

Western Australia

Wood Processing (WESFI) Agreement Bill 2000

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Schedule 1 — Wood Processing (WESFI) Agreement

Western Australia

LEGISLATIVE ASSEMBLY

Wood Processing (WESFI) Agreement Bill 2000

A Bill for

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

The Parliament of Western Australia enacts as follows:

1. Short title

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

2. Commencement

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

3. Interpretation

5 (1) In this Act —

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

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

4. Agreement ratified and implementation authorised

(1) The Agreement is ratified.

(2) The implementation of the Agreement is authorised.

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

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[s. 3(1)]

THIS AGREEMENT is made this eighth day of August 2000

BETWEEN

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

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

WHEREAS:

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

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- 5 D. The Company before establishing the factories required (*inter alia*) to be assured of the availability of certain facilities and services to operate the factories and that it would be able to procure a continuous supply of softwood resource within economic distances of the factories and requested the State to assist in these matters.
- 10 E. The State recognising that:
- (a) the Company's undertaking promotes and assists the State's policy of decentralization of industry;
 - (b) wood based panel products manufacture promotes the efficient development of the softwood plantations; and
 - (c) there are other factors peculiar to the nature of the Company's undertaking which require special rights—
- 15 F. agreed to give effect to the Company's requirements by entering into the 1975 Agreement for an initial term of 25 years from 23 May 1975.
- 20 G. Clause 32 (1) of the 1975 Agreement provides that (subject to the terms of the Clause) the State will if satisfied that the Company needs to have supplies of softwood resource suitable for the manufacture of wood based panel products assured to it by a further agreement enter into negotiations with the Company for that purpose.
- 25 G. Having satisfied itself that the Company needs to have assured to it:
- (a) the continued supply of adequate volumes of softwood resource suitable for the manufacture of wood based panel products within economic distances from the factories; and
 - (b) the intentions of the State to use all reasonable endeavours to ensure that a continuous supply of softwood resource suitable for the manufacture of wood based panel products is available within economic distances from the factories throughout the term and that the Company has the opportunity to purchase volumes of softwood resource in addition to those volumes provided for under this Agreement where such softwood resource becomes available,
- 30 the State desires in pursuance of the obligations undertaken by it in the 1975 Agreement and for the purpose of continuing to promote employment opportunity and industrial development especially in regional areas of Western Australia to assist by extending the supply
- 35

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

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

NOW THIS AGREEMENT WITNESSES:

1. In this Agreement subject to the context -
- 15 "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;
- 20 "**CALM**" means the Department of Conservation and Land Management established under the Public Service Act 1978;
- "**CALM Act**" means the Conservation and Land Management Act 1984;
- "**Clause**" means a clause of this Agreement;
- 25 "**Commonwealth**" means the Commonwealth of Australia and includes the Government for the time being thereof;
- "**Company**" means **WESFI LIMITED** ACN 008 672 740 a company incorporated in the State of Western Australia and having its registered office at 1-27 Somersby Road Welshpool and includes its controlled entities;
- 30 "**cubic metre**" means cubic metre of resource true volume under bark;
- "**Dardanup factory**" means the Company's factory at Dardanup and all necessary ancillary buildings works plant and equipment and services for the production of panel products;

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

“EP Act” means the Environmental Protection Act 1986;

“Executive Director” means the Executive Director of CALM;

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

“factory sites” means:

10 (i) the Dardanup factory site being Boyanup Agricultural Area Lots 353 and 354 and being part of Lot 2 on diagram 46933 the whole of the land in certificate of title volume 1729 folio 657; and

15 (ii) the Welshpool factory site being Lot 5 on Diagram 77208 the whole of the land in certificate of title volume 1867 folio 996 together with part of Lot 96 on Plan 2653 the whole of the land in certificate of title volume 1549 folio 869;

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

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

“LA Act” means Land Administration Act 1997;

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

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

30 **“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;

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

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

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

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

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

“said State” means the State of Western Australia;

“softwood” means timber of the genus Pinus;

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

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

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

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

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

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

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

“**year**” means a financial year.

Interpretation

2. (1) In this Agreement –

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

- 5 (g) reference to the Executive Director includes the person or body for the time being exercising the statutory powers and functions relevant to this Agreement exercised by the Executive Director at the date of this Agreement.
- 10 (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.
- 15 (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

Ratification and Operation

- 20 3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2000 or such later date as may be agreed between the parties hereto.
- 25 (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- 30 (3) If by 31 March 2001 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- 35 (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

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

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

10 (i) replants to *Pinus radiata* or *Pinus pinaster* such suitable areas of State forest and fee simple land held in the name of the Executive Director which have previously been planted to *Pinus* species and have been clearfelled, except for those softwood plantations occurring in State forest 65 (Gnangara), 70 (Peel) and 3 (Hamel); and

15 (ii) causes to be planted to *Pinus pinaster* within as close a proximity to the Welshpool factory as is reasonably possible such areas of available land

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

25 (2) On or before 31 December in each year during the continuance of this Agreement the Company shall deliver to the Executive Director an estimate of its resource requirements for each of the next ensuing 6 years.

30 (3) With due regard for sound forest practice, the Executive Director's other log supply commitments and the aim of minimising the haulage distance to the factories the Executive Director shall by 28 February in each year advise the Company of the softwood plantations from which it is planned to supply the Company's estimated requirements for resource for each of the factories for each of the next ensuing 6 years notified pursuant to subclause (2) of this Clause.

35 (4) Within 60 days of being advised by the Executive Director of the softwood plantations from which resource is planned to be supplied in accordance with subclause (3) of this Clause, the Company may advise the Executive Director if the Company

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

Executive Director's commitments

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

Price of resource

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

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

Company's commitments

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

(2) The following provisions shall apply with respect to stumpage rates and costs and expenses payable under this Agreement:

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(a) the stumpage rates shall be payable at such times after the amounts have been ascertained as provided for in subclause (11)(a) of Clause 5 and in such manner as the Executive Director from time to time determines; and

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(b) if any sum in respect of stumpage rates or any of the costs and expenses referred to in subclauses (11)(b) (11)(c) (11)(d) and (11)(e) of Clause 5 hereof remains unpaid for 30 days after the due date the Executive Director may, without limiting the obligations of the Company under subclause (1) of Clause 6 hereof by not less than 7 days notice in writing to the Company suspend its right to obtain resource under this Agreement until payment is made.

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(3) (a) The quantity of resource upon which the stumpage is payable shall be:

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(i) measured in such manner and by such method (allowance being made for bark) as may be agreed upon from time to time by the Executive Director and the Company provided that such methods are consistent with the Regulations made under the CALM Act; and

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(ii) accurately recorded in writing by the Company in such manner as the Executive Director reasonably directs and no resource shall be removed from the place referred to in subclause (3)(b) of this Clause until the measurement has been completed and so recorded and within 3 business days following the date of delivery of the resource the Company shall furnish to the Executive Director a return in writing showing the quantity of resource upon which stumpage is payable.

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Upgrading of public roads

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

No discriminatory charges

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

Zoning and other issues

Zoning

- 35 9. (1) The State shall ensure after consultation with the local
governments having jurisdiction in respect of the factory sites
that the factory sites shall be and remain zoned for use or
otherwise protected during the term so that the activities of the

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

Surrounding land

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

Resumption for the purposes of this Agreement

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

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

(b) In applying the Public Works Act 1902 and Parts 9
and 10 of the LA Act for the purposes of this Clause -

10 (i) "land" in those Acts shall be read as
extending to any land or to any portion of
any land or to the subsoil, surface or
airspace relating thereto and to any estate,
right, title, easement, lease, licence,
15 privilege, native title right or interest or
other interest, in, over, under, affecting, or in
connection with that land or any portion,
stratum or other specified sector of that land;

20 (ii) sections 170, 171, 172, 173, 174, 175 and
184 of the LA Act do not apply; and

(iii) the LA Act shall be deemed modified in
section 177(2) by inserting -

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

(B) after "that Act" the following -
"or that Agreement may be".

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

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Other

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

10 **Assignment**

- 15 10. (1) Subject to the provisions of this Clause the Company may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of its rights hereunder and of its obligations hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponee (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.
- 20 (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to a release from such liability where the Minister considers such
- 25 release will not be contrary to the interests of the State.
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Variation

- 35 11. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

5 (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.

10 **Force majeure**

12. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those
15 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
20 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
25 or inability (common in the panel products industry) to sell profitably panel products or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen
30 PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

35 **Power to extend periods**

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

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

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

Indemnity

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

15 **Subcontracting**

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

20 **Arbitration**

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

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

10 **Consultation**

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

Notices

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

Term of Agreement

- 35 21. (1) This Agreement shall remain in force for a period of 25 years commencing on the date of commencement and expiring on the day next preceding the twenty fifth anniversary thereof or until sooner determination in accordance with the provisions hereof.

Wood Processing (WESFI) Agreement Bill 2000

Schedule 1 Wood Processing (WESFI) Agreement

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

Applicable law

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

FIRST SCHEDULE

(Supply and Price of Resource – Clause 5)

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

2. Stumpage rates for resource for the Welshpool factory

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

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

20 \$12.90 per cubic metre of logs with the price
for resource of other specifications or
measured by weight being equivalent to this
rate but varied by conversion factors as
agreed from time to time by the Company
and the Executive Director;

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

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

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

3. Stumpage rates for resource for the Dardanup factory:

- (1) Subject to paragraph 4 of this First Schedule the stumpage rate
payable for resource for the Dardanup factory shall be five
sixths of the rate from time to time applicable (pursuant to
20 paragraph 2 of this First Schedule) in respect of resource for
the Welshpool factory.
- (2) The provisions of paragraph 2(3) of this First Schedule shall
apply mutatis mutandis to stumpage rates payable under this
paragraph.
- (3) It is acknowledged and agreed by the parties hereto that the
stumpage rates provided for in this First Schedule in respect of
resource used in the Dardanup factory are of a concessional
nature based on the bulk of the panel products manufactured
by the Company at the Dardanup factory being delivered
30 beyond the boundaries of the said State.
- (4) The Company shall if so requested by the Executive Director
inform the Executive Director prior to the expiration of the
period referred to in paragraph 2(1)(a) of this First Schedule
and of each successive 3 year period calculated from
35 1 May 2001 of details of distribution of its panel products.

Schedule 1 Wood Processing (WESFI) Agreement

(5) If the Executive Director considers in respect of a period reported on by the Company pursuant to paragraph 3(4) of this First Schedule that:

5 (a) there has been a material reduction in the quantity of panel products delivered beyond the said State compared to that in the preceding period; or

10 (b) at the end of the period the Company will be able to compete on an equal footing with its competitors in the markets for its panel products outside the State without the benefit of concessional rate of stumpage for resource used in the Dardanup factory

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

4. Roading Charge

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

30 (1) for the period from the date of commencement until 30th June immediately following the date of commencement, 52 cents per cubic metre of resource where that resource is measured by volume, or 52 cents per tonne where that resource is measured by weight; and

35 (2) for each ensuing year at the rate calculated by varying the rate payable during the preceding year in the same proportion as $(1+0.5(N_i-B_i)/B_i)$ bears to 1.0. where N_i refers to the Consumer Price Index for Perth (All Groups) published by the Australian Bureau of Statistics in respect of the quarter immediately preceding the particular review date and B_i is the Consumer Price Index for Perth (All Groups) published by that Bureau in respect of the corresponding quarter one year earlier.

SECOND SCHEDULE

(SPECIFICATIONS – Clause 5(8))

Log specifications

1. Industrial wood logs delivered to the Dardanup factory

- 5 Species: *Pinus radiata* (preferred species), *P. pinaster* or other *Pinus* species as available
- Preparation: Logs shall be freshly cut and have all branches flush trimmed.
- Dimensions:
- 10 Diameter: minimum 75 millimetres under bark
maximum 350 millimetres under bark
- Length 5.4 metres and such other lengths as agreed by the Company and the Executive Director:
- Defects (i) The following defects are not permitted:
- 15 - blue stain (except where delivery has been unreasonably delayed by the Company)
- abrupt changes in diameter
- sharp kinks
- massive knot whorls
- (ii) The following defects are permitted to the limits shown:
- 20 - Cone holes as they occur.
- Bent or curved logs if they will pass through the debarkers at Dardanup without interfering with production
- 25 - The moisture content of the logs at the time of delivery shall not be less than 75%.
- Burnt bark provided that the timber has not been affected

4. Woodchips delivered to the Dardanup and Welshpool factories

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

- 5 Chip Size: Nominal size:
 Minimum: 16mm x 16mm x 5mm
 Maximum: 25mm x 25mm x 8mm

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

Quality limits:

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

15

Schedule 1 **Wood Processing (WESFI) Agreement**

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

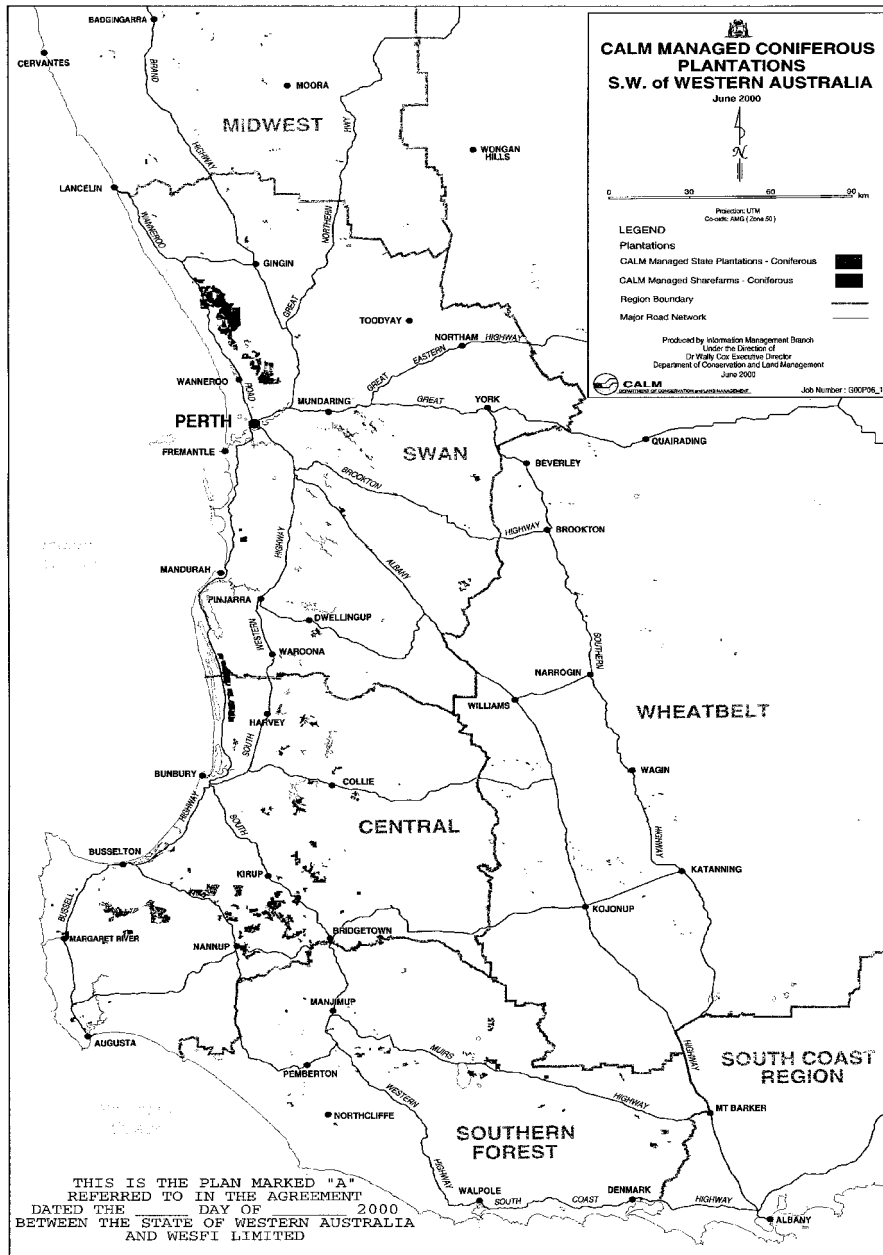
**SIGNED by the said THE HONOURABLE RICHARD }
FAIRFAX COURT, M.L.A., in the presence of: } RICHARD COURT
}**

5 **COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT**

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

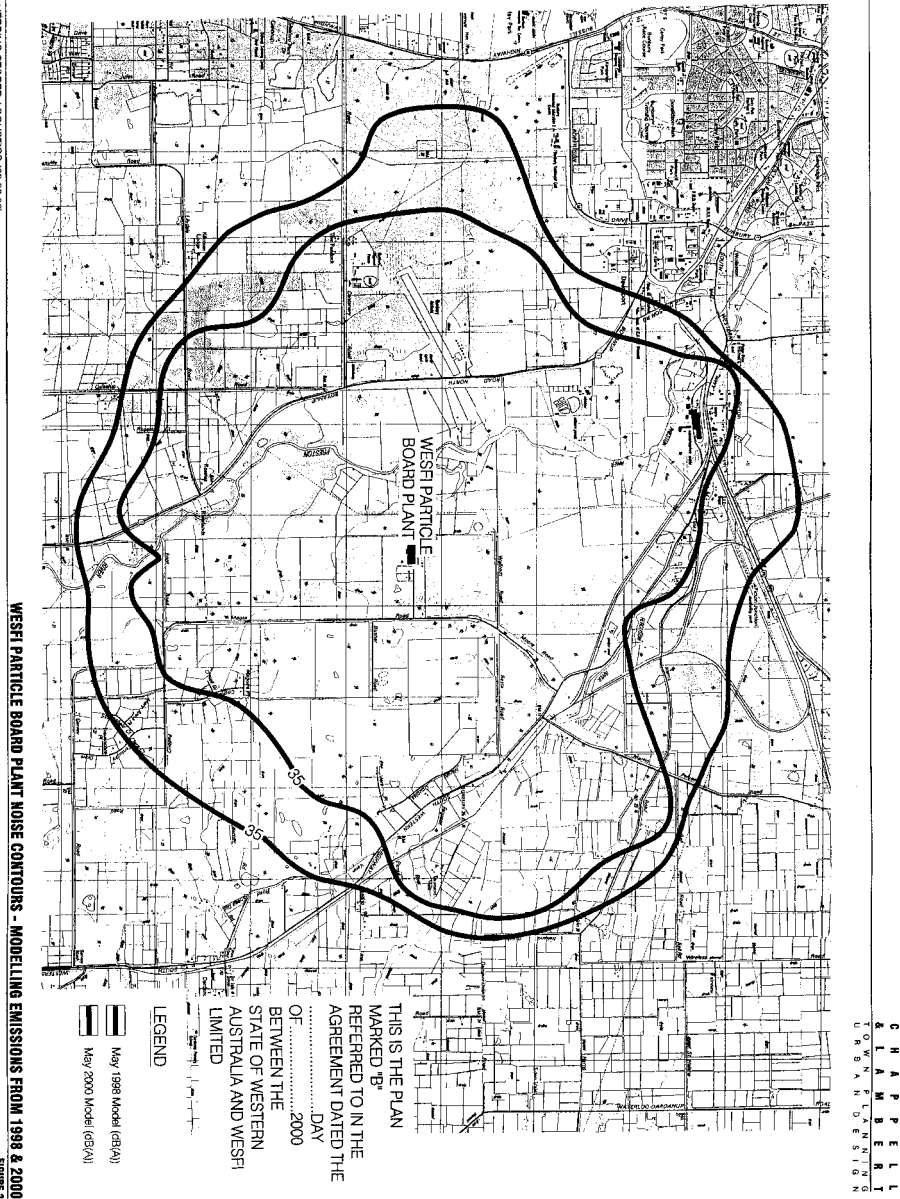
10 **DENIS CULLITY
Director:

JAMES MALONE
Director:**



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

SOURCE: HERRING STOPPER ACOUSTICS (08.06.00)



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

