

Western Australia

Wood Processing (Wesbeam) Agreement Bill 2002

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Western Australia

LEGISLATIVE ASSEMBLY

**Wood Processing (Wesbeam) Agreement
Bill 2002**

A Bill for

An Act to ratify, and authorise the implementation of, an agreement between the State and Wesbeam Pty Ltd and Wesbeam Holdings Limited relating to the supply, harvesting and processing of plantation timber for the manufacture of timber products.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Wood Processing (Wesbeam) Agreement Act 2002*.

2. Commencement

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

3. Interpretation

5 In this Act —

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

10 **4. Agreement ratified and implementation authorised**

(1) The Agreement is ratified.

(2) The implementation of the Agreement is authorised.

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

Schedule 1 — Wood Processing (Wesbeam) Agreement

[s. 3]

THIS AGREEMENT is made this 11th day of August 2002

BETWEEN

THE HONOURABLE DR. GEOFFREY IAN GALLOP, B.Ec., MA., MPhil., DPhil., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the first part,

WESBEAM PTY LTD ACN 004 268 017 of Suite 9, 89 Forrest Street, Cottesloe, Western Australia (hereinafter called “the Company” in which term shall be included its successors and permitted assigns) of the second part, and

WESBEAM HOLDINGS LIMITED ACN 095 594 826 of Suite 9, 89 Forrest Street, Cottesloe, Western Australia (hereinafter called “the Guarantor”) of the third part.

WHEREAS:

- A. The State of Western Australia has established softwood plantations on land covering and adjacent to the aquifer known as the Gnangara Mound. The Gnangara Mound is an important source of potable water for Western Australia. The State wishes the progressive harvesting of its softwood plantations on and adjacent to the Gnangara Mound to continue as part of its plans to protect the Gnangara Mound groundwater resource.
- B. The Company wishes to establish and operate in Western Australia at the Site a plant to process Timber into laminated veneer lumber and other Timber Products. The Company intends to market laminated veneer lumber within Australia as a suitable substitute for large dimension structural beams produced from old growth hardwood forest resource. The Company has also identified overseas markets for the dry veneer and other Timber Products to be produced by it and local markets for residues resulting from its wood processing activities.
- C. Before establishing that plant the Company needs (among other things) to be assured that during the currency of this Agreement it can obtain on reasonable and commercial terms from the State’s softwood plantations on and adjacent to the Gnangara Mound and from other parts of the Timber Supply Area a reliable supply of Timber suitable for the

production of laminated veneer lumber and other Timber Products. The Company also wishes to have the opportunity during the currency of this Agreement of obtaining additional Timber from the Timber Supply Area if such Timber becomes available.

- D. The State recognises:
- (a) that the harvesting of Timber from the State's softwood plantations on and adjacent to the Gnangara Mound will assist the State in implementing its plans to protect the Gnangara Mound groundwater resource;
 - (b) that it is in the interests of the State that Timber harvested by the Commission from the Timber Supply Area be fully processed in Western Australia; and
 - (c) that the Company's proposed wood processing activities under this Agreement will add value to an important resource of the State.

Accordingly and for the purpose of promoting employment opportunities and industrial development generally the State has agreed to assist the Company on the terms of this Agreement.

- E. For the purposes of providing part of the Company's Timber requirements for the Plant during the Further Term (as defined in clause 6) and of the Company being granted in accordance with, and subject to the conditions set out in, clause 6 rights to the supply by the Commission of Timber (if available) for the Plant during the Further Term, the Company proposes to spend \$1,000,000 during each Year of the Term commencing from 1 July 2009 on planting in the Timber Supply Area trees suitable for the production of Timber Products. The Company also considers such planting will allow the Plant's production during the Further Term to be increased and assist endeavours by the State to address land salinity concerns in the Timber Supply Area.

NOW THIS AGREEMENT WITNESSES:

1. In this Agreement subject to the context:

"Additional Area" means that land being at the date of this Agreement portion of Lot 10053 on Deposited Plan 186030 and being part of the land in Certificate of Title Volume 1659 Folio 100 and comprising an area of 5 hectares at Neerabup, Western Australia as shown coloured green on the plan "A" attached hereto and initialled by or on behalf of the

parties on the date of this Agreement for the purpose of identification and which the Company has or will have the option to purchase from LandCorp on the terms and conditions of the Option Deed. The Additional Area adjoins the 10 hectares of land at Neerabup, Western Australia that the Company has agreed or will agree to purchase from LandCorp on the terms and conditions of the Contract of Sale;

“Additional Timber Limit” means in relation to a Year 90,000 cubic metres less the total quantity of Timber offered by the Commission in respect of that Year (including pursuant to past offers) to the Company as referred to in clause 5(2) and accepted by the Company or the subject of a counter-offer by the Company which is accepted by the Commission;

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

“Available Additional Timber” has the meaning given to it in the Production Contract;

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

“Commencement Date” means the date on which the Bill referred to in clause 3 commences to operate as an Act;

“Commission” means the Forest Products Commission established under the Forest Products Act;

“Commission Sharefarmed Land” means land that is the subject of a timber sharefarming agreement made pursuant to section 34B of the CALM Act and which pursuant to the transitional provisions of schedule 1 clause 4 to the Conservation and Land Management Amendment Act 2000 has effect as if it had been entered into by the Commission, and land that is the subject of a timber sharefarming agreement made pursuant to section 52 of the Forest Products Act;

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

“Concurrent Contract” means a contract under which the Commission makes, or is to make, Timber available for supply to the Company and which results from the acceptance by the Company of an offer of a

quantity of Timber as referred to in clause 5(2) or the Commission's acceptance of a counter-offer from the Company for the same or a lesser quantity of Timber;

“Contract of Sale” means the contract of sale entered into or to be entered into on or about the date of this Agreement between LandCorp, the Company and the Guarantor for the purchase by the Company from LandCorp of the Site subject to the Bill to ratify this Agreement being passed by the State Parliament of Western Australia and commencing to operate as an Act as referred to in clause 3;

“cubic metre” means a cubic metre of Timber under bark calculated on the basis that the length of each softwood log taken into account is the sum of the length of each billet of 2.5 metres in length (or such other length as may from time to time be agreed in writing by the Company and the Commission) able to be cut from the softwood log;

“Department” means the Department of Conservation and Land Management referred to in section 32 of the CALM Act;

“Departmental land” means:

- (a) State forest and timber reserves within the meaning of the CALM Act;
- (b) land that is the subject of a declaration under section 87(2) of the CALM Act; and
- (c) land held by the Executive Director under section 131 of the CALM Act;

“Departmental Sharefarmed Land” means land that is the subject of a timber sharefarming agreement made pursuant to section 34B of the CALM Act (not being a timber sharefarming agreement to which the transitional provisions of schedule 1 clause 4 to the Conservation and Land Management Amendment Act 2000 apply);

“Executive Director” means the executive director of the Department referred to in section 36(1) of the CALM Act;

“Forest Products Act” means the Forest Products Act 2000;

“LandCorp” means the Western Australian Land Authority a body corporate established under the Western Australian Land Authority Act 1992;

“laws relating to native title” means laws applicable from time to time in Western Australia in respect of native title and includes the Native Title Act 1993 (Commonwealth);

“local government” means a local government established under the Local Government Act 1995;

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

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

“month” means calendar month;

“Option Deed” means the deed entered into or to be entered into on or about the date of this Agreement between LandCorp, the Company and the Guarantor for the grant by LandCorp to the Company of an option to purchase the Additional Area subject to the Bill to ratify this Agreement being passed by the State Parliament of Western Australia and commencing to operate as an Act as referred to in clause 3;

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

“Plant” means the plant and all necessary ancillary buildings, works, plant and equipment and services to be constructed and established by the Company on the Site in accordance with clause 4 for the processing by the Company of Timber into laminated veneer lumber and other Timber Products;

“Production Contract” means the contract in the form marked “B” initialled by or on behalf of the parties on the date of this Agreement for the purpose of identification and under which the Commission is to make Timber available for supply to the Company as referred to in clause 5(1);

“Public land” means Crown land within the meaning of section 11 of the CALM Act and Departmental land;

“residues” means green residues, dry residues and bark by-products resulting from the production of Timber Products by the Company at the Plant;

“Site” means the land being at the date of this Agreement portion of Lot 10053 on Deposited Plan 186030 and being part of the land in Certificate of Title 1659 Folio 100 and comprising an area of 10 hectares at Neerabup, Western Australia as shown coloured red on the plan marked “A” attached hereto and initialled by or on behalf of the parties on the date of this Agreement for the purpose of identification and which the Company has agreed or will agree to purchase from LandCorp on the terms and conditions of the Contract of Sale. If the Company acquires ownership of the Additional Area pursuant to the exercise of the option in that regard granted or to be granted to it under the Option Deed, a reference in this Agreement (other than in the definition of Contract of Sale in this clause) to the Site will from then on include the Additional Area;

“Term” means the term of this Agreement specified in clause 24(1);

“this Agreement”, **“hereof”** and **“hereunder”** refer to this Agreement as from time to time added to, varied or amended;

“Timber” means timber of the genus pinus and the species pinaster or radiata or other species agreed in writing by the Commission and the Company from time to time and in respect of which the Commission has at the relevant time harvesting and sale rights;

“Timber Products” means laminated veneer lumber, dry veneer, plywood and I-joists and such other allied products as the Minister may approve from time to time for the purpose of this Agreement;

“Timber Supply Area” means:

- (a) Public land;
- (b) Commission Sharefarmed Land; and
- (c) Departmental Sharefarmed Land,

within a geographical radius of 250 kilometres of the Site; and

“Year” means the period from and including 1 July of any year to and including 30 June of the next year.

Interpretation

2. (1) In this Agreement:
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than clause 15 to extend any period or date shall be without prejudice to the power of the Minister under clause 15;
 - (c) clause headings do not affect interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other genders;
 - (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
 - (g) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
 - (h) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
 - (i) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
 - (j) reference to the Commission includes the person or body for the time being exercising the statutory powers and functions relevant to this Agreement exercised by the Commission at the date of this Agreement; and
 - (k) “including” means “including, but not limited to”.

- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any law relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the Environmental Protection Act 1986.

Ratification and operation

- 3. (1) The State must introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 26 September 2002 or such later date as may be agreed between the parties hereto.
- (2) The provisions of this Agreement other than this clause and clauses 1 and 2 will not come into operation until the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and comes into operation as an Act.
- (3) If by 24 October 2002 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement will operate and take effect notwithstanding the provisions of any Act or law.

Establishment of the Plant

- 4. (1) The Company hereby covenants with the State that by 31 December 2002 the Company will commence to erect and thereafter will diligently proceed with the construction and establishment on the Site of a plant designed to process and capable of processing not less than 160,000 cubic metres per year

of Timber into laminated veneer lumber and other Timber Products, and will within 2 years after the commencement thereof complete the construction and establishment of the plant on the Site and commence operating it.

- (2) In constructing, establishing and operating the Plant the Company must comply with all statutes, regulations and by-laws and the requirements of any relevant public, local government or other authority.

Supply of Timber during the Term

5. (1) The State must ensure that the Commission enters into the Production Contract and during the period commencing on the Commencement Date (or if that date is for any reason considered inappropriate by the Commission and the Company, such later date as they may agree in writing) and expiring on 30 June 2029 makes available for supply to the Company at the Site up to 4,120,000 cubic metres (or such lesser quantity as is agreed between the Commission and the Company) of Timber in accordance with the log specifications, at the prices and upon the other terms and conditions agreed between the Commission and the Company in or under the Production Contract. The Company and the Guarantor must enter into the Production Contract.
- (2) During the period referred to in subclause (1) the State must until the Additional Timber Limit for each then remaining Year of the Term has been reached:
 - (a) ensure that except as otherwise permitted under the Production Contract the Commission does not sell, or agree to make available for supply, to a third party Available Additional Timber, or Timber that would be Available Additional Timber if immediately before that sale was made or that agreement was entered into a calculation of Available Additional Timber was undertaken pursuant to clause 10.1 of the Production Contract and immediately notified to the Company pursuant to clause 10.2 of the Production Contract, which if offered to the Company and accepted by it would not cause the Additional Timber Limit for the Year or Years of its intended supply to be exceeded, without first offering to the Company to make that Timber available for

supply to it at the Site upon the terms and conditions for such offer in the Production Contract; and

- (b) if a periodic notification to the Company from the Commission under the Production Contract of Available Additional Timber discloses that not less than 5,000 cubic metres per Year of Timber of the same specifications as to age, quality and dimensions would be available for supply from the Timber Supply Area for a period of not less than 5 consecutive Years that would commence within a timeframe agreed between the Commission and the Company and expire on or before 30 June 2029, ensure that the Commission offers to the Company to make available for supply to it at the Site for each Year of that period of supply and upon the terms and conditions for such offer in the Production Contract the quantity of such Timber disclosed as available for that Year which if offered to the Company and accepted by it would not cause the Additional Timber Limit for that Year to be exceeded.
- (3) For the purposes of this Agreement in respect of the Production Contract and each Concurrent Contract the Forest Products Act shall be deemed modified by:
 - (a) the deletion of sections 58, 59 and 61(b)(ii); and
 - (b) the insertion in the first line of section 61 after “production contract” of the words “(other than provisions as to the term of the production contract, the quantities of timber to be made available by the Commission under it and the prices payable for such timber)”.
- (4) If any of the State’s softwood plantations or other parts of the Timber Supply Area are damaged or destroyed by fire, disease or other cause to such an extent that it is impracticable for the State to comply with the provisions of subclauses (1) or (2) or if by reason of anything beyond its reasonable control the State is prevented from complying with those provisions the Company will have no claim against the State or against the Commission for the nonfulfilment of their obligations under or as referred to in those provisions so far as nonfulfilment is due to any such cause.
- (5) (a) Subject to paragraph (c), if during the Term the Commission or the State is a party to an agreement which

provides for the supply to a third party from the Timber Supply Area of 50,000 cubic metres or more over a period of 5 or more consecutive years, or 10,000 cubic metres or more in a 12 month period, of Timber:

- (i) meeting the specifications applying to Timber to be supplied under the Production Contract; and
- (ii) to produce, or which the Commission is reasonably satisfied the third party uses or intends to use to produce, one or more Timber Products for sale in Western Australia; and
- (iii) at delivered prices to the third party more favourable on the whole to the third party than those under which the Company will be supplied during the same period under the Production Contract or, if a Concurrent Contract provides for the supply of Timber of those specifications, under that Concurrent Contract and for that Timber,

(the quantity of Timber meeting the criteria in subparagraphs (i) and (ii) above being called the “**relevant quantity**”, the period of supply of such Timber being called the “**relevant period of supply**” and a contract referred to in subparagraph (iii) above under which the Company is being supplied on the less favourable delivered prices being called the “**relevant contract**”) the State must ensure that the Commission in accordance with this subclause (5) makes the more favourable delivered prices available in respect of the relevant contract on a whole of terms basis to the Company from the beginning of the relevant period of supply in the case of a third party agreement that specifies the use of the Timber as being to produce one or more Timber Products, or in the case of a third party agreement that does not specify the use of the Timber as being to produce one or more Timber Products from the time the Commission is reasonably satisfied that the third party uses or intends to use the Timber to produce one or more Timber Products, until:

- (iv) the expiration or earlier determination of the relevant period of supply to the third party; or

- (v) the expiration or earlier determination of the relevant contract; or
- (vi) the Timber to be supplied to the third party no longer meets the specifications applying to Timber to be supplied under the Production Contract,

whichever shall occur first.

The Commission must make the more favourable delivered prices available on a whole of terms basis by way of discount, during the period the Company is entitled to such discount, on the delivered prices otherwise applicable during such period under the relevant contract and for a quantity of Timber up to but not exceeding in aggregate between all of the relevant contracts, the relevant quantity.

If the Company is entitled to a discount under both the Production Contract and a Concurrent Contract such discount will first be made available to the extent permitted under the Production Contract. The Company is not entitled to a discount for a quantity of Timber exceeding in aggregate between the Production Contract and Concurrent Contracts the relevant quantity nor for Timber not meeting the specifications applying to Timber to be supplied under the Production Contract. This subclause (5) does not require the Commission to make available for supply to the Company more Timber than it is otherwise required to do so under the Production Contract or relevant Concurrent Contract.

- (b) If the Company believes that there are grounds on which the Commission may be reasonably satisfied in terms of paragraph (a)(ii), then the Company may give notice to the Commission specifying those grounds and requesting the Commission to determine whether or not it is reasonably satisfied in terms of that paragraph. The State must ensure that within 90 days after receiving the notice the Commission:
 - (i) determines whether or not it is reasonably satisfied in terms of paragraph (a)(ii), having regard to the grounds specified in the notice and any other

relevant information reasonably available to the Commission at the time the determination is required to be made; and

- (ii) notifies the Company of the determination.

If the Company disputes the Commission's determination it may refer their dispute to arbitration under the provisions of the Commercial Arbitration Act 1985 within 30 days after being notified of the determination. If no such referral is made the determination will be final.

- (c) Paragraph (a) does not apply:

- (i) to an agreement with a third party (whether entered into before or after the date of this Agreement) for the supply by the Commission or the State of Timber which is to be sent outside of Western Australia; or
- (ii) to an agreement with a third party (whether entered into before or after the date of this Agreement) who, in response to a request for tenders by the Commission (and which request was also open to the Company to respond to), tendered to be supplied by the Commission with the Timber the subject of the agreement; or
- (iii) to an agreement between the Commission or the State and a third party who is or becomes a related body corporate (as defined in the Corporations Act 2001) of the Company or who is a director or secretary of the Company or of a related body corporate of the Company; or
- (iv) to any other agreement with a third party that was entered into before the date of this Agreement unless it is expressly varied after the date of this Agreement by written agreement between the Commission or the State as the case may be and the third party to provide for the supply of Timber at delivered prices to the third party more favourable on the whole than those under which the third party was previously being supplied by the Commission or the State as the

case may be. The possible application of paragraph (a) will then be considered on the basis of it being an agreement for supply of Timber for the remaining term of that agreement and for the quantity of Timber to be supplied over that remaining term.

Supply of Timber during the Further Term

6. (1) (a) In this Agreement “**Available Future Timber**” means the aggregate quantity (if any) of Specification Timber that the Commission determines as at 30 June 2027 and in accordance with the provisions of this definition will be available or is likely to be available (within the limits of sound silvicultural practice) for supply by the Commission during the Further Term from the Timber Supply Area in equal (or nearly as practicable equal) quantities being not less than 1,000 cubic metres, and not more than the Future Timber Limit, for each Year of the Further Term after excluding only:
- (i) subject to clauses 10.1(b) - 10.1(e) both inclusive of the Production Contract, the quantity of Timber the Commission considers would be required to be made available by the Commission or the State from the Timber Supply Area during the balance of the Term and during the Further Term for supply under those of the agreements, renewals, extensions and replacement agreements referred to in clause 10.1(a)(i) of the Production Contract that are in force on 30 June 2027 or which at that date are proposed to be entered into, renewed, extended or replaced (as permitted under the Production Contract) by the State or by the Commission as the case may be, and on the basis that if the term of any such agreement then in force or to be entered into or as renewed, extended or replaced as the case may be (other than the Production Contract, Concurrent Contracts and agreements referred to in clauses 10.1(a)(i)E, not being agreements for the supply of Timber over a period of 5 or more years expiring on or shortly before 30 June 2029,

10.1(a)(i)F, 10.1(a)(i)G, 10.1(a)(i)H or in 10.1(a)(i)J of the Production Contract which replace those agreements referred to in clauses 10.1(a)E, not being agreements for the supply of Timber over a period of 5 or more years expiring on or shortly before 30 June 2029, 10.1(a)(i)F, 10.1(a)(i)G or 10.1(a)(i)H of the Production Contract or are renewals or extensions of such replacement agreements) would otherwise expire prior to 1 July 2055 the agreement will for the purpose of the Commission's determination be treated as continuing in force until that date for the yearly supply during that continued term of the aggregate quantity of the Timber that is required to be made available under it during the last year of its term and from the supply area applicable at that time; and

- (ii) the quantity of Timber which the Commission would otherwise have available (within the limits of sound silvicultural practice) for supply under an agreement, or a renewal, extension or replacement of an agreement referred to in clause 10.1(a)(i) of the Production Contract but which comprises Subject Timber (as defined in clause 10.3A of the Production Contract),

and including Timber referred to in subparagraph (i) of the definition of Specification Timber in paragraph (b) in priority to the Timber referred to in subparagraph (ii) of that definition, and the Timber referred to in that subparagraph (ii) in priority to the Timber referred to in subparagraph (iii) of that definition.

- (b) In this Agreement:

“Further Term” means the term commencing on 1 July 2029 and expiring on 30 June 2054;

“Future Timber Limit” means in relation to each Year of the Further Term:

- (i) if during the Relevant Period the Company purchases under the Production Contract and

Concurrent Contracts not less than 90% (or such other percentage as the Minister and the Company may agree in writing is appropriate in the circumstances) of the quantity that is equal to the aggregate of:

- A. the quantity of Timber the Commission makes available for purchase by the Company during the Relevant Period under the Production Contract and Concurrent Contracts less:
 - (1) the quantity of Timber that the Commission was obliged to but did not deliver to the Company during the Relevant Period for reasons other than the forfeiture of such Timber under the Production Contract or Concurrent Contracts or the refusal of the Company to accept delivery of such Timber including on the basis it was excused from doing so under the force majeure provisions of the Production Contract or a Concurrent Contract as the case may be; and
 - (2) the quantity of Timber that under the force majeure provisions of the Production Contract or the Concurrent Contracts as the case may be the Commission was excused from its obligation to deliver to the Company during the Relevant Period: and

- B. the quantity of Timber the making available of which for purchase by the Company under the Production Contract or a Concurrent Contract or Concurrent Contracts was reduced or suspended by the Commission for any part or parts of the Relevant Period under clause 23.4 of the

Production Contract or similar provisions of
a Concurrent Contract,

250,000 cubic metres; or

(ii) if subparagraph (i) of this definition does not apply:

A. then a quantity equal to the lesser of 250,000
cubic metres and the aggregate of :

(1) the average Yearly quantity during
the Relevant Period of Timber that
the Company purchases under the
Production Contract; and

(2) the average Yearly quantity during
the Relevant Period of Timber that
the Company purchases under
Concurrent Contracts; or

B. such greater quantity of Timber (not
exceeding 250,000 cubic metres) which the
Minister, after consultation with the
Company as to its ability to use such Timber
in the Plant's operations during the Further
Term and consultation with the Commission
and having regard to clause 6(2)(d), may in
the Minister's discretion approve;

“Relevant Period” means the period commencing on
1 July 2022 and expiring on 30 June 2027 or such other
period expiring not later than 30 June 2027 as the
Minister and the Company may agree in writing is
appropriate in the circumstances; and

“Specification Timber” means:

(i) Timber meeting the specifications at 30 June 2027
for Timber to be supplied under the Production
Contract; and

(ii) if during the Relevant Period the Company
purchases under a Concurrent Contract or
Concurrent Contracts more than 50,000 cubic metres

of Timber of the same specifications as to age, quality, and dimensions, Timber meeting those specifications; and

- (iii) Timber (if any) of other specifications which the Minister, after consultation with the Company as to its ability to use such Timber in the Plant's operations during the Further Term and consultation with the Commission and having regard to clause 6(2)(d), may in the Minister's discretion approve for inclusion in the Commission's determination of Available Future Timber.

(2) If at 1 July 2027:

- (a) the Company is not in default under this Agreement or the Production Contract or a Concurrent Contract; and
- (b) the Minister is satisfied that the Company has spent not less than \$1,000,000 per Year (or such lesser amount as the Minister determines is reasonable in the circumstances) during the period commencing on 1 July 2009 and expiring on 30 June 2027 on planting in the Timber Supply Area trees of a genus and species suitable for the production of Timber Products to provide timber for the Plant during the Further Term; and
- (c) the Commission has determined that there is Available Future Timber during the Further Term,

the State must ensure that the Commission as soon as practicable after 1 July 2027 enters into negotiations with the Company for the supply of the Available Future Timber (or such lesser quantity as is agreed between the Commission and the Company) to the Company during the Further Term upon reasonable and commercial terms to be agreed between the Company and the Commission for the purpose of producing laminated veneer lumber, dry veneer, plywood and I-joists and other allied products at the Plant. However, their agreement must:

- (d) include the Company's agreement to process at the Plant all the Timber (within the limits of sound silvicultural practice and the Company's log specifications from time

to time for such Timber to be processed at the Plant) from the Company's tree planting programme referred to in recital E; and

- (e) address the extent to which such Timber will be processed from time to time in priority to, or on a proportionate basis with, Timber that can be made available by the Commission; and
- (f) include provisions that will allow the Commission to sell or otherwise dispose of Timber made available to the Company but which the Company does not purchase; and
- (g) include provisions that will allow the Commission to reduce the total quantity of Timber to be made available for supply to the Company during the Further Term if the Company is not purchasing all of the Timber being made available to it under their agreement while allowing the Company a reasonable opportunity to increase the quantity it has been purchasing from the Commission.

Maintenance and upgrading of public roads

- 7. (1) The State must maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local government, which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local government as the case may be.
- (2) (a) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (1) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration of such road (other than fair wear and tear), the Company must pay to the State or the local authority, as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads, having regard to the use of such public road by others.

- (b) It is declared and agreed for the purposes of this subclause (2) that the Commission supplying Timber to the Site for the purposes of the Production Contract or a Concurrent Contract is not a person engaged by the Company referred to in paragraph (a) of this subclause (2).

Transport permits

- 8. (1) Subject to the observance of all statutory requirements by the Company, the Commission and persons carting Timber to the Site for the Company or Commission as the case may be, those persons will be issued with extra-mass and overlength vehicle permits or notices or both by the Commissioner of Main Roads appropriate to road transport routes used by the Company, the Commission or those others persons aforesaid as the case may be and as may be required to enable the efficient cartage of Timber to the Site.
- (2) Subject to the observance of all statutory requirements by the Company and persons carting Timber Products for the Company from the Site to a port, railhead or road freight delivery point for sending out of Western Australia, those persons will be issued with extra-mass and overlength vehicle permits or notices or both by the Commissioner of Main Roads appropriate to road transport routes used by the Company or those persons aforesaid as the case may be which the Commissioner of Main Roads reasonably determines are required to enable the efficient cartage of Timber Products from the Site for the above purpose.

No discriminatory charges

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

Zoning

10. (1) The State must ensure after consultation with the relevant local government that the Site (and the Additional Area while the Company has the option to purchase it under the Option Deed and also if it is purchased by the Company as a consequence of the exercise by the Company of such option) will be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local government or other authority of the State on the ground that such activities are contrary to zoning by-law, regulation or order.
- (2) The State must ensure that the zoning of the land shown outlined in blue on the plan marked "A" (excluding the Site and the Additional Area while the Company has the option to purchase it under the Option Deed and also if it is purchased by the Company as a consequence of the exercise by the Company of such option) attached hereto and initialled by or on behalf of the parties on the date of this Agreement for the purpose of identification shall not be changed during the currency of this Agreement to a zoning that is determined by the Minister for Planning after consultation with the Minister and the relevant local government to be incompatible with or likely to restrict or adversely affect the activities of the Company hereunder.

Submissions on the Company's behalf

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

Assignment

12. (1) Subject to the provisions of this clause the Company may at any time with the consent of the Minister:
 - (a) assign, mortgage, charge, sublet or dispose of to any person the whole or any part of the rights of the Company

hereunder (including its rights to have supplies of Timber made available to it under the Production Contract or a Concurrent Contract) and of the obligations of the Company hereunder or the whole or any part of the rights of the Company under the Contract of Sale or the Option Deed; or

- (b) allow the Site to be used wholly or in part for purposes other than the activities of the Company under this Agreement,

subject however in the case of an assignment, subletting or disposition to the assignee, sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.

Variation

13. (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister must cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the

agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

14. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement (other than the obligations of the Company under clause 4(1)) and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, inability (common in the Timber Products industry) to sell profitably Timber Products, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes must promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

15. Notwithstanding any provision of this Agreement, the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

16. (1) If:

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

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

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under clause 12; or
- (c) the Company does not complete its purchase of the Site under the Contract of Sale; or
- (d) the Production Contract or a Concurrent Contract is terminated by the Commission in accordance with its provisions before its agreed expiration date; or
- (e) the Company allows the Site to be used wholly or in part other than for the purpose of the Company's activities under this Agreement without the consent of the Minister under clause 12; or
- (f) the Company at any time ceases to operate the Plant for a continuous period of more than 12 months without the consent of the Minister,

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

- (2) The notice to be given by the State to the Company in terms of subclause (1)(a) must specify the nature of the default or other ground so entitling the State to exercise such right of determination.
- (3)
 - (a) If the Company contests the alleged default or other ground referred to in subclause (1)(a) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company must comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in subclause (1)(a) has not been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

- 17. On the cessation or determination of this Agreement:
 - (a) except as otherwise agreed by the Minister the rights of the Company to, in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;

- (b) the Company and the Guarantor shall forthwith pay to the State all money which may then have become payable or accrued due; and
- (c) save as aforesaid and as otherwise provided in this Agreement or in the Contract of Sale or Option Deed or in the Production Contract or a Concurrent Contract none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Indemnity

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

Subcontracting

19. Without affecting the liabilities of the parties under this Agreement both the State and the Company will have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Arbitration

20. (1) Any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement must, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and each party may be represented before the

arbitrator by a duly qualified legal practitioner or other representative.

- (2) Except where otherwise provided in this Agreement, the provisions of this clause will not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either the State or the Company, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

21. (1) The Company must during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.
- (2) During the currency of this Agreement the Company will notify the Minister of any non-compliance by the Commission with clause 10 of the Production Contract that the Company considers may have occurred as soon as practicable after the Company becomes aware of it.

Notices

22. Any notice consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company or to the Guarantor will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company or to the Guarantor as the case may be at its address hereinbefore set forth or other address in Western Australia nominated by

the Company, or by the Guarantor as the case may be, to the Minister and by the Company or by the Guarantor to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors, or by the Guarantor or by its solicitors as the case may be, as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Guarantee of the Company's performance

23. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State or by the Minister to the Company whether or not notice thereof is given to the Guarantor by the State, the Guarantor hereby guarantees to the State the due performance by the Company of all of the Company's obligations to be performed hereunder and under the Contract of Sale, the Production Contract and all Concurrent Contracts.

Term of Agreement

24. (1) Unless sooner determined in accordance with the provisions hereof this Agreement will expire on 30 June 2029.
- (2) The parties will confer 10 years after ratification of this Agreement and 10 years thereafter on the Company's intentions with respect to the continuance of the Plant's operations and the Company's likely Timber requirements for the Plant.

New agreement with the State

25. (1) Provided that the Company is not then in default under this Agreement or under the Production Contract or under a Concurrent Contract and the State is reasonably satisfied that a further agreement with the State is required to assure to the Company the supply to the Company of Timber to be supplied to the Company during the Further Term in accordance with clause 6, the State will not later than 18 months prior to the expiration of the Term enter into negotiations with the Company for that purpose.
- (2) If a new agreement with the State is entered into the State must when it is entered into introduce and sponsor a Bill in the Parliament of the State of Western Australia to ratify the execution on behalf of the State of the new agreement.

Stamp duty

26. The State will exempt:

- (a) this Agreement; and
- (b) the Contract of Sale; and
- (c) the Production Contract; and
- (d) Concurrent Contracts entered into within 2 years after the Commencement Date,

from stamp duty which, but for the operation of this clause, would or might be assessed as chargeable on them provided that this clause shall not apply to any liability to stamp duty arising under the Production Contract or a Concurrent Contract more than 2 years after the Commencement Date.

Applicable law

27. This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia.

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

SIGNED by the **HONOURABLE** }
DR. GEOFFREY IAN GALLOP } GEOFF GALLOP
in the presence of: }

..... CLIVE BROWN
Name:

Wood Processing (Wesbeam) Agreement Bill 2002

Schedule 1 Wood Processing (Wesbeam) Agreement

THE COMMON SEAL of }
WESBEAM PTY LTD }
ACN 004 268 017 was hereunto }
affixed in accordance with its }
constitution in the presence of: }

[CS]

Director: **DENIS CULLITY**
Name:

Director/Secretary: **J MALONE**
Name:

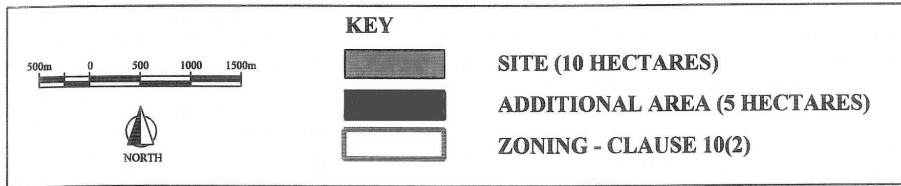
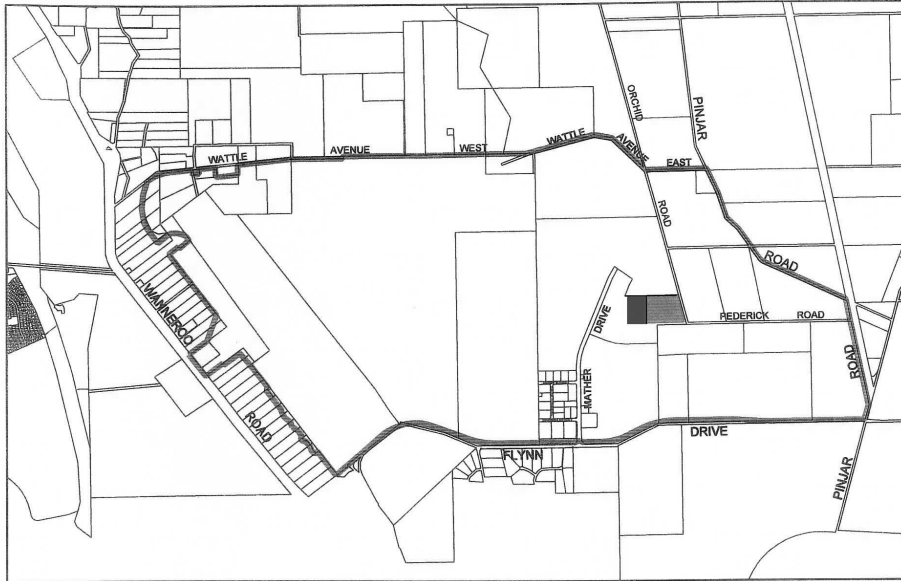
THE COMMON SEAL of }
WESBEAM HOLDINGS }
LIMITED ACN 095 594 826 was }
hereunto affixed in accordance }
with its constitution in the }
presence of: }

[CS]

Director: **DENIS CULLITY**
Name:

Director/Secretary: **J MALONE**
Name:

"A"



THIS IS THE PLAN MARKED "A" REFERRED TO IN THE AGREEMENT MADE 11 AUGUST 2002 BETWEEN THE STATE OF WESTERN AUSTRALIA, WESBEAM PTY LTD AND WESBEAM HOLDINGS LIMITED

PREPARED FOR WESTERN AUSTRALIAN LAND AUTHORITY BY TAYLOR BURRELL TOWN PLANNING AND DESIGN