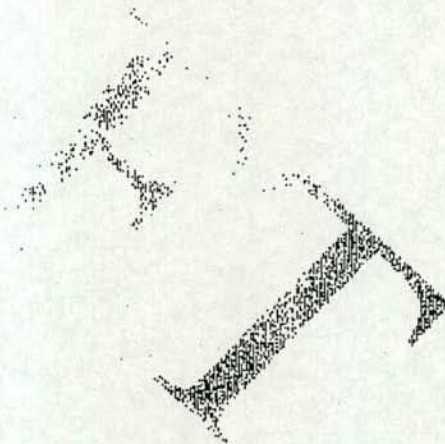
32. GENERAL

- 32.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.

EXECUTED AS AN AGREEMENT

SCHEDULE 1

Specifications (Clause 12)



SCHEDULE 2

Base Allocation (Clause 5)

Part I

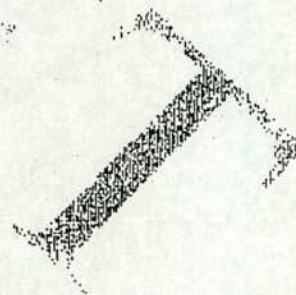
Base Allocation

Part II

Indicative Quantities of Timber

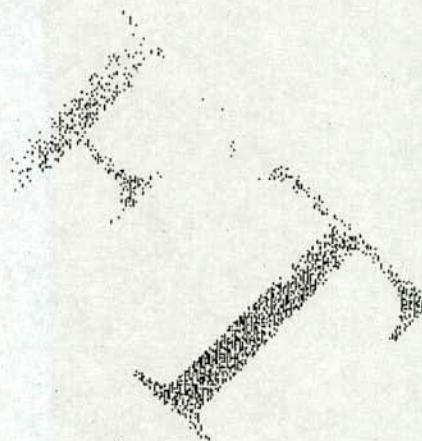
SCHEDULE 3

Plan of Management Areas



SCHEDULE 4

Code of Practice



SCHEDULE 5

Rates (Clause 14)

Part I

Part II

SCHEDULE 6

Approved form of Unconditional Undertaking (Clause 19)

At the request ofACN('the Company')
 and in consideration of State Forests('the Principal')
 accepting this undertaking in respect of the Hardwood Timber Term Agreement for
('the Agreement')
ACN.....('the Financial Institution')
 unconditionally undertakes to pay on demand any sum or sums which may from time to time be
 demanded by the Principal to a maximum aggregate sum of \$.....
 (.....).

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by a delegate for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Company and notwithstanding any notice given by the Company not to make payment.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$.....
 (.....)
 less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

This undertaking will expire on theday of 19

DATED atthisday of19

Attention! Sid Walker - 2 fax pages only

From: Barrie Griffiths (065) 77.3105 fax: (065) 77.3001.

11 fax pages including this one. (Includes 9 pages of draft Scoping Agreement)

Tim Robertson

Dear Tim,

The Resource and Conservation Assessment Council next meets this coming Monday; Dailan is a member of the Council and wants to move a motion recommending amendments to the draft Hardwood Timber Term Agreement with the effect of enabling the base allocation to be reviewed according to availability of supply; this needs to be notified on Wednesday for the agenda. We would be grateful if you could assist with the drafting of amendments.

RACAC is unlikely to pass such a motion; however we need an alternative draft agreement we could live with; and of course we're anxious for advice as to whether there are grounds upon which we might challenge the agreements (or refer to ICAC? or, with respect to Boral, allege breach of Trade Practices Act?)

I have attempted to draft amendments as follows:

Definitions

"Comprehensive Regional Assessment" means assessments co-ordinated by the Resource and Conservation Assessment Council in accordance with the Scoping Agreement for a Regional Forest Agreement, January 1996, consistent with the National Forest Policy Statement.

"Ecologically sustainable development" has the same meaning as under section 6 (2) of the Protection of the Environment Administration Act 1991.

3.3 Add: Subject to 5.2, the State of NSW will only be excused...
Delete all words after "Force Majeure".

5.1. Subject to 5.2, State Forests must make available...

5.2 add: State Forests may reduce the base allocation in accordance with updated information on available timber volumes.

5.2.1 State Forests will review the timber resources available within each region subject of a Comprehensive Regional Assessment. The review shall be completed within six months of the conclusion of the Comprehensive Regional assessment, or within five years, whichever is the sooner. State Forests may reduce the base allocation as from the first day of January following the review where

(1) the review indicates a need to adjust the allocation in the interests of proper forest management in accordance with the principles of ecologically sustainable development;

(2) a reduction is required as a consequence of regulatory procedures under the Harvesting Approval Process;

(3) a reduction in allocation is necessary as a consequence of Forest Reserves declared at the completion of the Comprehensive Regional Assessment.

5.2.2 State Forests must give the Company not less than six months notice of a reduction in the base allocation.

Clause 22.6.1:

Add: except in accordance with 5.2.

Part I of Schedule 2 should state that the Base Allocation is subject to clause 5.2 of this agreement.

Enclosed: draft Scoping Agreement; I do not think the signed agreement was significantly changed; if relevant I can arrange for the final agreement to be sent to you.

Can we communicate about this by phone or fax tomorrow?

Best wishes,
Barrie.

Urgent fax for Sid Walker

From Bruce Donald

Please review this draft and call me as soon as possible as I have to conclude it in the next half hour.

6th December 1996

The Chair,

Nature Conservation Council of NSW,

39 George St.,

SYDNEY NSW 2000

Dear Sir,

Hardwood Timber Term Agreements

This advice reviews the pro-forma "Hardwood Timber Term Agreement" under which the State of NSW and State Forests are to supply timber companies.

Advice Summary

- The agreements are to be entered into in the context of a fundamental restructuring of the resource and conservation needs of the NSW native forests.
- The restructuring process involves all public and private interest groups and authorities relevant to forests and is not yet complete.
- Basic issues remain unresolved in the process such as the validity of the appraisal of available resources and the likelihood of the reserve system requirements being met.
- The agreement is a crude supply agreement for the supply of firm base allocations of timber to the companies.
- It is drafted as if it is occurring in a vacuum, in the sense that its terms reflect nothing of the restructuring process or its uncertainties.
- The agreement provides an unqualified State Government guarantee of performance.
- The agreement contains no review or qualifying terms to take account of the acknowledged uncertainties affecting potential timber quantities,
- The agreement contains no basis for adjustment if it conflicts with the State's obligations to achieve the agreed reserve system.
- These would be long term agreements for up to ten years contrary to the NFPS.

The Forest Restructuring Process

I am instructed that the resource and conservation restructuring background to the proposed use of this pro-forma is as follows.

(Name).....

(Address).....

P/C.....

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

Dear Mr Corbett,

Unfair Review of Child Care Regulations

The Department of Community Services' recently reviewed N.S.W.'s centre-based child care regulations. The Department had six years to prepare the review but offered industry only six weeks to absorb and respond to the significant changes.

This rush has led to needless costs, problems and confusion. There was no proper assessment of costs and benefits, and not enough time to allow proper consultation, especially with the private sector which had not been included in the Department's Advisory Reference Group (even though private services 70% of long day care).

The new regulations came into force on 1st September, 1996 but on 9th September, 1996 the Department instructed existing licensees to continue to comply with 1989 regulations while the Department seeks advice on "implementation timeframes". I can understand why the Department has effectively suspended the new regulations given the extent of the problems with them, but I question whether the Department is authorised to make these pronouncements, and whether the Department will get it right next time if left to itself.

I ask that Parliament now exercise its responsibility for correcting the problems. The Shadow Minister agrees and on or about 22nd October, 1996 will move for the disallowance of the regulations to enable the review process to be done properly. This letter seeks your support for that course.

I do not oppose the need for sensible regulation providing proper protection at reasonable cost. But the new regulations go beyond sensible; for example:

- * the requirement that two adults be present at all times. This could mean the end of small centres run by sole operators and have great impact on larger ones.
- * requiring additional space without explaining why more is needed, without analysing costs and benefits, and without proper consultation.

Imposing unnecessary costs on centres, parents and taxpayers will harm the economy and weaken our community. That is what is at stake here. Please support the Shadow Minister's motion as the first step to allow proper procedures to be followed.

Yours faithfully,

1st October, 1996

The Comprehensive Regional Assessment/Regional Forest Agreement process (the CRA/RFA process) is taking place pursuant to the National Forest Policy Statement (NFPS) and the agreement between the Federal and State Governments:

- to establish a Comprehensive, Adequate and Representative (CAR) forest-reserve system throughout Australia, and
- to determine a sustainable basis for supply of hardwood to the timber industry under long term supply agreements to be entered into at the conclusion of the CRA/RFA process.

In NSW the CRA/RFA process has included an Interim Assessment Process (IAP) to identify, and defer logging in, native forest areas that may contain the necessary types and quantities of forest to meet the CAR objectives, while identifying other areas where it continues to be appropriate for logging to proceed.

The appraisal data concerning forest resources developed and used by the various authorities and interested groups during the IAP is subject to continuing review and the extent to which the deferred areas will be sufficient to provide the range of forests to meet the CAR objectives remains to be finally determined by the completion of the CRA/RFA process.

State Cabinet has decided to enter into term supply agreements before the CRA/RFA process is complete and State Forests has drafted this pro-forma agreement for that purpose.

Issues

The issues for advice are whether agreements using this pro-forma will be long term agreements made before the CRA/RFA process is complete, whether they will expose the State to potential liability and whether they will provide a basis for ensuring that the State is in a position to achieve the CAR reserve objectives in the event that the data used in the IAP proves incorrect in any particular or that the deferred areas are inadequate.

The Agreement

The Agreement does not contain any recitals of the background or context within which it is to be entered into. Usually agreements set out in clear and simple terms the context for the purposes of aiding in their interpretation, implementation and if necessary their enforcement. This Agreement is written in a vacuum such that the entire industry, resource and conservation process in which its parties continue to be intimately involved and which determine crucial elements of its operation will be legally irrelevant. This very much favours the timber company parties as, together with other provisions, it underscores the absolute nature of their rights.

(Name) Dianne King
(Address) Austral St
Penshurst P/C 2222

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

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Unfair Review of Child Care Regulations

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The new regulations came into force on 1st September, 1996 but on 9th September, 1996 the Department instructed existing licensees to continue to comply with 1989 regulations while the Department seeks advice on "implementation timeframes". I can understand why the Department has effectively suspended the new regulations given the extent of the problems with them, but I question whether the Department is authorised to make these pronouncements, and whether the Department will get it right next time if left to itself.

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Yours faithfully,



1st October, 1996

Clause 5 provides that State Forests "must make available ... the Base Allocation for each Year". Base Allocation is defined in clause 1 and Sched. 2 simply as a quantity of timber without reference to any areas or forests from which it is to be obtained.

Clause 3 is an unconditional agreement by the State that there will be timber to meet this obligation and that State Forests will perform.

Clause 7 contains provisions for Plans of Operations under which State Forests will identify Compartments and expected yields. Cl 7.2 refers to a "Harvesting Approval Process" under which Plans are to be approved but this Process is not contained elsewhere in the Agreement. Subject to the effect of that approval Process, nothing in these provisions provides any basis for adjustment to the supply obligation if the available resource from the areas anticipated by State Forests to service the Agreement turn out to be inadequate.

Under the State's guarantee, once the Agreement is signed and the base Allocation set, the State must find timber or compensate the company. Cl.21.2 limits compensation to direct loss but this would include the loss of the value of the shortfall.

It would be straight-forward to refine the Agreement to provide that:

- it is entered into in the context of the CRA/RFA process and the LAP during which
- ~~it relates to a specified forest area or areas,~~ ... the parties identified extensive data re. available resources.
- it is based on identified data as to available resources which the parties estimate are likely to be adequate to provide the Base Allocation,
- the Base Allocation obligation will be varied if, during the operation of the Agreement, an independent assessor eg. RACAC, determines that the available resource is inadequate to provide the Base Allocation.

Nor does the Agreement provide any mechanism for adjustment or review if at the conclusion of the CRA/RFA process, the deferred areas prove insufficient to provide the CAR reserves. Since these Agreements are to be entered into in the context of an incomplete process which I am instructed is providing a \$120 million restructure package to the industry, this seems to place the State in a disadvantageous contractual position.

It would again be straight-forward to draft a recital of the relevance of the restructure package to the operation of the Agreement and a review provision for adjustment of the specified areas and Base Allocation in the event of the final CRA/RFA outcomes requiring this. Again, reference to an independent assessor could be included.

(Name) Elisa Hurtado
(Address) 43 Edgar st
Jagoona P/C 2199

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

Dear Mr Corbett,

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The new regulations came into force on 1st September, 1996 but on 9th September, 1996 the Department instructed existing licensees to continue to comply with 1989 regulations while the Department seeks advice on "implementation timeframes". I can understand why the Department has effectively suspended the new regulations given the extent of the problems with them, but I question whether the Department is authorised to make these pronouncements, and whether the Department will get it right next time if left to itself.

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Yours faithfully,

1st October, 1996

Such an approach to these two issues would permit these agreements to be entered into in advance of the time in the original policy proposal thus giving the companies the commercial basis apparently intended by Cabinet while at the same time preserving an orderly and independently verifiable basis for the CRA/RFA process to continue to completion as has always been anticipated by all parties.

Term of the Agreement

Although the Agreement in Cl.4 is expressed to be for a term of 5 years, cl.25 regulating extension of the term may well to operate in certain circumstances to make it difficult for the State not to renew the Agreement for a further five year term to become an effective ten year agreement.

Clause 25 sets out specific matters the Minister is to have regard to when refusing to extend; the Minister's discretion is therefore not absolute and a company may be in a position to seek an administrative law remedy requiring the Minister to renew.

Even if that is not available, the term of 5 years would appear on your instructions to be a long term supply agreement contrary to the intention of the NFPS.

I should be pleased to expand on this advice or assist in drafting review or other provisions if you require.

Yours faithfully,

(Name) Kylie Argus
(Address) 58 Salisbury Rd
Willoughby NSW P/C 2068

The Hon Alan Corbett MLC,
A Better Life for our Children,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000

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Yours faithfully,



1st October, 1996

FORESTRY COMMISSION OF NEW SOUTH WALES (TRADING AS STATE FORESTS OF NEW SOUTH WALES)

The Forestry Commission is a corporation sole constituted by the *Forestry Act 1916*. Under this legislation the Commission is required to:

- ◆ Conserve and utilise the timber on Crown timber lands to the best advantage of the State.
- ◆ Provide adequate supplies of timber from Crown timber lands for building, commercial, industrial, agricultural, mining and domestic purposes.
- ◆ Preserve and improve, in accordance with good forestry practice, the soil resources and water catchment capabilities of Crown timber lands.
- ◆ Encourage the use of timber derived from trees grown in the State.
- ◆ Consistent with the use of State forests for the purposes of forestry and of flora reserves for the preservation of the native flora, promote and encourage their use as a recreation, and to conserve birds and other animals within them.

The Commission is, except in relation to the contents of a recommendation or report made by it to the Minister, subject in all respects to the control and direction of the Minister for Land and Water Conservation.

State Forests manages approximately 3 million hectares of forest across NSW. These forests are spread throughout the State, but the largest areas are concentrated on the coast and coastal escarpment. The dominant trees are the eucalypts of which there are more than 200 species. To complement the native forests State Forests has established plantations. These include some 200,000 hectares of conifer plantations and approximately 30,000 hectares of eucalypt plantations on State forests and in joint venture with private land owners.

KEY ACCOUNTABILITY ISSUES

In addition to the matters raised in the independent audit report, the following significant items arose during the audit of State Forests' of NSW accounts and records.

(i) Accounting Issues

- ◆ In addition to softwood growing stock which is internally valued annually, State Forests engaged the Valuer-General's Office to value its other forest assets during 1995-96. This was largely responsible for the significant increase in the asset revaluation reserve.

- ♦ State Forests for the first time registered a market value decrement for its softwood plantation growing stock, \$18.3m compared with a \$92.7m increment in 1994-95. This was largely attributable to a statistical correction of \$52m required after review of inventory measurements by experts engaged by this Office.
- ♦ A provision for diminution in the carrying value of hardwood plantations was established during 1994-95. The appropriateness of this provision was reassessed during the year, resulting in the balance of the provision, \$2m, being reversed to income.
- ♦ Following reassessment of the tax component of transfers to the plantation growing stock revaluation reserve an amount of \$83.4m was transferred from the reserve to retained profits.
- ♦ Borrowings undertaken on a short-term basis to finance long-term activities have affected liquidity ratios. The NSW Treasury Corporation has confirmed that borrowings may be re-financed as necessary.

(ii) Control Issues

During the course of the audit instances were noted where existing procedures could be improved. These matters will be discussed further with State Forests' staff and where appropriate will be included in the 1995-96 management letter.

OTHER SIGNIFICANT MATTERS

Legislation

Forestry Restructuring and Nature Conservation Act 1995. Under this Act qualifying expenditure may be recouped from environmental trust funds. State Forests has advised that there would not appear to be any specific provision under which it may be able to recoup expenditure.

Timber Plantations (Harvest Guarantee) Act 1995. This Act removes impediments to the harvesting of plantation timber, so as to encourage the establishment of commercial timber plantations.

Other Forestry Bodies

The Forestry Advisory Council (FAC) advises on forestry policy issues and matters relating to the management of State forests. The Council includes representation from major stakeholders, the scientific community and State Authorities with forestry responsibilities.

Resource and Conservation Assessment Council (RACAC). This Council conducted the Interim Forestry Assessment (IFA). It co-ordinates Comprehensive Regional Assessments of public and private forested lands; is responsible for the development of a comprehensive, adequate and representative reserve system and facilitates the negotiation of Regional Forest Agreements with the Commonwealth.

Forestry Structural Adjustment Committee (FSAC) reports on the expenditure under the Forestry Industry Structural Adjustment Package (FISAP). FISAP is a joint NSW/Commonwealth program to provide assistance to workers, industry and businesses affected by the restructure of the native forest industry.

These bodies report to the Cabinet Sub-committee on Forestry comprising the Ministers for Land and Water Conservation, Urban Affairs and Planning, and Environment.

In addition the *Regulatory and Public Information Committee (RaPIC)* gives effect to the intent of the legislation incorporated in the *Timber Industry (Interim Protection) Amendment Act 1994*. The Committee, which determines the compartments to be logged, and sites for roads, and monitors logging and roading, reports to the Minister for Land and Water Conservation and the Minister for the Environment.

Government Restructure of the Native Forest Industry

On 23 September 1996, the Government announced a forestry reform package. The package was to further the implementation of the 1992 National Forest Policy Statement (NFPS). The NFPS proposes the establishment of a national forest reserve system which is Comprehensive, Adequate and Representative (CAR). The Government has agreed to carry out Comprehensive Regional Assessments (CRA) which will be incorporated into formal agreements, Regional Forest Agreements (RFA), with the Commonwealth. The reform package included:

- ◆ The exclusion of harvesting on public land from all high conservation value, old growth forest areas, identified wilderness areas and other areas likely to be required for the development of CAR System. All areas of rainforest are to be similarly protected.
- ◆ 671,000 hectares of State forest being placed in Interim Deferred Forest Areas (IDFA), logging in which is subject to approval by Harvest Advisory Boards.
- ◆ 45,000 hectares of State forest to be converted to 8 new national parks and one nature reserve in north east New South Wales.
- ◆ 45,000 hectares of State forest to be reserved to extend an existing national park in the south east to 90,000 hectares. A further 30,000 hectares is to be placed in IDFA for further consideration for the CRA system.
- ◆ The protection of 163,000 hectares of identified wilderness on State forest (118,000 hectares for immediate declaration, 20,000 hectares to be included subject to resolution of leasehold issues, 16,000 hectares to be included in national parks and 9,000 hectares to be considered in the CRA process).
- ◆ An undertaking to prepare a comprehensive timber inventory of all State forest and Crown land using methods, assumptions and models agreed to by RACAC.
- ◆ Maintaining existing supply levels for quota grade sawlogs until July 1997. Supply levels will then be reduced from 70% of 1995-96 levels to 60% in the Northern Interim Assessment Process regions and 65% in the southern and central regions.

- ◆ The granting of term agreements to current holders of annual licences for quota sawlogs.
- ◆ The allocation of additional volumes of quota sawlogs under annual licences for three years or until the completion of the current RFA.

Marketing and Market Reforms

State Forests markets two major products, softwoods and hardwoods, which (together with their associated products) contribute approximately equal revenue each year.

RACAC in its publication "The Economic Efficiency of RACAC Resource Allocation Options - A Conceptual Framework" states (in respect of hardwoods): "royalties charged by State Forests for standing timber are not determined in competitive markets. Rather, royalty rates are administered prices." This echoed Australian Bureau of Agricultural and Resource Economics' observation in its 1991 Discussion Paper "Pricing and Allocation of Logs in Australia" that: royalties were subject to approval by state ministers; allocation of logs by state forest agencies among log buyers is generally inflexible and for many products, royalties for logs have generally been less than the competitive market prices.

The Government has made a commitment to reform the hardwood forest industries to provide a high value adding and competitive industry in NSW. The Government has reduced supply to the industry (30% from 1 July 1996 for quota sawlogs) and introduced structural price increases (15% from 1 July 1995) and has proposed further increases of 20% from 1 January 1997 and 10% from 1 January 1998.

State Forests' hardwood log supplies to timber companies may be: made by long term wood supply agreements (covering graded sawlogs, veneer logs, and large scale pulpwood sales); by annual allocation (annual quota); or by other allocations (parcel sales). Prices under the wood supply agreement are usually prescribed for adjustment on a periodic basis (6 months or 12 months), often in keeping with industry sector log price adjustments. For pulpwood, pricing arrangements for up to 5 years have been specified. For annual allocations, prices are determined by State Forests following negotiations usually at industry sector level. For other sales, prices may be negotiated or bid on an area and/or company basis.

As part of the Forestry Reform Package the Government converted a portion of current quotas (from 1 January 1997) to 5 year term agreements with the option of a further 5 year period if value adding criteria are met. The term agreements will be tradeable and divisible. The volume of term agreements to individual companies will be 50% of individual companies' 1995 base quota sawlog allocations. A price increase is associated with the grant of a five-year security of supply with the option of a further five years.

In addition to term agreements, quota licences are being offered under annual licences for additional volumes for up to three years or until a CRA/RFA is completed, whichever is sooner. From 1 January 1997 to 30 June 1997 the volume of timber will be 20% of 1995 quota sawlog allocations, with this percentage reducing from 1 July 1997.

As for Wood Supply Agreements, the Government has conducted negotiations with customers resulting in a decrease in volume commitments of similar magnitude to quota sawlog holders.

The Government has also requested that a review be conducted by the Independent Pricing and Regulatory Tribunal. This is expected to occur in late 1997, after the development of a whole of government policy on natural resources pricing principles by the Office for Natural Resources Policy (ONRP) within the Department of Land and Water Conservation (DWLC). The likely terms of reference of the review will include: current pricing approach and its adequacy; cost of timber resources and efficiencies in supply; principles for pricing of timber; consideration of monopoly characteristics; achievement of value adding and commercial returns to the State.

These, together with State Forests' introduction of a system of matrix pricing whereby the true value of each log (according to size, species and location) is more accurately reflected in its price, will impact upon the profitability of State Forests' hardwood operations and may increase commercial returns.

Marketing of softwood has been unencumbered by historical obligations. Contracts with a number of end users have been negotiated directly. Sale of major parcels of softwood resources have, in recent years, been conducted through an open, competitive process, starting with "Expressions of Interest". State Forests' experience with tenders has proved that in most cases tendered prices exceed the schedule prices.

State Forests has indicated that its marketing objective is to apply an open and competitive process to price discovery in all of its sales, or as Government policy requires, whilst being prepared to negotiate resource security in the form of longer term contracts where the scale of investment in processing the resource clearly justifies extended arrangements.

Corporatisation/Restructure

State Forests is preparing for corporatisation. A Steering Committee for the Corporatisation of State Forests first met on 15 November 1995. The Steering Committee has proposed a timetable that would see the organisation attain corporatisation by 1 July 1997.

In addressing the issue of corporatisation the Steering Committee is also considering the regulatory regime that applies to forest management. The aim is to develop a consistent regulatory framework that applies to the forestry industry (both public and private) and addresses both plantation and native forest operations. Such a framework should better allow State Forests to conduct its business in a commercial manner.

It is understood that an internal working group has been established to examine the appropriateness of the organisation's current internal structure following completion of the IFA.

Land Rights Claim

An application for native title, under the *Native Title Act 1993*, was made by the Yorta Yorta Aboriginal Clan over the Murray Redgum Forests. Mediation between the State of NSW and the Clan failed and on 1 May 1995 the case was referred to the Federal Court.

Logging Breaches/Methods

During the year, 99 breaches of logging conditions were reported to the non-statutory Board of Governance of State Forests. Of these breaches, 76 were contractor related issues. Breaches included incorrect felling of trees, potential breaches of pollution, control licences, and incorrect construction of drainage structures.

In November 1995 complaints were made to the Minister for Land and Water Conservation concerning logging in compartment 61, Nullum State Forest. The complaints (which related to endangered flora and fauna and potential destruction of natural vegetation) were investigated by State Forests, National Parks and Wildlife Service and the Environmental Protection Agency. Indications are that action has been taken to prevent a recurrence of these breaches.

The silvicultural technique of "gaps and clusters" has been trialed by State Forests to manage harvesting and regeneration of certain forest types. Following representations by various stakeholders, the Minister placed a moratorium on the technique.

Sustainable Logging

State Forests has advised that it manages the native forest resource (broadleaf and cypress pine) on a sustained yield basis, meaning the volume harvested will approximate, over time, annual forest growth of the harvestable native forest areas. Because they are considered by-products State Forests excludes non-quota quality sawlogs from its sustained yield determination.

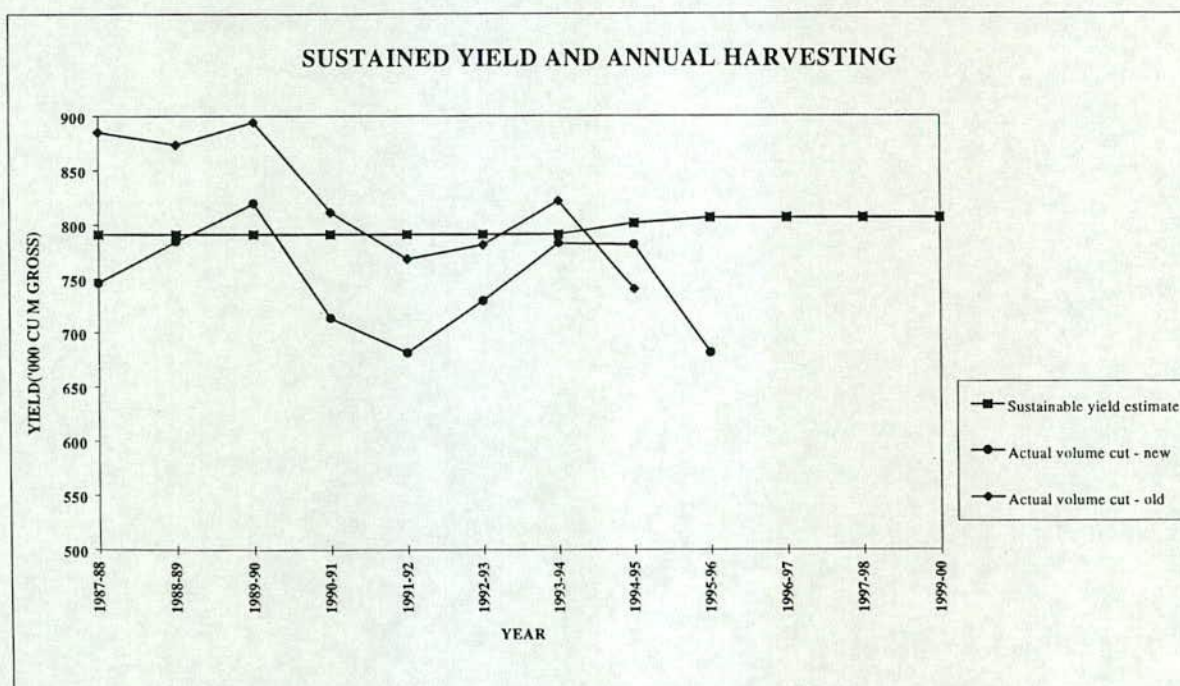
State Forests has advised that sustained yield is dependent upon assumptions made regarding: areas available for harvest; market for products; silvicultural practice; harvesting prescriptions; economics of timber production; natural events and techniques for sustained yield derivation and transitional strategies to implement new Government policies. Management, in a presentation to The Audit Office, advised that there is neither one sustained yield for a forest area nor a particular sustained yield method for regulating timber production. It is understood that State Forests has, for the purpose of:

- ♦ obtaining a valuation of its native forest assets, used a wood flow of 455,400 cu m (based mainly on February 1995 assessment which generally excluded areas restricted from logging based on an assessment made at that time);
- ♦ determining available wood yield for broadleaf and cypress pine for 1995-96, used a wood flow of 806,000 cu m (based on pre-1990 management plans, which included yield from the total forest and pre-dates external regulatory/logging conditions which impinge on sustainable yield);
- ♦ the IFA, provided a wood flow of 676,630 cu m (based on a native forest database and assuming identified wilderness areas would be available for logging).

Government policy in 1995 reduced sawlog allocations by 30 per cent from July 1996 to approximate sustained yield while the IFA process was implemented. As a result of the IFA, the Government has staged an additional reduction of 5 to 10 per cent while further investigations of wood resource and areas to be available for logging are undertaken as part of the CRA process.

State Forests considers that the wood flow figure provided to the independent valuer, which excluded non quota quality sawlogs (responsible for some 34% of revenue from native forests in 1995-96) was the most appropriate for the valuation of forest assets at that time. It is our understanding that State Forests has not as yet determined a revised wood flow figure following the IFA announcement of 23 September 1996.

State Forests on an annual basis compares the harvested volume with the estimated sustained yield volume. During the year State Forests revised assessments of the actual volume cut each year. The following unaudited graph shows the sustained yield estimate based on pre-1990 management plans and harvested volumes. State Forests has explained that previously reported harvesting data had to be estimated because the sales system did not readily identify quota sawlogs (shown as 'old' in the graph below). Following conversion of the format of sales data, State Forests has been able to refine its harvest volume statistics (shown as 'new' in the following graph).



State Forests recognised the specifications on sustainable forest use (as used in the NFPS) in its 1994 Corporate Plan. The NFPS while not defining sustainable forest use adopted the specifications of the Ecologically Sustainable Development Working Group on Forest Use: maintaining the ecological processes within forests (the formation of soil, energy flows and the carbon, nutrient and water cycles); maintaining the biological diversity of forests and optimising the benefits to the community from all uses of forests within ecological constraints.

State Forests now considers that sustained yield should reflect a socio economic activity as well as an ecological concept and is one that is appropriately planned with regard to industry stability. Following the NFPS State Forests established a Sustainable Forest Management Team in May 1995. This team will implement sustainable forest management systems and principles including sustained yield and ecological values. Stakeholder input will be included. This will involve field case studies to detail and highlight the management techniques necessary to demonstrate and assess sustainability following routine logging operations. The Team recognised that there was a "chronic lack of information" to demonstrate sustainable forest management. It is State Forests' objective that it comply with the "Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests" (the Montreal Process).

Forest Management Information System

To facilitate ecological sustainable management of native forests, State Forests commenced development of a Forest Management Information System in 1994. This included the development of fauna, flora and soils data bases, and enhancements to plantation and native forests systems. As at the date of preparation of this report, it is understood that only the flora and fauna sightings components of the system had been completed.

Existing database information for native forests includes compartment details of: unlogged forests; light selectively logged forests; regrowth forests (merchantable and pre merchantable); reserves and preserves; non-productive forests; harvest history; silvicultural condition and estimates of growth. As a consequence of requirements of the Interim Assessment Process, the native forests database now includes a sustainable wood flow algorithm which has been integrated with the Wood Resources Model. This model will be further refined to include requirements for landscape management, inventory and the CRA process.

Possible Conflict of Duties

The Government appointed a new Chief Executive Officer of State Forests, effective from 2 September 1996. The Chief Executive has now also been appointed to the statutory office of Commissioner of Forests. Previously this latter position was held by the Chairman of the then non-statutory Board of Governance. The new Chief Executive was also appointed Acting Director-General of the DLWC on 30 September 1996.

The positions of chief executive of both State Forests and DLWC may be conflicting roles. At present DLWC is responsible for the ONRP, which supports the FAC and the FSAC. ONRP and the various committees were established to provide the Government with independent information regarding State forestry issues. In addition DLWC administers State Environment Planning Policy - 46 (SEPP 46), under which applications for clearance of native vegetation are lodged.

The Chief Executive Officer has advised of the Department's awareness of the possibility for perceived conflict of interest in a number of areas of natural resource management. He has further advised that systems and procedures are in place to ensure that there is no capacity for such conflicts, nor any incompatibility arising from his role as Acting Director General.

As recently advocated by the South Australian Auditor-General there is a need to be mindful of the settled rule of the common law that a person cannot hold two incompatible public offices at the same time. Even if the appointments are legally permissible there is a question of conflicting duties and interests. If the dual appointments are not permitted by statute, acceptance of one can lead to the deemed forfeiture of the earlier occupied position. We are advising that an opinion on this matter be sought from the Crown Solicitor.

Board of Governance

The non-statutory Board of Governance was dissolved by the Minister with effect from 30 September 1996. State Forests has advised that it is not aware of any intention to establish a new Board.

Revocation of Land

State Forest land transferred to the National Parks and Wildlife Service during the year totalled some 54,000 hectares. Together with associated infrastructure this was recognised by the Service at a value of \$9.3m.

AUDIT OPINION AND FEES

The audit of State Forests' financial statements resulted in the issue of a qualified Independent Audit Report. In the previous year's financial statements, consistent with the requirements of the *Public Finance and Audit (General) Regulation 1995* and Treasurer's Direction: land, roads and bridges and growing stock were separately disclosed. This separate disclosure has been changed. Within Native Forests and Hardwood Plantations, the value of these relevant assets has not been disclosed. Within Softwood Plantations, the value of relevant land, roads and bridges has been disclosed as one asset class. These disclosures are inconsistent with the requirements of the Regulation and Direction.

An application to Treasury by State Forests for exemption from these statutory requirements was not granted.

Without further qualification, the audit report also referred to the following inherent uncertainties:

♦ **Valuation of Forest Assets**

The audit report on the financial statements for the year ended 30 June 1995 included a qualification pertaining to the valuation method for broadleaf and cypress pine forests and native plantations. State Forests has now changed the valuation basis for these assets. The valuation is dependent upon the accuracy of data supplied by State Forests to the independent valuer. Because of the assumptions required to estimate the key components of this data the valuation is subject to uncertainty.

♦ **Superannuation**

Uncertainty currently exists concerning certain taxation allocations that may impact virtually all of the individual employer reserve balances of the State Authorities Superannuation Board - Pooled Fund. Until resolution of this uncertainty, the quantum of the financial effect on the individual employer reserves is unclear. The same situation existed at 30 June 1995. The uncertainty has not arisen from inaccuracies in the maintenance of State Forests' accounting records.

♦ **Forestry Reform Package**

The likely but as yet unquantifiable effect of the State Government's forestry reform package on State Forests' financial position, operations and viability.

In recent years State Forests' management have expressed concern over audit fee increases. The Audit Office too would prefer to allocate significantly less resources to the audit of State Forests' accounts and records. As explained to management in the past the audit fee is determined according to the extent of resources required to complete the audit. The fee cannot be used to limit the audit process, although State Forests can through its own contribution to the audit process cause the fee to be higher than it need be.

FINANCIAL STATEMENTS REVIEW

Income and Expenditure Statement

	Actual 1996 \$'000	Actual 1995 \$'000	Variance From 1995 %
INCOME			
Sale of Timber and Related Products	98,394	102,205	(3.7)
Community Services	14,557	14,587	(0.2)
Fees and Rents	3,244	2,932	10.6
Profit on Sale of Property, Plant and Equipment	268	953	(71.9)
Other	<u>11,613</u>	<u>13,943</u>	(16.7)
TOTAL INCOME	<u>128,076</u>	<u>134,620</u>	(4.9)
EXPENDITURE			
Labour and Related Costs	55,871	52,364	6.7
Depreciation	12,581	12,709	(1.0)
Materials and Contractors	14,787	16,000	(7.6)
Superannuation	6,418	5,743	11.7
Consultants	1,009	1,335	(24.4)
Directors' Fees	141	137	2.9
Interest	6,453	4,517	42.9
Cost of Timber Harvested	3,784	3,806	(0.6)
Indirect Tax Equivalents	2,186	1,435	52.3
Fees	5,146	5,765	(10.7)
Telephone, Communication and Travel	3,882	3,858	0.6
Computer Costs and Office Supplies	1,232	1,330	(7.4)
Occupancy	1,581	1,307	21.0
Audit Fees	171	149	14.8
Doubtful Debts	3	22	(86.4)
Other	2,690	4,286	(37.2)
Capitalised Costs	<u>(4,029)</u>	<u>(6,232)</u>	(35.3)
TOTAL EXPENDITURE	<u>113,906</u>	<u>108,531</u>	5.0
OPERATING SURPLUS BEFORE MARKET VALUE INCREMENT AND ABNORMAL ITEMS	14,170	26,089	(45.7)
Market Value Increment/ (Decrement)	(5,440)	36,931	(a)
Abnormal Items	<u>(14,852)</u>	<u>62,428</u>	-
OPERATING SURPLUS/(LOSS) BEFORE INCOME TAX EQUIVALENT	(6,122)	125,448	(a)
Income Tax Attributable to Operating Surplus	(6,338)	(10,484)	(39.5)
Income Tax Attributable to Market Value Increment and Abnormal Items	<u>8,632</u>	<u>(31,286)</u>	(a)
OPERATING SURPLUS/ (LOSS) AFTER TAX	(3,828)	83,678	(a)
Government Capital Contribution	5,705	--	(a)
Retained Earnings at 1 July	44,069	101,303	(56.5)
Adjustment Due to Change in Accounting Policy	--	694	(100.0)
Tax effect on Becoming Subject to Tax Equivalent Regime	--	<u>(30,698)</u>	(100.0)
Total Available for Appropriation	45,946	154,977	(70.4)
Appropriations (to)/from:			
Growing Stock Revaluation Reserve	83,393	(92,678)	(a)
Dividend	<u>(5,974)</u>	<u>(18,230)</u>	(67.2)
RETAINED EARNINGS AT 30 JUNE	<u>123,365</u>	<u>44,069</u>	179.9

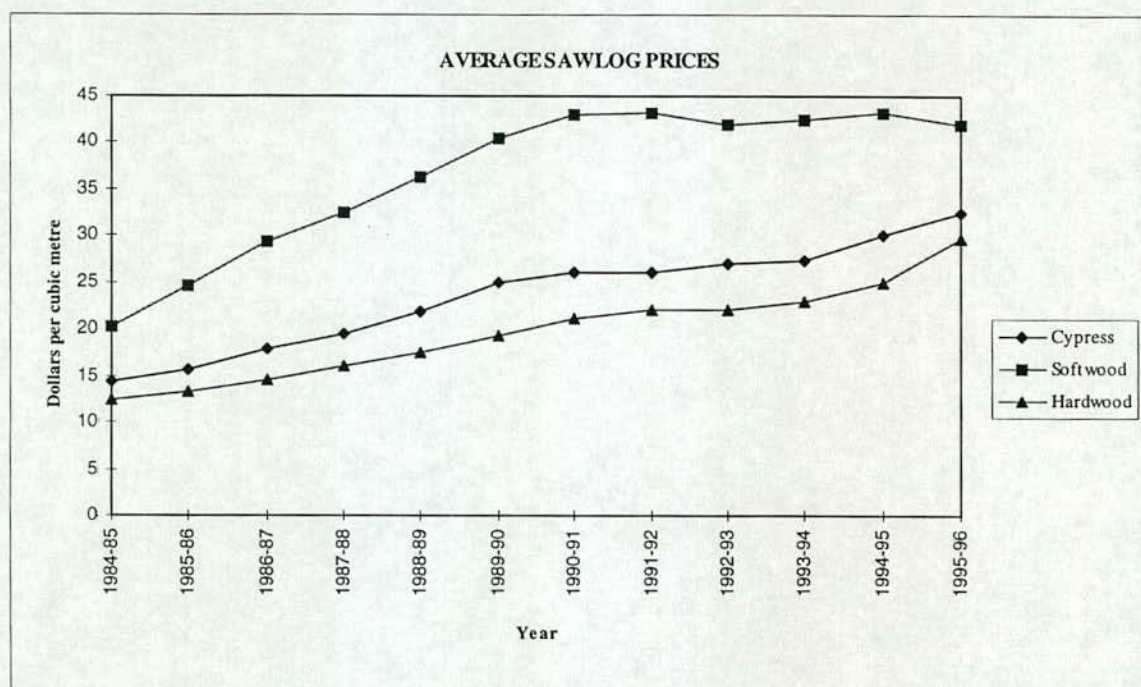
(a) Percentage not applicable.

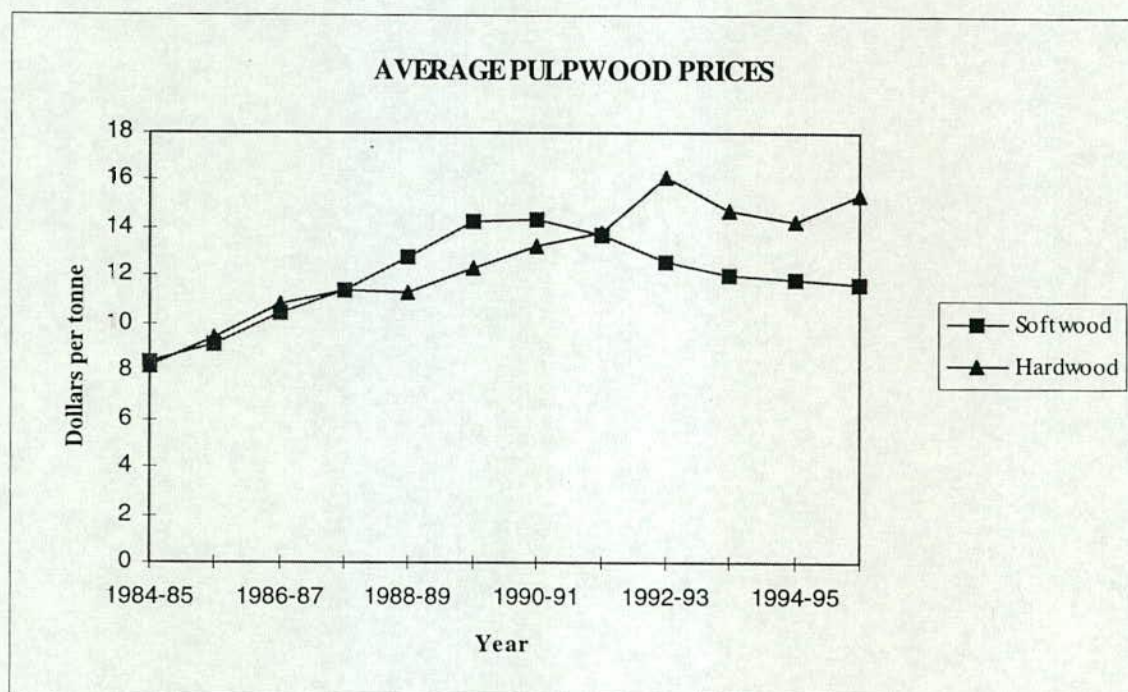
Management has explained the variations and components as follows:

- ◆ Sale of timber and related products included revenue from softwood, \$49.3m (\$52.8m in 1994-95), native hardwood, \$44.4m (\$45.1m), cypress pine, \$3.3m (\$3.2m) and hardwood plantations, \$1.4m (\$1.1m). The decrease in total revenue is mainly attributed to the slump in the domestic housing sector, from which State Forests derives some two thirds of its sawlog timber revenue. Hardwood volumes are consistent with forecasts because of customers stockpiling ahead of future uncertainty of supply. Increased quota sawlog prices (15% from 1 July 1995 and 3% from 1 May 1996) was largely offset by reduced volumes for this product category.

State Forests expects the soft market conditions and the forestry reform agenda to impact on its performance over the next 12 to 18 months. To reduce future exposure to movements in the domestic housing industry State Forests' has indicated that it has 5 to 10 year strategies for expansion of market share.

The following two charts show the trends of sawlog and pulpwood prices from 1985 to 1996. The price of hardwood sawlogs has increased over recent years relative to softwood sawlog prices. This is understood to reflect increasing recognition of the relative value of this product in the market place and the structural price adjustment on 1 July 1995.





State Forests has advised that these charts are based upon average prices over a range of size/quality/price grades. As a result interpretation may be difficult. In particular, shifts in the size/quality/price grade mix affect the price trends. Furthermore, the product groups (softwood, hardwood, cypress) represent significantly different products in quality, grade recovery, grade range, etc., such that comparison of absolute average prices for each category is of limited value.

- ◆ Government contributions for social programs (Community Service Obligations) totalled \$14.6m (\$14.6m for 1994-95). These are applied towards costs incurred on the provision of recreational facilities, education and advisory services, Government liaison and regulatory services, community fire protection, and research. Other State and Federal contributions received during the year totalled \$11.1m (\$5.4m). This included \$8.5m (\$5m) towards the Hardwood Plantation Establishment Program, of which \$5.7m was capitalised. The remaining \$2.6m included contributions towards costs associated with the Interim Assessment Process and development of the Wood Resources Study (\$1.3m).
- ◆ Interest expense has increased due to additional borrowings.
- ◆ Each year State Forests recognises, in its income and expenditure statement, the change in the value of unharvested commercial softwood plantations growing stock (as a market value increment or decrement). The value of the commercial component of the growing stock is derived using statistical methods. The following table summarises the changes in value.

Components of Market Value Increment/(Decrement)	1996 \$'000	1995 \$'000
Normal Components:		
Timber Prices	(17,113)	21,858
Timber Volumes	<u>11,673</u>	<u>15,073</u>
	(5,440)	36,931
Abnormal Component:		
Improved Inventory Techniques	<u>(12,900)</u>	<u>55,747</u>
TOTAL INCREMENT/(DECREMENT)	<u>(18,340)</u>	<u>92,678</u>

State Forests has attributed the lower volume growth to drought conditions in recent years. The price decrement reflects lower year-end average sawlog prices. The abnormal component reflects further improvements in the measurement of inventory leading to a reduction in its value.

- ◆ Abnormal items have moved from a net supplementation to operating surplus of \$62.4m to a net reduction of \$14.9m. The major abnormal item is the unrealised market value increment/decrement of growing stock. Abnormal items comprised:

	1996 \$'000	1995 \$'000
ABNORMAL ITEMS		
Adjustment to: Superannuation Provision	2,215	6,094
Property, Plant and Equipment	--	6,840
Prior Year Adjustments:		
Government Guarantee Fee	--	(330)
Reversal of Provision for Diminution of Hardwood Plantations	1,996	--
Expenditure on Environmental Impact Statements	(5,635)	(5,748)
Plantation Growing Stock		
Write-down of Plantation Due to Storm Damage	(528)	(175)
MVI/(MVD) - Changed Inventory and Data Component	<u>(12,900)</u>	<u>55,747</u>
Total Abnormal Items	<u>(14,852)</u>	<u>62,428</u>

The cost of Environmental Impact Statements (EIS) is expensed due to the uncertain outcome and timing of future benefits that may arise. All Environmental Impact Assessments are undertaken under the *Timber Industry (Interim Protection) Act 1992*. Of the 15 EIS required: four have been considered by the Minister for Urban Affairs and Planning and been determined; ten have completed the exhibition period and one (Murwillumbah) is being prepared. Cumulative expenditure on EIS as at 30 June 1996 totalled \$18.8m.

Balance Sheet

	1996 \$'000	1995 \$'000	Variance %
CURRENT ASSETS			
Cash	6,072	1,677	262.1
Accounts Receivable	11,268	11,344	(0.7)
Investments	136	159	(14.5)
Forest Assets - Plantation Growing Stock	58,794	59,903	(1.9)
Inventories	4,319	3,585	20.5
TOTAL CURRENT ASSETS	80,589	76,668	5.1
NON-CURRENT ASSETS			
Forest Assets	1,274,649	1,084,723	17.5
Non-Forests Assets	73,979	72,938	1.4
Future Income Tax Benefit	9,447	9,073	4.1
TOTAL NON-CURRENT ASSETS	1,358,075	1,166,734	16.4
TOTAL ASSETS	1,438,664	1,243,402	15.7
CURRENT LIABILITIES			
Accounts Payable	13,138	11,214	17.2
Borrowings	63,626	20,125	216.2
Provisions	16,878	31,139	(45.8)
TOTAL CURRENT LIABILITIES	93,642	62,478	49.9
NON-CURRENT LIABILITIES			
Borrowings	21,463	27,990	(23.3)
Provisions	22,371	22,172	0.9
Deferred Income Tax Liability	76,389	78,011	(2.1)
TOTAL NON-CURRENT LIABILITIES	120,223	128,173	(6.2)
TOTAL LIABILITIES	213,865	190,651	12.2
NET ASSETS	1,224,799	1,052,751	16.3
CAPITAL AND RETAINED EARNINGS			
Contributed Capital	466,257	466,257	-
Retained Earnings	123,365	44,069	179.9
Reserves - Softwood Growing Stock Revaluation	418,094	531,858	(21.4)
- Asset Revaluation	217,083	10,567	(a)
TOTAL CAPITAL AND RETAINED EARNINGS	1,224,799	1,052,751	16.3

(a) More than 1,000%.

Management has explained the variations and components as follows:

- ♦ The ratio of surplus after tax and government capital contributions to net assets declined from 8% to 0.2% mainly due to the volatility of unrealised market value increment/decrement of softwood growing stock and the higher asset base because of revalued forest assets.
- ♦ Forest assets (both current and non-current) comprised:

	1996 \$'000	1995 '000
SOFTWOOD PLANTATION GROWING STOCK		
Non Commercial - at Cost	247,483	244,579
Commercial - at Market Value (a)	<u>656,174</u>	<u>658,663</u>
Total	<u>903,657</u>	<u>903,212</u>
HARDWOOD PLANTATION GROWING STOCK		
- at Valuation/(at Cost 1995) (a), (b), (c)	24,890	425
- at Cost (d)	<u>5,367</u>	--
Total	<u>30,257</u>	<u>425</u>
TIMBER RIGHTS IN OTHER CROWN LAND ETC (b) (c)	<u>500</u>	--
ASSETS VALUED AS INTEGRAL ASSETS BY INDEPENDENT VALUER IN 1995-96		
<i>Land Roads and Bridges -</i>		
Softwood Plantation (b), (c)	134,027	--
Hardwood Plantations - at Valuation (b), (c)	15,532	--
<i>Timber Resource, Land, Roads and Bridges -</i>		
Native Broadleaf Forest (b), (c)	222,470	--
Native Cypress Forest (b), (c)	27,000	--
<i>In 1994-95 these assets were reported as-</i>		
Land (e)	--	77,660
Roads and Bridges (e)	--	78,728
Broadleaf Forests (e)	--	70,551
Cypress Pine Forests (e)	--	14,050
Total of Categories that Could not be Compared	<u>399,029</u>	<u>240,989</u>
Total Forest Assets	<u>1,333,443</u>	<u>1,144,626</u>
(a) Includes \$58.8m reported as current assets - the portion expected to be realised in 1996-97.		
(b) Valuation dependent on accuracy of data supplied to independent valuer.		
(c) Disclosure inconsistent with statutory requirements.		
(d) 1995 figure is at cost and net of provision for diminution.		
(e) Figures not comparable.		

Commercial softwood plantations are valued using statistical methods. Non-commercial plantations are those non-harvested plantations aged less than 15 years which have not yet undergone a commercial operation.

For non-commercial softwood plantations, direct costs together with other attributable costs comprising fire prevention and suppression, road maintenance, forest management and planning, research and district administration and management are capitalised until a plantation reaches the age of 15 years, or the first commercial thinning of the plantation (which could be as early as age 12). From this point until the plantation is completely harvested all costs are expensed when incurred, with the exception of costs expended on fertilising and pruning programs (to improve stand quality) which are capitalised.

State Forests has advised that softwood plantings during the year totalled 5,613 hectares. New hardwood plantations on both private (in joint venture) and State Forests' land totalled 2,077 hectares. Consistent with Government initiatives it is intended that hardwood plantations be increased to facilitate the move from harvesting old growth forests to regrowth forests and plantations. State Forests are also working to establish softwood plantations in conjunction with private landholders.

The following table details forest asset components and is indicative of the average value per hectare. Data used in the construction of this table has been based on information provided to the independent valuer. This information has been supplemented by the assessed values of softwood growing stock and particulars of recently established hardwood plantations.

FOREST, PLANTATION TYPE	HECTARES '000	TIMBER RESOURCE AS A SEPARATE ASSET \$'000	LAND, ROADS, & BRIDGES AS ONE INTEGRAL ASSET \$'000	TIMBER, LAND, ROADS & BRIDGES AS ONE INTEGRAL ASSET \$'000	TOTAL VALUE \$'000	AVERAGE VALUE PER HECTARE \$'000
Softwood Plantations	265	903,657	134,027	--	1,037,684	3,916
Hardwood Plantations	40 (b)	30,257	15,532	--	45,789	1,145
Broadleaf Forests	2,524	90 (a)	45,739	176,731	222,560	88
Cypress Pine Forests	799	410 (a)	6,349	20,651	27,410	34
TOTAL	3,628	934,414	201,647	197,382	1,333,443	368
(a) Value of timber on Crown Land not controlled by State Forests.						
(b) Includes 3,347 hectares established with private landholders.						

A 1992 State Forests' report indicates that almost all of the 25,000 hectares of then existing eucalypt plantations were established on former native forest sites which were logged and then cleared for plantation purposes. That report also indicates that "in the early 1980s the Forestry Commission made a decision that eucalypt plantation areas were to be managed under the same prescriptions as the surrounding native forest and therefore it was not necessary to classify these areas separately." It is understood that, because of changes in the classification criteria for hardwood plantations, State Forests is currently undertaking an inventory of its hardwood plantations and intends seeking accreditation of its hardwood plantations under the *Timber Plantations (Harvest Guarantee) Act 1995*.

Included within broadleaf and cypress pine forests are non harvestable areas totalling 933,219 and 253,187 hectares respectively. The value of this land is included in the total value of native forests in the financial statements. The value averages \$25 per hectare for cypress pine forests to \$49 per hectare for broadleaf forests. The range of land values for both forests is from a low of \$20 to a high of \$50 a hectare. The value of productive land averaged \$111 and \$38 per hectare for broadleaf and cypress respectively. The Audit Office raised some concerns with the Valuer-General about the valuation but was unable to resolve them. They will be addressed during the coming year.

- ◆ Non-forest assets comprise land identified as not forming part of the forest estate, buildings and installations, plant and equipment and capital work in progress. At 30 June 1996 heavy plant was devalued by \$2.1m. This reappraisal of value resulted from a change in the market for these assets. Non-forest assets comprised:

	Valuation / Cost \$'000	Accumulated Depreciation \$'000	1996 \$'000	1995 \$'000
Land	3,104	-	3,104	3,287
Buildings & Installations	27,394	1,313	26,081	26,983
Plant & Equipment	42,387	3,058	39,329	39,725
Capital Work in Progress	<u>5,465</u>	<u>-</u>	<u>5,465</u>	<u>2,943</u>
Total Non-Forest Assets	<u>78,350</u>	<u>4,371</u>	<u>73,979</u>	<u>72,938</u>

- ◆ Borrowings increased by \$37m. Additional borrowings were applied to softwood plantations and other investing activities.
- ◆ Apart from employee accrued leave entitlements and superannuation, provision is made for payment of dividends. The provision for dividend decreased by \$12.3m reflecting the lower operating surplus. In addition, as at 30 June 1995, a provision for taxation equivalents of \$3.5m was required. No provision for taxation was required as at 30 June 1996.

Cash Flows

Net cash provided by operating activities totalled \$23.9m (\$35.1m in 1994-95). This was offset by net outflows from investing and financing activities of \$19.5m (\$37.9m in 1994-95) resulting in an increase in cash held from \$1.7m to \$6.1m. Cash at year-end included two short-term loans totalling \$5m received on 28 June 1996. On 1 July 1996, a short-term loan of \$5.6m was repaid.