

**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

Persons intending to use an electronic version of the Application Form/s should note the following:

- 1 The Application Forms herein relate to the 2002 Timbercorp Almond Project ARSN 099 611 935 ('**project**') pursuant to a prospectus dated 7 March 2002 as supplemented by the supplementary prospectus dated 13 March 2002 ("**prospectus**"). The prospectus expires 13 months after the date of the prospectus. However it should be noted that no applications will be accepted after 30 June 2002, or such later date determined by Timbercorp Securities Limited. From 1 June 2002, applications will only be accepted where Timbercorp Securities Limited is reasonably satisfied that it can complete the services to which the application moneys relate by 30 June 2002.
- 2 The Application Forms are accompanied by an electronic version of the prospectus which contains information regarding investing in securities referred to in the Application Form.
- 3 Persons who access the prospectus in electronic form should note that interests in the project offered by this prospectus are not intended to be a short-term investment and will be subject to the risks generally associated with commercial almond orchards.
- 4 A person who gives another person access to the Application Form must at the same time and by the same means give the other person access to the prospectus and any supplementary document.
- 5 Interests in the project will only be processed and issued on receipt of the Application Form issued together with the prospectus.
- 6 The offer to subscribe for interests referred to in the prospectus is available to Australian residents. The prospectus does not constitute an offer of securities in any jurisdiction where, or to any person to whom, it would be unlawful to issue the prospectus.
- 7 Whilst the prospectus is current, Timbercorp Securities Limited will send copies of the prospectus and any supplementary document and the Application Form, on request and without charge. In this regard, please contact:

**Timbercorp Securities Limited**

Level 8, 461 Bourke Street,

Melbourne, Victoria, 3000

Telephone: 03 8615 1200

Facsimile: 03 9670 4271

Email: [n.williams@timbercorp.com.au](mailto:n.williams@timbercorp.com.au)

# 2002 Timbercorp Almond Project Prospectus



An offer to cultivate and manage up to 500 hectares of almond orchards (ie. 2000 x 0.25 hectare Almondlots) with an option to accept oversubscriptions. This is not intended to be a short term venture and will be subject to the risks generally associated with horticultural operations. 2002 Timbercorp Almond Project ARSN 099 611 935



**Responsible Entity**

Timbercorp Securities Limited  
(ACN 092 311 469)

**Directors**

Gary W Liddell (Chairman)  
Robert J Hance  
John M Vaughan  
Sol C Rabinowicz

**Timbercorp Offices**

Melbourne, Perth, Sydney,  
Brisbane, Adelaide, Launceston,  
Hamilton, Albany and Penola

**Head Office**

8th Floor, 461 Bourke Street  
Melbourne Victoria 3000  
Telephone 03 8615 1200  
Facsimile 03 9670 4271  
Email [melb@timbercorp.com.au](mailto:melb@timbercorp.com.au)

**Perth Office**

Level 4, 50 Colin Street  
West Perth  
Western Australia 6005  
Telephone 08 9481 0581  
Facsimile 08 9481 0582  
Email [perth@timbercorp.com.au](mailto:perth@timbercorp.com.au)

**Brisbane Office**

Milton Business Centre  
Suite 4, Level 3  
349 Coronation Drive  
Brisbane, QLD 4064  
Telephone 07 3842 3142  
Facsimile 07 3371 7300  
Email [brisbane@timbercorp.com.au](mailto:brisbane@timbercorp.com.au)

**Sydney Office**

Level 10, 17 Bridge Street  
Sydney, NSW 2000  
Telephone 02 9241 3633  
Facsimile 02 9241 3866  
Email [syd@timbercorp.com.au](mailto:syd@timbercorp.com.au)

**Launceston Office**

62 Paterson Street  
Launceston, Tasmania 7250  
Telephone 03 6334 6436  
Facsimile 03 6331 5606  
Email [tas@timbercorp.com.au](mailto:tas@timbercorp.com.au)

**Adelaide Office**

Level 1, 210 Greenhill Road  
Eastwood, South Australia 5063  
Telephone 08 8172 2144  
Facsimile 08 8172 1644  
Email [adelaide@timbercorp.com.au](mailto:adelaide@timbercorp.com.au)

**Project Manager**

Almond Management Pty Ltd  
(ACN 094 468 845)

Level 8, 461 Bourke Street  
Melbourne Victoria 3000

**Land Owner**

Almond Land Pty Ltd  
(ACN 090 141 512)

Level 8, 461 Bourke Street  
Melbourne Victoria 3000

**Orchard Contractor**

Select Harvests Limited  
(ACN 000 721 380)

198 Beavers Road  
Northcote Victoria 3070

**Custodian**

Permanent Trustee Company  
Limited  
(ACN 000 000 993)

Level 5, 365 Collins Street  
Melbourne Victoria 3000

**Auditor**

Deloitte Touche Tohmatsu  
Chartered Accountants

505 Bourke Street  
Melbourne Victoria 3000

**Lawyers**

N M Taylor  
Lawyers  
Level 7, 350 Collins Street  
Melbourne Victoria 3000

**Taxation Advisor**

J W de Wijn of Queen's  
Counsel

Owen Dixon Chambers West  
525 Lonsdale Street  
Melbourne Victoria 3000

**Independent Almond Orchard Expert**

Horticultural Development Services  
Pty Ltd  
(ACN 094 895 271)

7 Josie Court  
Mildura Victoria 3000

**Independent Price Analysis Expert**

David Neve & Associates  
Agricultural and Management  
Consultants

PO Box 1394  
Midland, Western Australia



This document is important and should be read in its entirety. If you are uncertain or have any doubts about subscribing to this issue, you should consult your financial advisor, solicitor or accountant.

No person, firm or corporation associated with the issue of this document guarantees, warrants or underwrites the performance of this Project or any particular return.

The Custodian has not authorised or caused the issue of this document. The Custodian has not performed any role in the preparation of this document.

Each subscriber will become a Grower responsible commercially for carrying on the business of growing almonds for sale. This venture is not intended to be a short term investment and will be subject to the risks generally associated with commercial almond orchard plantations. The Responsible Entity does not guarantee that any Grower will be protected against all liability to other parties since each Grower is severally liable under the various agreements entered into on its behalf.

**Select Harvests Limited**

Intending applicants should note that Select Harvests (and any related company of Select Harvests involved in the Project) has not been involved in the preparation of this document; has not been authorised or caused the issue of this document; has not been involved as a promoter of Timbercorp Securities, the Project or this document; has not taken any responsibility for the correctness of any disclosure in this document of any references to Select Harvests (or any related company of Select Harvests involved in the Project) or the terms of any contract to which Select Harvests (or any related company of Select Harvests involved in the Project) is a party; and has not performed any function in a professional, advisory or other capacity for Timbercorp Securities Limited in relation to the issue or proposed issue of securities under this document.

References to Select Harvests (or any related company of Select Harvests involved in the Project) in this document ought not to be taken as an endorsement by Select Harvests (or any related company of Select Harvests involved in the Project) of this Project nor are they recommendations of participation by an intending applicant.

All legislative material herein is reproduced by permission but does not purport to be the official or authorised version. It is subject to Commonwealth of Australia copyright. The Copyright Act 1968 permits certain reproduction and publication of Commonwealth legislation. In particular, s.182A of the Act enables a complete copy to be made by or on behalf of a particular person. For reproduction or publication beyond that permitted by the Act, permission should be sought in writing from Ausinfo. Requests in the first instance should be addressed to the Manager, Legislative Services, Ausinfo, GPO Box 1920, Canberra ACT 2601, or by email [Cwealthcopyright@dofa.gov.au](mailto:Cwealthcopyright@dofa.gov.au)

This prospectus is dated 7 March 2002 and was lodged with the Australian Securities and Investments Commission on 7 March 2002. The Australian Securities and Investments Commission takes no responsibility as to its contents. No interests will be allotted or issued on the basis of this prospectus later than 30 June 2002. From 1 June 2002, applications will only be accepted where Timbercorp Securities Limited is reasonably satisfied that it can complete the services in respect of which the subscription moneys are payable by 30 June 2002.

**Electronic Prospectus**

Timbercorp Securities Limited proposes to issue this prospectus on the website [www.timbercorp.com.au](http://www.timbercorp.com.au). Any person accessing the electronic version of this document for the purpose of participating in the 2002 Timbercorp Almond Project must be an Australian resident and must only access the information from within Australia. Almondlots will only be issued under the electronic version of the prospectus on receipt of an application form issued together with the electronic version of the prospectus.

**Definitions and Glossary**

This document contains a number of terms that have a special meaning or that you may not have heard before. A glossary of those terms appears in the section titled "Glossary" at the back of this document.

# 2002 Timbercorp Almond Project Prospectus



## ATO Product Ruling PR 2002/24

Contents	Page
Corporate Directory	
Features	3
1 Overview of the Project	4
2 The Almond Industry	6
3 Prospective Financial Information	12
4 Taxation Benefits and GST	15
5 How the Project Works	17
6 Project Site and Development	21
7 Key Participants	26
8 The Timbercorp Group	30
9 Risks	33
10 Taxation Advisor's Report	36
11 Product Ruling	40
12 Independent Almond Orchard Expert's Report	48
13 Independent Price Analysis Expert's Report	52
14 Lawyers' Report	55
15 Summary of Significant Documents	56
16 Additional Information	66
17 How to Apply	68
Application and Power of Attorney Forms	
Glossary	



# 2002 Timbercorp Almond Project Prospectus Supplementary Prospectus

## Introduction

This is a Supplementary Prospectus to the prospectus for the 2002 Timbercorp Almond Project ("**the Project**") issued by Timbercorp Securities Limited (ACN 092 311 469) and dated 7 March 2002 ("**the Prospectus**"). This Supplementary Prospectus is dated 13 March 2002 and should be read in conjunction with the Prospectus.

This Supplementary Prospectus must accompany any copies of the Prospectus that are issued after this Supplementary Prospectus has been lodged with the Australian Securities and Investments Commission.

## Page 12

On the first line of paragraph d, the figures "40%" are replaced with "50%".

## Declarations

A copy of this Supplementary Prospectus was lodged with the Australian Securities and Investments Commission on 13 March 2002. The Australian Securities and Investments Commission and its officers take no responsibility as to the contents of this Supplementary Prospectus.

Each of the directors of Timbercorp Securities Limited has given his written consent to the lodgment of this Supplementary Prospectus with the Australian Securities and Investments Commission.

This Supplementary Prospectus was signed on 13 March 2002 by a director of Timbercorp Securities Limited for and on behalf of the directors in accordance with section 351 of the Corporations Act.

Sol C Rabinowicz

This is a supplementary prospectus intended to be read in conjunction with the prospectus dated 7 March 2002, issued by Timbercorp Securities Limited, relating to the subscription of Almondlots in the 2002 Timbercorp Almond Project.



## Features

Benefit from an established and vibrant industry that has not experienced the boom and bust cycles common to many horticultural crops *Page 6*

An opportunity to participate in one of the largest commercial almond orchards in Australia *Page 4*

The Orchard has been established on premium land and is professionally managed by Select Harvests Limited, an ASX listed company, and Australia's largest integrated producer, processor and marketer of almonds *Page 28*

Almonds have a variety of consumption purposes and are increasingly being recognised as offering significant health benefits *Page 7*

Significant tax deductions are available to Growers – confirmed by ATO Product Ruling PR 2002/24: 2002 Timbercorp Almond Project *Page 40*

Substantial after tax returns for Growers on high marginal tax rates *Page 12*

Anticipated income from your activities from 2004 *Page 19*

Your Almonds will be harvested and sold in both the export and domestic markets *Page 20*

The Responsible Entity is a wholly owned subsidiary of Timbercorp Limited, an ASX 200 listed company *Page 30*

You may assign or transfer your Almondlots *Page 56*

The Project contains safeguards to protect your investment *Page 33*

Permanent Trustee Company Limited has been appointed as Custodian to receive and hold Application Moneys and Proceeds until they are disbursed in accordance with the Project Agreements *Page 17*

Security of land tenure is enhanced by the grant of a Lease of the Orchard by Almond Land Pty Ltd to the Responsible Entity *Page 18*





# 1 Overview of the Project

## What are we offering?

The 2002 Timbercorp Almond Project offers you a unique opportunity to participate in a vertically integrated project, in an historically stable, yet expanding, global industry.

The Australian almond industry, which accounts for less than 2% of world production, is experiencing increasing demand for almonds and almond-related products both locally and in export markets that include India, Europe, the Middle East, Japan and South East Asia.

The Project will be conducted on a large commercial almond orchard in Australia, located near the town of Robinvale in north east Victoria. Almond Land Pty Ltd, the Land Owner, established the orchard during the 2001 financial year with the assistance of Select Harvests. The anticipated size of the Project, combined with the use of best horticultural management practices and the most advanced harvesting and irrigation systems and processing facilities, should achieve significant economies of scale and enhanced returns.

The term of the Project is approximately 20 years from the date of acceptance of your application.

## How does the Project work?

You will enter into a Licence and Joint Venture Agreement with the Land Owner to obtain a licence over discrete allotments of the Orchard of approximately 0.25 hectares each, called Almondlots. Each Almondlot will include Almond Trees, an allocation of Water Licenses and associated infrastructure all of which you are entitled to use under the licence. The licence fee payable under the agreement is your sole responsibility.

Then, you and the Land Owner, as your 10% joint venturer, will engage us, Timbercorp Securities, under an Almondlot Management Agreement to provide the following services:

- cultivate and manage your Almondlots;
- harvest and procure the processing of the almonds grown on your Almondlots; and
- market the almonds grown on your Almondlots.

You will be responsible for 90% of the management costs payable to Timbercorp Securities under the Almondlot Management Agreement. The management costs shown in this prospectus relate to your 90% share of the costs payable under the Almondlot Management Agreement.

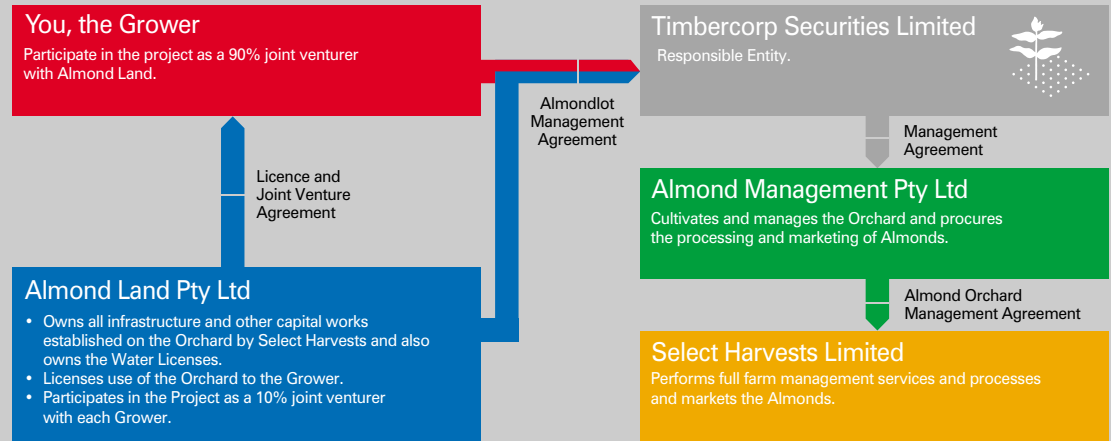
We expect your Almondlots to enter commercial production in February-April 2004.

We as responsible entity, will delegate our responsibilities to Almond Management, the Project Manager, under the Management Agreement, but will remain liable to you for the actions of the Project Manager.

## Engagement of Select Harvests

Under an Almond Orchard Management Agreement, Select Harvests, Australia's leading integrated producer, processor and marketer of almonds manages the day-to-day farming operations on the Orchard. It will harvest and process the entire crop of Almonds each year at its processing facility and market the Almonds through established channels in domestic and overseas markets. Select Harvests guarantees that the entire annual crop of Almonds available for harvest in a particular season will be sold by 30 June in the Financial Year after the year in which the harvest for that season commences.

## Timbercorp Almond Project Structure



### How much will it cost?

#### Initial fees and costs

As a Grower, you will be required to pay the following fixed management and licence fees per Almondlot (0.25 of a hectare) in respect of the first three financial years of the Project. These fees represent your licence fee and your 90% share of the total management fees for this period. The total fees payable per Almondlot on application are \$6,050 (including \$550 GST).

Year ended 30 June	2002 \$	2003 \$	2004 \$
<b>Management fee</b>	5,198 <i>(incl. \$472.55 GST)</i>	1,848 <i>(incl. \$168 GST)</i>	1,848 <i>(incl. \$168 GST)</i>
<b>Licence fee</b>	852 <i>(incl. \$77.45 GST)</i>	852 <i>(incl. \$77.45 GST)</i>	852 <i>(incl. \$77.45 GST)</i>
<b>Total</b>	6,050	2,700	2,700
<b>When due</b>	On Application	31 October 2002	31 October 2003
<b>Tax deduction</b>	100%	100%	100%

#### Ongoing fees and costs

On 31 October of each subsequent year during the life of the Project, commencing 31 October 2004, you will pay the following annual costs:

- an annual licence fee of \$852 indexed each year;
- the estimated annual operating costs of managing your Almondlots; and
- a management fee equal to 3% of the Proceeds from the sale of your Almonds.

Our remuneration package is deliberately designed to provide an incentive for us to obtain the highest yield and best price for your Almonds and to minimise your operating costs. Accordingly, we will be entitled to an incentive fee if we exceed the forecasts set out in this prospectus. Details of these costs are set out in section 5. All fees and costs will be increased on account of GST.

### Taxation

Based on Product Ruling PR 2002/24 and the Taxation Advisor's Report, you should be entitled, in the year of payment, to an income tax deduction for all management and licence fees and costs that you pay under the Project. However, the amount of deduction will be reduced by the amount of any GST input tax credit to which you are entitled under GST Law.

### Returns

Full details of the estimated returns and underlying assumptions and risks are set out in sections 3 and 9 of this prospectus.

### Subscription and allocation details

There is no minimum subscription that must be reached before we allocate Almondlots under this prospectus.

You must apply for a minimum of two Almondlots (0.50 hectares), although we reserve the right in our absolute discretion to accept applications for less than two Almondlots.

We are offering up to 2000 Almondlots for subscription and we reserve the right to accept oversubscriptions for Almondlots on the Orchard. Unless agreed otherwise with any particular Grower or financial intermediary and subject to our absolute discretion to refuse an application, Almondlots will be allocated and issued on a first come first served basis, ie. in the order of receipt of completed applications. Almondlots will be allocated randomly across the Orchard.

Applications will not be accepted after 30 June 2002, or such later date determined by us. From 1 June 2002, we will only accept applications of any Almondlots that remain to be allotted where we are reasonably satisfied that we can complete the services to which the Application Moneys relate by 30 June 2002.

*This section contains an overview only of the Project. Before deciding whether to participate in the Project, you should read the whole of this prospectus.*





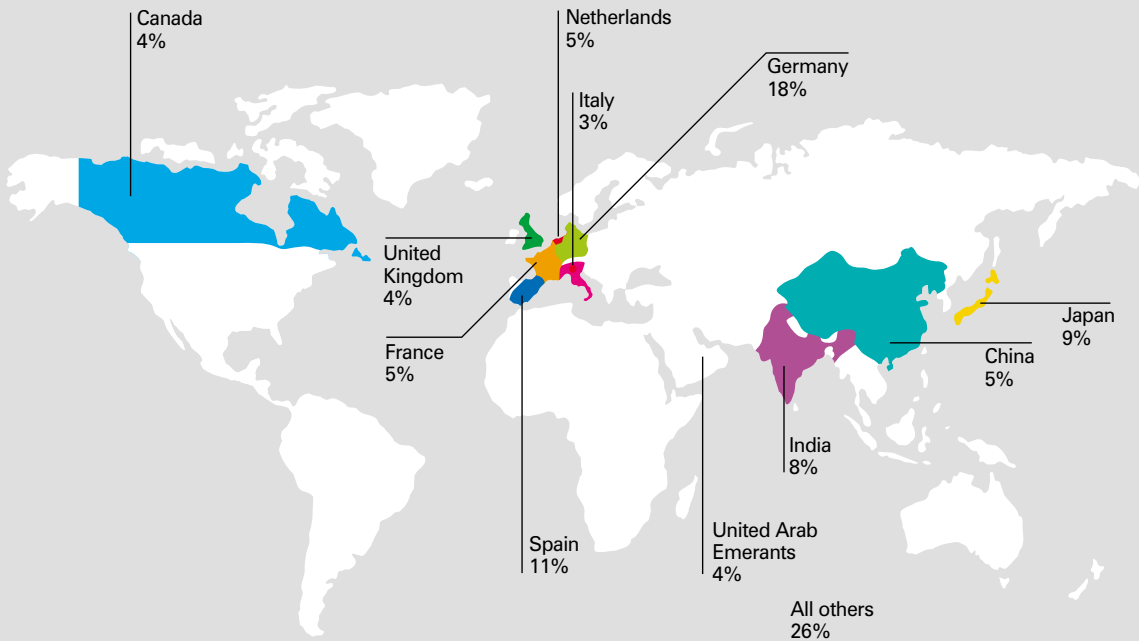
## 2 The Almond Industry Stability and Growth

### Why invest in almonds

In July 1999, the South Australian Government ('SAG') published a report outlining the investment opportunity in almonds. Under the heading, 'Why Invest in Almonds?' the report lists the following key reasons:

- 'Industry growth of more than 13 percent per annum for more than 15 years indicates buoyancy of the market.'
- 'The industry enjoys world's-best practice in production, processing and marketing.'
- 'It is a highly organised industry and professionally managed at all levels.'
- 'Its relative pest and disease-free status results in lower production costs.'
- 'Australia's international reputation as a producer of premium quality product is driving export sales.'
- 'There is potential to develop new, value-added almond products.'

The 10 largest importers of Californian almonds for 2000/2001





Almonds are the most versatile of all nuts as they are able to be consumed in their raw form as well as in a wide variety of processed forms, including blanched (whole, sliced or slivered), roasted and smoked. They are extensively used in cooking, breakfast cereals, confectionery, snack foods, dairy products and spreads. Almond oil has very low saturated fat content that makes it popular for cooking and as salad oil. It is also used for massaging, cosmetics and wood preservation. Almond hull (the outside husk) is a high-energy fodder used as stock food.

In developed countries, health-related considerations contribute to the increasing acceptance of almonds as an important component of a healthy diet. This has led to a drive among producers to develop an even wider range of applications for almonds.

In developing countries, where almonds are desirable and are often associated with cultural ceremonies or celebrations, affordability is a key factor in market growth. In India, China and several Middle Eastern and Asia Pacific countries, economic development is improving the average standard of living and increasing the size of the middle class. This growth makes almonds an affordable food for a sizeable market. The marketing of almonds is likely to become a contributing factor to continued growth in demand in these countries once market size encourages greater investment in marketing activities.

Given California's dominant supplier position, and the fact that it accounts for approximately 75-80% of world almond production, it is reasonable to take Californian export statistics as indicators of market growth. These statistics show that Asian demand experienced a significant dip in 1995/96 (during Asia's economic difficulties) but achieved consistent growth since then, achieving pre-crisis export levels attained by 1997/98. Demand from India and China is accelerating strongly.

India accounts for approximately one-third of California's almond exports to Asia. India is also a major market for Australian almonds, and is widely considered to have a stronger economy than many other countries in the region, with a fast-growing middle class which is a significant almond consumer. Almonds are attractive to the Indian diet because of their high protein value in a meatless society.

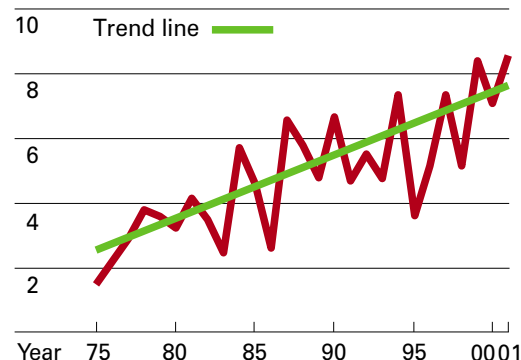
History shows that worldwide consumer demand for almonds is relatively elastic. Increased almond production has historically been met with increased market demand and market consumption.

International demand for almonds is expected to continue to show strong growth with considerable strength in India, Japan and China.

#### The Californian almond crop

The world's largest producer of almonds is California, which accounts for approximately 75-80 % of the world supply. Almonds are California's largest-food export and the United States' seventh largest food export. The size and quality of the Californian crop is the single most influential factor affecting the market price for almonds. Spain and Italy are also significant almond growers, accounting for approximately 19% of world production, with a large number of other countries sharing the balance.

**California almond crop**  
Pounds (hundreds of millions)



World prices declined in 1999 following a record crop in California of 830 million pounds (approximately 380,000 tonnes). However, in May 2000, the United States implemented a statutory reserve system (ie. a crop set aside) of just over 22% of the total crop to help stabilise the market. With a commercial selling floor operating, prices recovered and stability returned to the



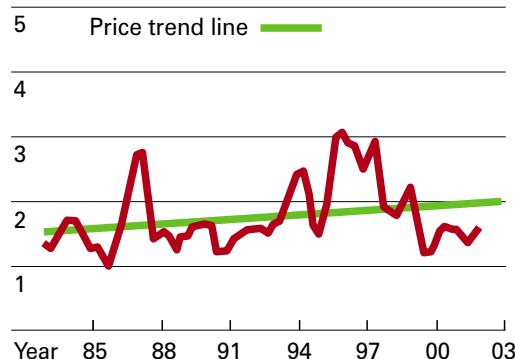


### Forecast lower Californian production and rising almond prices

market. The record exports from the United States, including newly developed markets, together with a lower crop in the 2000 season, resulted in the full release of the reserve.

#### World almond prices

Grade NP SSR 23/25 \$US price per pound



The 2000 crop totalled 700 million pounds, approximately 16% below the record 1999 crop. The Almond Board of California estimates the 2001 crop at a record 816 million pounds (approximately 371,000 tonnes).

Shipments to January 2002 totalled a record 822 million pounds for the first six months of the 2001 crop year, demonstrating a strong growth in international consumption. Almond prices have risen off the historically low levels experienced in 1999 and in February 2002 prices are estimated to be approximately 20% higher than prices achieved in September 2001.

Despite the recent bumper crops, California suffers from variable climatic conditions that result in substantial fluctuations in world almond production. An analysis of California's almond crops over the past 25 years shows that bumper crops occur only sporadically, with very good crops typically followed by average or poor harvests: see graph on previous page.

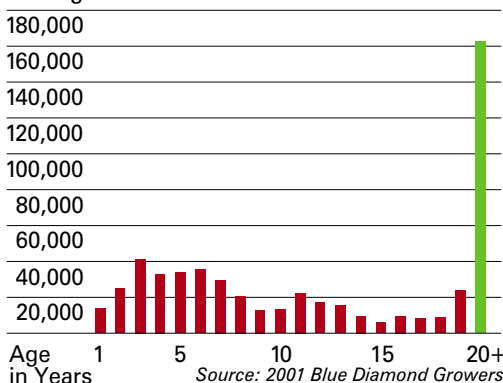
In May 2001 the California Agricultural Statistics Service (CASS) released the 2000 California Almond Acreage Report.

The CASS Report disclosed that almost one third of California's almond bearing acres are now 20 years or older. Furthermore, production from these orchards is declining and many may soon be removed.

Given the older acreage and depressed returns at the current historically low prices, CASS comments that almond tree removal during the next several years may exceed new acres coming into production. At the existing 525,000 bearing acres, it is likely that we are at or near the peak for the California almond bearing acreage for the foreseeable future. Until market conditions improve, CASS believes that California's almond bearing acreage may well start to decline or stabilise as it did towards the end of the 1980's.

Since 1981 the compound annual growth rate in consumption of Californian almonds has been 4.3% per year and CASS expects this rate to be maintained or increased given the global consumer awareness of the favourable health and nutritional information surrounding Almonds.

#### California Almond Orchard Age of Acreage - May 9, 2001





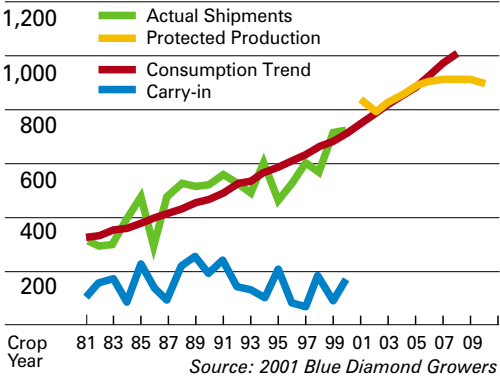


In a presentation to the International Nut Council in May 2001, Blue Diamond Growers, a major group of California almond growers noted that over the past two years, almond prices had been at very attractive levels for buyers, similar to those over 15 years ago in the mid 1980's.

Since then, however, grower costs have risen dramatically, most recently, due to the California energy crisis. With the lower prices, many growers are experiencing returns that are lower than the cost of production.

If future consumption growth is to be satisfied, prices must continue to improve; otherwise available supplies will radically decline.

**California Almond Production/Shipment  
Almond Trend**  
Millions LBS



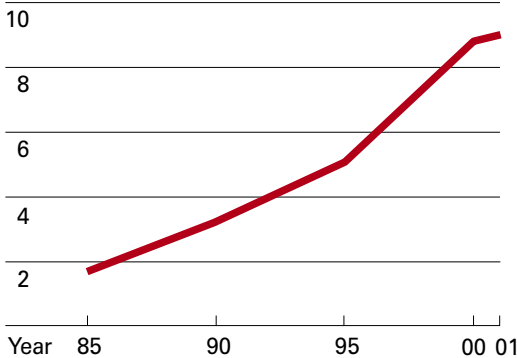
### The Australian almond industry

#### Climate

Unlike California, Australia has a history of stable almond production: see the graph below. This is primarily due to the more favourable weather conditions present in almond growing regions of Australia.

The majority of almond production in Australia is located in the Sunraysia region, which is centred on the Murray River from Robinvale in Victoria through Renmark and Loxton in South Australia and then through to Swan Reach, also in South Australia. Australian growers experience less significant variations in climatic conditions than those experienced by Californian almond growers.

**Australian almond production**  
Tonnes (000)





### *Production*

Australian production of almonds has been steadily increasing over the past 15 years at approximately 13% per annum.

Australia's favourable weather conditions result in a relatively stable production of almonds and Australian almond growers produce a consistent quality of output, which should place our industry in a competitively advantageous position.

Furthermore, Australia has a track record of producing high-grade almonds, which are recognised by their largeness and lightness in colour, and has been able to develop attractive export markets because of the ability to provide continuity of supply, as well as the quality of this supply.

Select Harvests, the orchard contractor and marketer for this Project, focuses on meeting the requirements of its customers. An example of this is its Indian customers. In India, there is a demand for unshelled almonds and an established hand-shelling industry. Most of Select Harvests' exports unshelled almonds are sold to India, which has an expected rapidly growing market for almonds.

Australia's position is further strengthened by the fact that its supply is anti-cyclical, complementing rather than competing with the supply patterns of the almond producers of the Northern Hemisphere.

In 1999 Australia's production of almonds reached a then record of approximately 8,500 tonnes. In 2001, it reached a new record of approximately 9,000 tonnes and is expected to increase significantly over the next five years.

### *Consumption*

The domestic market for almonds is solid, with high per capita consumption due to Australia's relative affluence and multicultural mix. Almonds are a traditional component of the diets of people from Mediterranean countries, India, the Middle East and Asia.

Australian consumption reached 8,867 tonnes in 1999, representing a per capita consumption rate of approximately 490 grams and is estimated to have reached 9,000 tonnes in 2001. This compares with 5,790 tonnes in 1995, equating to approximately 350 grams per head.

### *Australia's competitive advantage*

While Australia has developed a sound niche position in selected export markets, its overall volume of production is still very small and accounts, accounting for less than 2% of world production. Although Australia's production is increasing, so is the world production. The Californian crop has quadrupled over the past 20 years. Our proportion of world production is not expected to change significantly, although as some producers (for example, Italy) decline, Australia will move up the ranking ladder.

While the production level from California and the United States' exports and market policies remain the most influential factors in determining global supply and prices of almonds, in some niche markets such as India, Australia has enjoyed premium prices by being able to meet demand for high quality almonds and value added products such as blanched almonds.

Australia, being the dominant grower of almonds in the Southern Hemisphere, has a counter seasonal advantage that provides a fresh alternative for consumers. It also benefits from a far less erratic climatic pattern than California and its pollination period is approximately twice that of California. These factors contribute to relatively stable harvests of good quality almonds.

Our counter seasonality to Northern Hemisphere growers, together with our quality and clean environment and efficient production technology, ensure that Australia is comfortably able to sell its total crop each year.

The SAG report highlights this competitive advantage: 'High-quality almonds tend to be exported for premium prices to niche markets... Over the past three years significant export markets have been identified and developed, and the almond industry is now increasingly focused on the export market.'

The SAG report further states: 'The Riverland/Sunraysia region provides excellent climate conditions ... The primary requirements of almonds are frost-free growing conditions from the flowering stage in the month of July. The region is relatively frost free and there are few pests and disease problems due to the ideal dry climate.'





#### Nutritional benefits

- High in monounsaturated fat \_\_\_\_\_
- Cholesterol free \_\_\_\_\_
- Low in saturated fat \_\_\_\_\_
- A leading source of vitamin E \_\_\_\_\_
- A good source of dietary fibre \_\_\_\_\_
- High in arginine rich protein \_\_\_\_\_
- High in calcium and riboflavin \_\_\_\_\_
- A source of copper, zinc and magnesium \_\_\_\_\_



In recent times, Australian production has outstripped domestic consumption and we are now a net exporter, selling a growing proportion of our crop to international markets.

This Project aims to capitalise on the competitive advantages identified above, but also takes the range of benefits further through long-term contractual arrangements with Select Harvests, Australia's leading integrated producer, marketer and exporter of almonds. Select Harvests will control all aspects of growing, harvesting, processing, sorting and packing of almonds and therefore is well placed to achieve a consistent quality of almonds.

This Project is expected to have little or no impact on the balance of global supply and demand and therefore no significant impact on world almond prices. However, Growers will benefit from increased sales that Select Harvests will make to niche and emerging export markets, including China, India, Japan, Middle East, Europe, and to longstanding domestic customers such as confectioners, bakers and cereal manufacturers, dairy producers, supermarket packers and wholesalers. For further details regarding Select Harvests, refer to the previous section and sections 6 and 7.

#### Almonds – the health benefits

Current medical research demonstrates that not only are almonds healthy, but they may also provide some protection against various cancers, lower the risk of heart disease and reduce the risk of strokes by lowering blood pressure. In addition, almonds contain a wide range of important vitamins, antioxidants and minerals as well as dietary fibre.

The health benefits of almonds are being increasingly understood and this is stimulating consumption in developed countries. Nuts of all sorts are rich in antioxidant vitamin E. Almonds are loaded with alpha-tocopherol, which is believed to have the potential to lower the risk of heart disease.

Until recently, there was some focus on nuts being relatively high in fat. Whilst this is true, the fat in nuts is unsaturated. A study published in the April 2000 issue

of the American Archives of Internal Medicine indicated that people could lower their blood cholesterol by eating less saturated fats and more unsaturated fats.

Because nuts are rich in unsaturated fats, nut enthusiasts could very well enjoy their cholesterol lowering benefits. In fact, New Mexico State University researchers reported in the March 2000 issue of the Journal of American Dietetic Association that diets that include almond, walnuts, pecans, macadamias and pistachios could help lower cholesterol.

Nuts of all varieties have traditionally been labelled 'party fare' – a sinful, fat laden snack only to be eaten as a treat. However, awareness is growing that nuts contain monounsaturated fats and are in fact good for you.

Research by the Heart Foundation of Australia has established that 'good' fats are found in nuts, fish, poly and monounsaturated margarines, cooking oils and salad dressings. These fats help lower high blood cholesterol levels and fight heart disease.

While a diet high in saturated fat is undoubtedly bad, Heart Foundation National Nutrition Manager Susan Anderson says: 'Throwing out all fats is like throwing out the baby with the bath water.' The most popular misconception about nuts is that they are fattening and contain cholesterol. Studies by leading medical and nutritional researchers in the United States have shown this to be without scientific basis.

Other studies by leading research groups have concluded that diets high in nuts could be protective against some cancers such as colon, lung and prostate cancer and diabetes and Alzheimer's disease, amongst others.

The accumulation of nutritional and medical research should have a significant impact on the demand for, and consumption of, almonds in developed countries where growing numbers of people are changing their dietary habits to include healthy foods.



# 3 Prospective Financial Information

It is not possible to determine financial returns to Growers over the life of a 20 year Project with certainty. This is because the calculation of returns involves the consideration of a large number of variables, most of which are outside our control, and because anticipated events that affect returns may not occur as expected, whilst unanticipated events that affect returns may also occur.

For these reasons, the financial returns set out below show the potential returns that Growers may achieve from the Project. They are an indication only of what might occur. However, on present information available and based upon the underlying notes and assumptions listed below, including reports obtained from a number of experts, our directors believe that it is reasonable to expect the following returns:

	Geared	Ungeared
Equivalent pre tax compound return p.a. (IRR)*	42.3% p.a.	26.8% p.a.
Average after tax compound returns p.a. (IRR)	21.8% p.a.	13.8% p.a.

\* The above forecasted after tax compound returns per annum are internal

Year ending 30 June Project Year	2,002 0	2,003 1	2,004 2	2,005 3	2,006 4	2,007 5	2,008 6	2,009 7	2,010 8	2,011 9
<b>Net Almond Sales</b>			331	1,575	2,983	4,828	6,499	6,905	7,078	7,256
less: joint venturer's share			(33)	(158)	(298)	(483)	(650)	(691)	(708)	(726)
<b>Gross Proceeds to Grower</b>			298	1,417	2,685	4,345	5,849	6,214	6,370	6,530
<b>Grower's Costs</b>										
Management costs	5,198	1,848	1,848	1,931	2,121	2,560	2,685	2,758	2,827	2,897
Licence fee	852	852	852	873	895	917	940	964	988	1,013
Management fee			10	47	89	143	193	205	210	215
Total costs	6,050	2,700	2,710	2,851	3,105	3,620	3,818	3,927	4,025	4,125
<b>Net proceeds to Growers / cashflow before tax</b>	(6,050)	(2,700)	(2,412)	(1,434)	(420)	725	2,031	2,287	2,345	2,405
Input Credit for GST paid	550	245	246	259	282	329	347	357	366	375
Taxable income / (deduction)	(5,500)	(2,455)	(2,166)	(1,175)	(138)	1,054	2,378	2,644	2,711	2,780
Tax saving / (payable)	2,668	1,190	1,050	570	67	(511)	(1,153)	(1,282)	(1,315)	(1,348)
<b>Cashflow after tax</b>	(2,832)	(1,265)	(1,116)	(605)	(71)	543	1,225	1,362	1,396	1,432
<b>WITH BORROWINGS</b>										
<b>Borrowings:</b>	4,840	2,160	2,160							
Principal payments	(122)	(978)	(1,434)	(1,748)	(1,950)	(1,964)	(736)	(228)		
Interest Payments	(88)	(614)	(722)	(643)	(441)	(217)	(63)	(7)		
Total loan payments	(210)	(1,592)	(2,156)	(2,391)	(2,391)	(2,181)	(799)	(235)		
<b>Cashflow before tax</b>	(870)	(1,887)	(2,162)	(3,566)	(2,529)	(1,127)	1,579	2,409	2,711	2,780
Taxable income / (deduction)	(5,588)	(3,069)	(2,888)	(1,818)	(579)	837	2,315	2,637	2,711	2,780
Tax saving / (payable)	2,710	1,488	1,401	882	281	(406)	(1,123)	(1,279)	(1,315)	(1,348)
<b>Cashflow after tax</b>	1,840	(399)	(761)	(2,684)	(2,248)	(1,533)	456	1,130	1,396	1,432

## Notes and Assumptions:

### a Grower and investment profile

The returns and cashflow forecasts are for one Almondlot of 0.25 hectares planted in the 2001 financial year for a Grower who is a natural person on a marginal tax rate of 48.5% including the Medicare levy for the term of the Project. The Grower is registered for the GST and claims a GST input tax credit in the year of income in which a payment is made.

### b Estimated inflation rate

The directors believe, on best estimates, that the average annual inflation rate, as measured by the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities, will be 2.5% per annum over the term of the Project. The estimate is based upon a report commissioned by us from BIS Shrapnel Pty Ltd.

### c Estimated price

The directors believe, on best estimates, that a real almond sale price of \$A6.80 per kilogram increasing annually with movements in inflation is a reasonable almond price for forecasting the returns set out in this section. The reasonableness of this estimate is supported by the Independent Price Analysis Expert's Report, which is reproduced in section 13.

rates of return calculated in respect of the after tax cashflows. The forecasted after tax cashflows take into account the tax deductibility of the cash outflows and the assessability of the cash inflows in the Project. The equivalent pre tax compound returns p.a. shown above do not represent actual rates of return achieved by the Project. Rather, they are measures used generally in the agribusiness investment industry to allow comparison with actual or forecasted pre tax returns from other investments such as property, shares and fixed interest investments, where investors are not entitled to claim a tax deduction for the initial contribution costs and where these investments are predominantly capital in nature. The forecasted equivalent pre tax compound returns p.a. are derived by dividing the forecasted after tax compound returns p.a. by the product of [1 - 0.485 (being the assumed tax rate of 48.5%)].

Of course these returns, and the underlying assumptions on which they are based, are also subject to the risk factors described in section 9 of this prospectus titled Risk Analysis, which you should read in conjunction with this section.

In preparing its report, the Independent Price Analysis Expert assumed an US\$/A\$ exchange rate of 62.5 based upon our advice to him. Our directors believe, on best estimates, that an US\$/A\$ exchange rate of 62.5 is a reasonable estimate for the Independent Price Analysis Expert to use. The estimate is supported by a report commissioned by us from BIS Shrapnel Pty Ltd.

### d Sale Patterns

The directors believe, on best estimates, that approximately 40% of the entire crop for a season will be sold by 30 June of the year in which it is harvested. The reasonableness of this assumption is based on discussions with Select Harvests in relation to the usual pattern of its sales. The remainder of the crop for a season is sold in the following year as guaranteed by Select Harvests under the Almond Orchard Management Agreement with the Project Manager.

### e Estimated yield

The directors believe, on best estimates, that the long term average yield of almonds will be as follows:

If there is any change to the underlying notes and assumptions listed below, the returns will differ from those stated in this prospectus. The assumptions in each case are best current estimates of our directors as at the date of this prospectus, based on expert independent reports and currently available information. However, no guarantee or assurance can be given as to the assumptions and potential results as they are subject to numerous known and unknown risks, uncertainties, changing circumstances, and other factors, including the risk factors set out in section 9 that could cause a Grower's actual results to differ materially from the returns forecasted in this section.

You may form your own view as to the possible range of returns by examining the notes and assumptions that have been taken into account by our directors.

2,012 10	2,013 11	2,014 12	2,015 13	2,016 14	2,017 15	2,018 16	2,019 17	2,020 18	2,021 19	2,022 20	2,023 21	TOTAL
7,438 (744)	7,624 (762)	7,814 (781)	8,009 (801)	8,210 (821)	8,415 (842)	8,625 (863)	8,841 (884)	9,062 (906)	9,289 (929)	9,521 (952)	4,819 (482)	135,122 (13,514)
6,694	6,862	7,033	7,208	7,389	7,573	7,762	7,957	8,156	8,360	8,569	4,337	121,608
2,970	3,044	3,120	3,198	3,278	3,360	3,444	3,530	3,619	3,709	3,802	111	63,858
1,038	1,064	1,091	1,118	1,146	1,175	1,204	1,234	1,265	1,297	1,329		22,107
221	226	232	238	244	250	256	263	269	276	283	143	4,013
4,229	4,334	4,443	4,554	4,668	4,785	4,904	5,027	5,153	5,282	5,414	254	89,978
2,465	2,528	2,590	2,654	2,721	2,788	2,858	2,930	3,003	3,078	3,155	4,083	31,630
384	394	404	414	424	435	446	457	468	480	492	23	8,177
2,849 (1,382)	2,922 (1,417)	2,994 (1,452)	3,068 (1,488)	3,145 (1,525)	3,223 (1,563)	3,304 (1,602)	3,387 (1,643)	3,471 (1,683)	3,558 (1,726)	3,647 (1,769)	4,106 (1,991)	39,808 (19,305)
1,467	1,505	1,542	1,580	1,620	1,660	1,702	1,744	1,788	1,832	1,878	2,115	20,502
												(9,160)
												(2,795)
												(11,955)
2,849	2,922	2,994	3,068	3,145	3,223	3,304	3,387	3,471	3,558	3,647	4,106	37,012
2,849 (1,382)	2,922 (1,417)	2,994 (1,452)	3,068 (1,488)	3,145 (1,525)	3,223 (1,563)	3,304 (1,602)	3,387 (1,643)	3,471 (1,683)	3,558 (1,726)	3,647 (1,769)	4,106 (1,991)	37,013 (17,950)
1,467	1,505	1,542	1,580	1,620	1,660	1,702	1,744	1,788	1,832	1,878	2,115	19,062

Year ended 30 June	Kilograms per Almondlot	Kilograms per hectare
2004	95	380
2005	340	1,360
2006	462	1,850
2007	802	3,210
2008 onwards p.a.	865	3,460

The above yields are based on an average planting density of 248 Almond Trees per hectare, ie. 62 per Almondlot, and are supported by the Independent Almond Orchard Expert's Report, which is reproduced in section 12. Of course, actual yields may fluctuate from year to year due to seasonal and other factors.

#### f Future costs

Under the Almondlot Management Agreement, management costs are fixed in the first three years of the Project and thereafter are based on actual production costs. From year three of the Project, there is a management fee equal to 3% of the proceeds of sale of your Almonds. Under the Licence and Joint Venture Agreement, the Licence fee is \$852 per Almondlot per annum. Commencing 31

October 2004, both management and licence fees are indexed at the estimated inflation rate of 2.5% per annum.

#### g Gearing

Assumes a deposit of \$1,210 per \$6,050 Almondlot with interest at 11% p.a. repayable by 60 equal monthly instalments of principal and interest. Also assumes that 80% of the GST inclusive fees due in the second and third years of the Project will be financed by way of loans at 11% p.a. repayable by 60 equal monthly installments. Each of the loans will be drawn down when the relevant fees become due and payable. Repayments for loans commence in the month following drawdown.

#### h Deductibility of Payments

The directors believe, based on the Taxation Advisor's Report and Product Ruling PR 2002/24 that the Application Moneys and the ongoing licence and management fees and costs payable by a Grower each year and any interest incurred on borrowings will be 100% tax deductible in the years in which they are incurred.

Please note that no person, firm or corporation associated with the issue of the prospectus guarantees, warrants or underwrites the performance of this Project or any particular return set out in this prospectus.



## Sensitivity Analysis

The graphs below demonstrate the possible effect which varying almond prices and yields may have on Grower returns forecast in this section. It is important to note that:

- a) the Independent Almond Orchard Expert Report which is produced in section 12, states that the early year and mature yields assumed in paragraph (e) above are reasonable; and
- b) the Independent Price Analysis Expert's Report which is produced in section 13, states that the real almond sale price of \$6.80 per kilogram assumed in paragraph (c) is reasonable.

Of course, some Almondlots may produce yields which are higher or lower than the estimated yields. However, all almonds produced from the Project will be pooled and Growers will share in the proceeds of sale of the pooled almonds. The purpose of the sensitivity analysis below is to demonstrate the range of possible returns that Growers may achieve in the following circumstances:

### Sale price per kilogram

Average after tax  
compound return (%p.a.)



**Sale price per kilogram**  
(assuming a base yield of 3,460 kilograms per hectare)

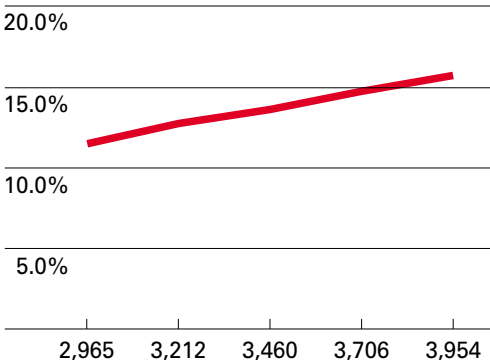
- a) where we achieve sales of your almonds at prices below or above the assumed price of \$6.80 per kilogram; and

- b) where the Orchard, as a whole, produces almond yields below or above the estimated early year and mature yields.

The graphs below demonstrate the effect of varying yields and prices on the returns of a Grower who does not borrow to fund the costs of the Project during the first three years. Of course, the returns of a Grower who does borrow from the Timbercorp group or another financier to fund the costs of the Project during the first three financial years will be higher.

### Yield per hectare, per kilogram

Average after tax  
compound return (%p.a.)



**Yield per hectare (kilograms)**  
(assuming a base price of \$6.80 per kilogram at 30 June 2002)





## 4 Taxation Benefits and GST

### Deductions available

You should be entitled to an immediate taxation deduction for the Application Moneys payable on subscription.

In addition, you should also be entitled to deductions for your ongoing annual costs when they are incurred. These costs include management and licence and incentive fees, as well as interest on any funds that you borrow to finance your almond farming activities.

However, you should note the operation of section 27-5 of the Tax Act in relation to GST, which is explained below.

### ATO Product Ruling

The Australian Taxation Office has issued Product Ruling PR 2002/24. This Product Ruling confirms the deductibility of the Project costs. A copy of the Product Ruling is reproduced in section 11.

A product ruling is a binding public ruling under the Taxation Administration Act 1953, in relation to the effect of the income tax law on a project. It protects Growers so long as the Project is carried out in accordance with the details that we provided to the Australian Taxation Office and described in the Product Ruling.

It should be noted that the Australian Taxation Office has advised us that it will be issuing an Erratum to the Product Ruling to change the word 'ten' in paragraph 23 of the Product Ruling to 'two'.

### Ralph Initiatives

Under the New Business Tax System (Integrity Measures) Act 2000, prepayments in respect of 'tax shelter' arrangements are deductible over the period during which the services are provided, rather than being immediately deductible.

Growers in the Project should not be affected by these provisions, as all payments under the Project Agreements relate to services being wholly provided in the year of payment. In other words, none of these payments are prepayments. This means that all management and licence fees and costs set out in this

prospectus and incurred in relation to the Project should be deductible in the year of payment.

The New Business Tax System (Integrity Measures) Act 2000 also affects the deductibility of losses from 'non-commercial business activities'. The provisions of this legislation restrict the extent to which an individual can offset losses from a non-commercial activity against other income.

If the provisions apply, losses from the non-commercial business activity will be carried forward and will be deductible against future income derived from that activity only. Losses will only be allowed as deductions against other income if the income is excepted income, if one of four tests is satisfied or, importantly for our purposes, if the Commissioner favourably exercises a discretion that the legislation gives to him.

This is important because none of the tests will be satisfied by a Grower either in the year of subscription or subsequent years up to the stage of harvest and the income is unlikely to be excepted income.

The Product Ruling, however, states that the Commissioner will exercise his discretion favourably for the period of the Product Ruling and thereafter in the absence of legislative change.

For further explanation of how these provisions affect Growers in the Project, refer to the Taxation Advisor's Report in section 10.

### Goods and Services Tax (GST)

The Goods and Services Tax (GST) came into effect on 1 July 2000.

GST is a tax payable on any "taxable supply". A taxable supply includes the supply of goods, services and many other things. Taxable supplies in respect of the Project include the management services provided by us, the licence rights granted by the Land Owner in



relation to your Almondlots and all services associated with the harvesting, processing, delivery and marketing of your Almonds. All of the Project Agreements contain provisions to the effect that where the Land Owner or we are required to remit any GST in respect of services provided to you under the Project Agreement, the amount of the management, licence or incentive fee payable by you may be increased by an amount to cover the GST that the Land Owner or we must remit.

It is important to note that the provision of finance is not a 'taxable supply' and, therefore, any interest payable by you on borrowed funds is not subject to GST.

As a Grower in the Project, you will be carrying on an enterprise. This means that you will be entitled to claim an input tax credit in the nature of a refund or offset for any GST that you pay in relation to the Project. In order to claim the credit, you must be registered for GST purposes and obtain an Australian Business Number (ABN) from the Australian Taxation Office. If you already carry on an enterprise that is registered and you licence your Almondlots in the same name as that which carries on the enterprise, your existing registration will be sufficient. However, if you do not, or if you do not carry on any other type of enterprise, then you will be able to register specifically in relation to your Almond growing enterprise.

You should note the effect of section 27-5 of the Tax Act. It operates to reduce the amount of any tax deduction that you may claim by the amount of any input tax credit to which you are entitled. This means that if you register, or are required to be registered, for GST, you will not be entitled to claim a tax deduction for the amount of any GST that you pay under the Project Agreements during the life of the Project. Of course if you are registered for GST, you will be entitled to claim an input tax credit in respect of any GST paid.

You should obtain your own independent professional advice in relation to the effects of GST under the Project.

#### **Almond proceeds**

All proceeds that you derive from the sale of Almonds will be assessable income for taxation purposes.

#### **Taxation opinion**

The Taxation Advisor's Report sets out in full the taxation implications of participating in the Project.

Before deciding whether to participate, you should refer to the Taxation Advisor's Report and Product Ruling PR 2002/24 in sections 10 and 11 respectively. You should also obtain your own independent professional advice on this important matter.

## 5 How the Project Works

### Becoming a Grower

You may become a Grower by completing the application and power of attorney form at the back of this prospectus and paying the relevant Application Moneys.

On acceptance of your application, you will become an almond grower in your own right on Almondlots that Almond Land, the Land Owner, licenses to you.

Upon becoming a Grower, we will send to you:

- an Almondlot statement, together with a map to enable you to identify the location of your Almondlots; and
- a formal advice of the Application Moneys paid by you, to assist in the preparation of your income tax return.

During the Project, we will send to you:

- annual reports setting out the results of the harvest of Almonds including the condition of the Orchard and Almond Trees and other relevant details;
- annual invoices for management, incentive and licence fees; and
- once the Almond Trees start producing Almonds, annual statements of income and expenses and proceeds from the sale of Almonds produced from the Orchard.

Naturally, you will be entitled to visit your Almondlots and monitor their progress.

### Project Agreements

Your rights and obligations under the Project will be governed by the Constitution and the Project Agreements. Following is an explanation of the key features of these agreements.

### Constitution

The Constitution is a deed that establishes the 2002 Timbercorp Almond Project as a managed investment scheme. By completing the application and power of attorney form attached to this prospectus, a Grower

agrees to be bound by the Constitution. The Constitution sets out the terms and conditions under which we are appointed Responsible Entity of the Project. It also sets out:

- how the Project will be administered;
- how reports will be provided to you;
- your rights;
- the fees that you are required to pay;
- termination and retirement provisions;
- your protections and safeguards, including complaints resolution procedures; and
- receipt and distribution of Proceeds.

### Custody Agreement

We have engaged Permanent Trustee Company Limited as Custodian for the Project. Its principal role is to perform the following functions:

- receive and hold Application Moneys and Proceeds until they are disbursed under the Project Agreements;
- upon a direction from us, and if duly appointed as attorney, execute the Licence and Joint Venture Agreement and Almondlot Management Agreement as attorney for and on behalf of the Growers; and
- retain the executed Project Agreements in safe custody.

We will pay all of the Custodian's fees and expenses out of our own funds. None of these fees are required to be met by Growers.





### **Licence and Joint Venture Agreement**

The Licence and Joint Venture Agreement will be between you and the Land Owner. We will also be a party to that agreement.

Under this agreement, the Land Owner warrants that it has established all infrastructure and other capital works necessary to operate a commercial almond orchard and has planted the Almond Trees on your Almondlots.

The Land Owner owns all infrastructure and other capital works established on the Orchard, including the Water Licences and irrigation equipment. It has acquired rights over the irrigation mainlines that will transport water to the Orchard. For further details on the Orchard and the Water Licences refer to section 6 of this prospectus.

The Land Owner will grant to you a licence to use and occupy identifiable Almondlots for the term of the Project. The purpose of the licence is to allow you to cultivate and harvest Almonds in a joint venture with the Land Owner for commercial gain.

Your application fee includes a licence fee of \$852 (including \$77.45 GST) per Almondlot for the period from acceptance of your application until 30 June 2002. On 31 October 2002 and 2003, you will also pay a licence fee \$852 and from year 4 of the Project, commencing on 31 October 2004, you will pay an annual licence fee of \$774.55, indexed from the previous year and increased on account of GST. Please note that the licence fees payable under the Licence and Joint Venture Agreement is your sole responsibility.

The Land Owner will be your joint venturer in respect of each of your Almondlots. Your joint venture interest will be 90% and the Land Owner's joint venture interest will be 10%. This means that you will pay 90% of all costs associated with the cultivation and management of your Almondlots and the Land Owner will pay 10% of these costs. Correspondingly, you will receive 90% and the Land Owner will receive 10% of the produce. Costs and fees shown in this prospectus relate to your 90% share of the costs, other than the licence fees, whilst the income shown reflects your 90% entitlement to income.

Almond Land engaged Select Harvests:

- to oversee the establishment of the infrastructure and other capital works on the Land; and
- to plant the Almond Trees on the Orchard and to erect stakes and tree guards.

These works were completed shortly after 30 June 2001.

### **Lease and Sub-Lease**

In order to secure your tenure of the Land for the duration of the Project, the Land Owner will lease or sublease to us in our capacity as Responsible Entity under the Project those parts of the Land on which the Project will be conducted. The Leases will confer on us exclusive possession of the relevant parts of the Land. In order to enable the Land Owner to grant to you a licence over your Almondlots, we will sub-lease or sub-underlease the relevant parts of the Land back to the Land Owner. The terms and conditions of the Sub-Lease generally will reflect those contained in the Lease.

### **Almondlot Management Agreement**

Under the Almondlot Management Agreement between you and us, we will manage and cultivate your Almondlots (which you will operate in joint venture with the Land Owner), harvest your Almonds, procure the processing of the Almonds that have been harvested and procure the marketing and sale of the Almonds throughout the term of the Project.

We will engage Almond Management, the Project Manager, to assist us in performing our duties and meeting our obligations under the Almondlot Management Agreement. In turn, under the Almond Orchard Management Agreement, Almond Management will engage Select Harvests, Australia's leading integrated producer, processor and marketer of Almonds, to undertake the day-to-day management of the Orchard, harvest the Almonds and thereafter process and sell the Almonds to domestic and overseas markets through an established distribution network.



Select Harvests' ability to manage the value chain from the Orchard to the supermarket shelf is considered to be a major benefit to Growers participating in the Project.

Your application fee includes a management fee of \$5,198 per Almondlot (including \$472.55 GST) for the period from acceptance of your application until 30 June 2002.

Thereafter, you will be required to pay the following management fees and costs:

- (a) for the period commencing on 1 July 2002 and ending on 30 June 2003 - \$1,848 per Almondlot (including \$168 GST) payable on 31 October 2002, partly in arrears and partly in advance;
- (b) for the period commencing on 1 July 2003 and ending on 30 June 2004 - \$1,848 per Almondlot (including \$168 GST) payable on 31 October 2003, partly in arrears and partly in advance;
- (c) in respect of each subsequent financial year until 30 June 2022, commencing on 31 October 2004 – an amount per Almondlot that we estimate to be the reasonable operating costs of us managing your Almondlots. This fee will include an allocation of overhead costs incurred by us that will not exceed \$50 per Almondlot (indexed, adopting 30 June 2002 as the base date) and will be payable on 31 October of each year. Once the actual costs are determined, we will adjust the following year's payments to reflect the actual costs;
- (d) a management fee of 3% of the annual proceeds of sale of your Almonds; and
- (e) an incentive fee of 25% of so much of the annual Net Proceeds payable to you in a financial year which exceed the forecasted Net Proceeds set out in this prospectus, less any allowance for inflation in arriving at such estimate, but indexed adopting 30 June 2002 as the base date. In order to allow for a variation in yields from year to year, this fee will be calculated on a two year rolling basis.

Under the Almondlot Management Agreement, we may pay on your behalf your annual licence fees and your 90% share of the annual management and incentive fees and other costs out of any Proceeds that we hold on your behalf or to which you are entitled.

#### **Harvest, processing and sale of your Almonds**

##### *Harvest and processing*

We expect your Almondlots to start producing commercial quantities of Almonds in autumn 2004.

The harvesting program will commence in late February of each year when Select Harvests will test the maturity of the Almonds to determine their readiness for harvesting. Harvesting will take place generally in the months of February to April.

Following harvest, the Almonds will be transported to a modern processing facility owned and operated by Select Harvests, where they will be weighed, tested and processed. The processing facility is divided into two parts. The hulling and cracking plant is located on Select Harvests' main farm at Kyndalyn Park, approximately 40 kilometres from the Orchard, and the sorting and packing operation is situated close by at Euston, the sister city of Robinvale on the New South Wales side of the Murray River.

After the Almonds are shelled, Select Harvests will dry any kernels derived from the Almonds to remove excessive moisture content. All hull and shell generated by the processing of the Almonds will be the property of Select Harvests and it will be responsible for their disposal. Finally, the Almonds will be graded having regard to size, variety and defects, if any. For further information on the harvesting and processing of your Almonds, including a map of the Land on which the Orchard has been established and the processing plants, refer to section 6 of this prospectus.





### *Sale of your Almonds*

The Almondlot Management Agreement requires us to sell your Almonds as your agent. We will endeavour to sell the Almonds so as to maximise returns to Growers. Under the Almondlot Management Agreement, we are appointed as your agent and attorney to enter into any agreement for the sale of the Almonds. We have appointed the Project Manager as agent to sell the Almonds, subject to our direction.

One of the key arrangements that underpin the commerciality of the Project is the engagement by Project Manager of Select Harvests to market the entire crop of Almonds through established local and overseas channels. This arrangement is embodied in the Almond Orchard Management Agreement.

### *Pools and sub-pools*

Following harvest, your Almonds will be pooled with the Almonds of all other Growers in the Project. They will then be processed and, until they are sold, kept separate from all other almonds that have been processed or stored by Select Harvests.

Generally, Select Harvests will pool your Almonds with all other almonds that it sells. By doing so, you will receive the average price that Select Harvests receives for the whole of the almonds sold by it. Alternatively, the Project Manager, as your agent, may choose to sell the Almonds outside the pooling arrangements operated by Select Harvests and may direct Select Harvests to sell the Almonds separately. Price considerations will determine whether the Project Manager Almond Management directs Select Harvests to sell outside these pool arrangements operated by Select Harvests.

The pooling arrangements operated by Select Harvests are also designed to ensure that producers of higher quality almonds benefit from higher prices and returns that may be achieved in respect of the sale of their almonds.

Accordingly, Select Harvests will establish sub-pools at the commencement of each season. The sub-pools will be based on grades that will be marketed separately and for which substantial price differentials will exist. Separate contribution proportions and prices will be calculated for each sub-pool created, and an amount equal to the proceeds of sale less the costs of sale will be paid to the Project Manager within 7 days of the end of each month. Then, at end of each quarter, Select Harvests will reconcile and adjust the actual contribution proportions made by Almond Management on your behalf to each sub pool to ensure that Growers ultimately receive all proceeds to which they are entitled.

### *Distribution of your almond proceeds*

As your Almonds will be pooled with the Almonds of all other Growers in the Project, you will be entitled to a proportionate share of the net proceeds paid by Select Harvests to the Project Manager, plus any other proceeds of sale generated by the Project Manager on your behalf.

As consumer demand and price prospects will determine the timing of sales, we will receive proceeds from the sale of almonds progressively throughout each year. We will distribute proceeds received from the Project Manager within 30 days after the end of each quarter. Prior to distributing the proceeds to you, we will deduct your licence fees and 90% share of the estimated costs of operating your Almondlots for the next year, the management fee of 3% of the annual sale proceeds and any incentive fee due to us. At the same time we may have also calculated the actual operating costs incurred by you for the previous Financial Year and will adjust your distribution accordingly.





## 6 Project Site and Development

### The land and soils

The Sunraysia region of northwest Victoria is a prime horticultural area with a history of improving yields of high quality almonds. This Project will be conducted on land known as the Liparoo site and the Carina site. The Liparoo site comprises 992 hectares of land that was planted in June and July of 2001 and is located adjacent to the Hattah-Robinvale Road, Liparoo approximately 40 kilometres from the town of Robinvale and 125 kilometres southeast of Mildura, in northwest Victoria. The Carina site, which comprises 142 hectares of established almond orchards was also planted in June and July of 2001. It is an extension of an existing orchard and is located approximately 29 kilometres from the town of Robinvale.

The Land on which the Orchard was established was soil tested and surveyed not only to determine the most appropriate orchard layout, but also to ensure that the irrigation system design was optimised for the land planted. The tests conducted before the Orchard was established showed the Land to be suitable for growing commercial crops of almonds.

Like many nut trees, almonds need deep well drained soils. The Land on which the Orchard was established is gently undulating with generally sandy loam to light sandy clay loam topsoils. It is well drained and requires little clearing. Chemical analysis has ascertained the pH of the soil surface to be within acceptable limits for almond production. The majority of the Land has moderate depth topsoils (40-80 cm). Certain areas required soil amelioration in order to assist almond tree root growth. Areas on the Land with shallow topsoil,

high drainage hazards, significant compacted soil layers and high frost risk (typically low lying areas where cold air accumulates) have not been developed. For further details regarding the land and soil, refer to the Almond Orchard Expert's Report in section 12.

### Climate and topography

The Sunraysia region enjoys a Mediterranean semi arid climate with relatively mild winters and long warm to hot dry summers. This is the preferred climate for almond growing. It has a mean annual rainfall of 311.2 millimetres, which resembles the southern end of the San Joaquin valley in California, around Bakersfield, which is a significant almond-producing region. Rainfall is distributed quite evenly throughout the year with an average rainfall of approximately 20 to 30 millimetres each month of the year. As a result, the incidence of crop loss and disease due to high rainfall is low.

The minimal daily cloud that is characteristic of the area maximises the time available for tree and nut growth. Mean daily temperatures during August, when almonds flower and bees are used to cross-pollinate the crop, range from 4.1 to 17.3 degrees Celsius. During the harvest months of February to April, mean maximum daily temperatures range from 32.1 to 23.5 degrees Celsius, thus allowing the kernel sufficient time to dry in the field before the harvest and processing commence.

**Climatological Summary for Euston Postal Agency** - approximately 30km northwest from the Orchard

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	Years of Record
Mean daily max. temperature (C)	32.5	32.1	28.8	23.5	19.0	15.4	15.2	17.3	20.8	24.3	27.9	31.0	24.0	54.5
Mean daily min. temperature (C)	15.8	15.7	13.0	8.9	6.1	3.9	3.1	4.1	6.8	9.5	12.3	14.6	9.5	54.5
Mean number of days min. <2 (C)	0.0	0.0	0.0	2.4	6.6	14.0	14.8	13.0	6.0	1.2	0.2	0.0	58.1	5.0
Mean monthly rainfall (mm)	19.7	22.2	21.5	22.2	29.9	34.0	25.8	29.9	29.3	30.5	24.4	21.8	311.2	93.8



### **Water supply and irrigation**

Growing almonds is a high water usage activity and the establishment of a new orchard requires extensive planning in the areas of irrigation design, layout, installation and water monitoring in order to achieve high yields.

At full maturity, almond trees, on average, require 12.5 megalitres of water per hectare to produce the quantity and quality of almonds that are being forecasted for this Project.

The Land Owner will progressively acquire, at its own cost, sufficient permanent water licences on the open market to meet the Project's needs. It has secured sufficient Water Licences to irrigate the Orchard for the first two years of the Project, and will acquire sufficient water licences two years in advance to meet the irrigation needs of the Orchard.

Water for the Project is pumped from the Murray River. The Murray River generates water from rainfall on the slopes of the Australian Alps. The northern slopes including the Mount Kosciusko region in New South Wales feeds water to the Murrumbidgee River which enters the Murray River not far from Robinvale. The southern slopes of the Australian Alps located south of the Kosciusko National Park feeds water to the north of the Murray River.

The water is transported from the Murray River to dams located on the Orchard via mainlines. The Land Owner has constructed two dams on the Land with a combined capacity of 300-megalitres. The water is delivered to Growers' Almondlots through a sophisticated drip irrigation system.

The delivery of water to the Orchard is under the control and direction of the Sunraysia Rural Water Authority which is also responsible for the collection and disposal of sub-surface drainage water resulting from irrigation activities.

Water is applied to the Almond Trees using two poly drip laterals with one lateral on each side of the tree row to allow alternative watering of Non Pareil and pollinator almond varieties. To achieve optimum tree growth and yields, soil moisture needs to be maintained within strict limits. Therefore, the volume of water that is applied to the almond rows each day depends on the prevailing climatic conditions, the age

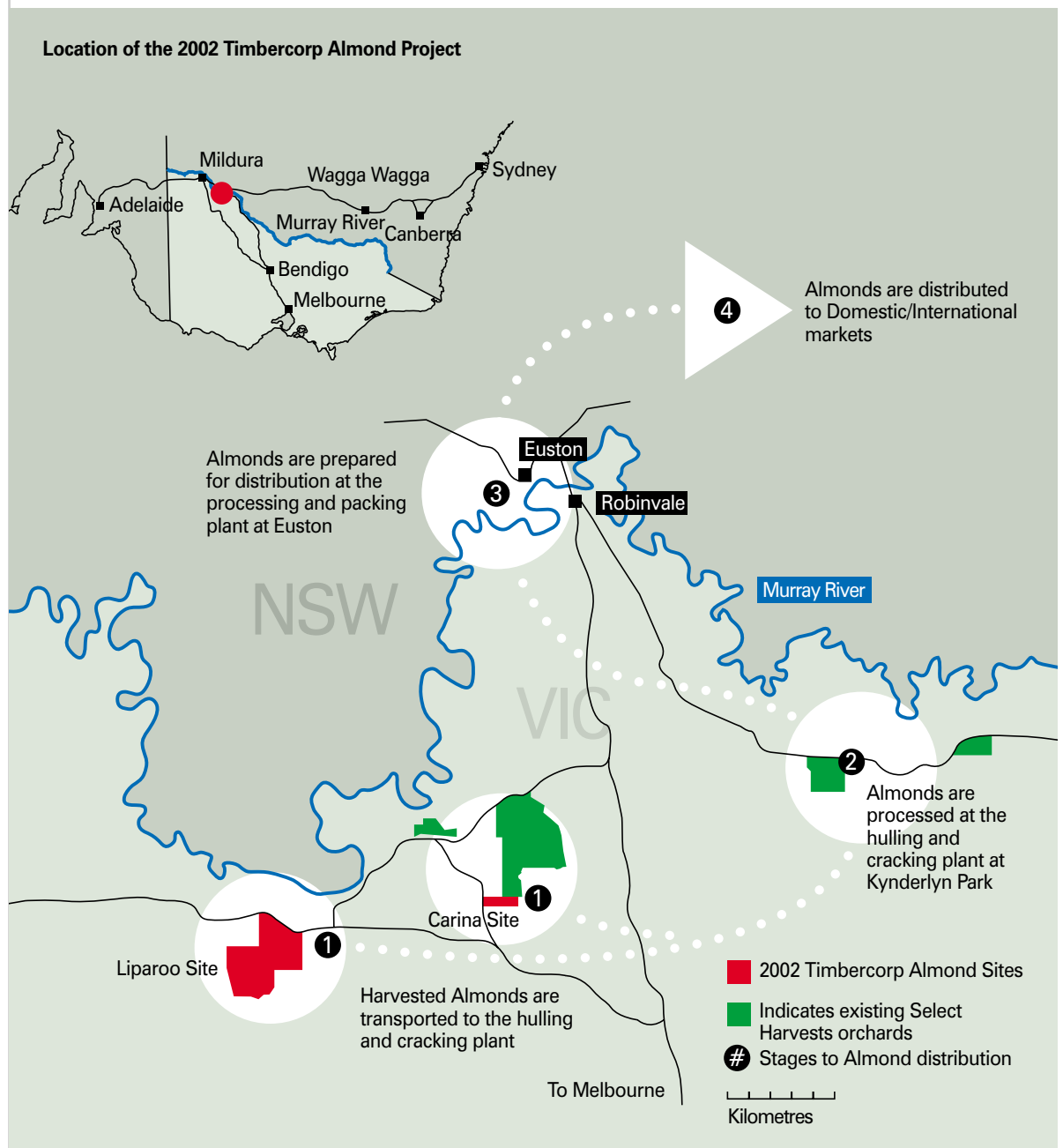
of the trees, drainage characteristics and moisture holding capacities of soils and roots at various parts of the Orchard. For this purpose the irrigation blocks on the Orchard have been grouped within uniform soil types.

The Land Owner commissioned Agri Hort Developments Pty Ltd, a qualified expert irrigation company, to prepare a fully integrated irrigation design, water budget and drainage management plan for the Orchard. These plans and budgets were reviewed by Select Harvests' engineer before the Orchard was established to achieve a number of results: first, to ensure that the irrigation system installed on the Orchard conforms with specifications particular to almond growing and operates to maximum efficiency; secondly, to enable us to maximise the quantity and quality of the Almond produced and achieve consistent uniform production. For further details on the irrigation requirements of the Orchard, refer to the Almond Orchard Expert's Report in section 12.

The Land Owner owns all of the infrastructure and other capital works that it has carried out on the Orchard, including the Water Licences and irrigation equipment. It has also acquired rights over the irrigation mainlines that transport water to the Orchard.

### **How the Orchard was established**

The Land Owner purchased the Almond Trees from Select Harvests. They were largely supplied from Select Harvests nursery. The trees were defoliated in May 2001 and planted the following month. The Land Owner appointed Select Harvests to oversee the installation of the internal irrigation system and other infrastructure works on the Orchard prior to planting. These works included identifying and organizing the pegging of block layouts, clearing approved vegetation, broadacre weed spraying, ripping of tree rows, marking out tree locations and applying pre-plant fertilizer. Select Harvests then planted the Almond Trees, tied them to tree stakes and protected them with supporting guards.







The almond trees were planted on a 7.25 metre by 5.5 metre grid to give a density of approximately 247 trees per hectare. This spacing allows trees to grow without undue overcrowding and enable machinery to travel down the rows without damaging the crop. Select Harvests will prune the trees to promote tree shape that has the potential to achieve early yield projections and consistent quality commercial yields at full maturity.

The layout of the Orchard needs careful planning. Because the almond tree is not self-pollinating, different varieties of almond trees that flower at approximately the same time were planted to ensure bees carry out cross-pollination. Three varieties of almonds were planted, with the main Non Pareil variety being planted every second row. The other two varieties, Price, an early blooming variety, and Carmel, a later blooming variety, were planted in alternate pollinator rows to ensure that the main variety is adequately pollinated.

#### *Non Pareil*

Non Pareil originated in Suisun, California in 1879. It is the main variety and has been planted across one half of the Orchard. It is the most widely grown almond variety in the world because of its consistently high productivity and high market appeal as kernel and inshell. Non Pareil is the preferred table almond because of its size, shape, light colour, mild taste and ease of hand shelling which minimises kernel damage. The nut has a thin shell often referred to as 'papershell' which gives a high kernel to shell ratio and sells at a premium to all other varieties.

The tree is large and moderately spreading and harvests early. In full bearing it produces well and continues to grow in size. It is relatively resistant to frost damage and is vigorous but easy to shape and train.

As the preferred table almond, Non Pareil usually attracts a price premium.

#### *Carmel*

Carmel is a pollinator that is sold as kernel and manufacturing product and, to a lesser extent, inshell. It is highly productive when young and is second only to Non Pareil in popularity worldwide. Carmel blooms

shortly after Non Pareil and matures ready for harvest approximately one week after the conclusion of the Non Pareil harvest, allowing for an efficient harvest program.

The tree is more upright than Non Pareil and is of medium size. It is a strong pollinator of Non Pareil and is highly productive when young but may lose some tree vigour over time. Carmel has a long elongated kernel of medium size and is generally darker than Non Pareil with a stronger flavour. The nut is versatile from a marketing perspective and can be used as a table nut or a manufacturing nut. Shelling damage is usually higher than Non Pareil due to a thicker shell. Approximately one third of the Orchard was planted with Carmel.

#### *Price*

Price is a minor yet significant variety pollinator because it blooms within a day or two of Non Pareil. Price kernel tends to be smaller than Non Pareil and Carmel and has a similar shape to Non Pareil and is generally lighter in colour than Carmel. It is a versatile nut from a marketing perspective, much the same as Carmel. The crop matures for harvest slightly after Non Pareil but before Carmel, again allowing for an efficient harvest.

The tree generally has good vigour and is somewhat spreading but more upright than the Non Pareil tree. Price can have a tendency to have a lower bloom density on alternate years and can bear lighter crops in those years. As a pollinator it is secondary to Carmel and is planted at no more than a 1:2 ratio to Carmel. Accordingly, the Price variety was planted across approximately 17% of the Orchard on every sixth row.



### The Almond crop, yields, harvest and processing

It is forecasted that the Orchard will yield its first commercial crop in February-April 2004, and reach full maturity in year six of the Project, being the seventh year after the establishment of the Orchard in 2001. At full maturity, it is forecasted that the weighted average yield across the Orchard will be 3.46 metric tonnes per hectare.

The table below sets out the forecasted long term average yields from the first year of commercial crop to full maturity and beyond. These forecasts have been independently reviewed and endorsed by the Independent Almond Orchard Expert.

Year ended 30 June	Almond yields	
	(kilograms/ Almondlot)	(kilograms/ hectare)
2004	95	380
2005	340	1,360
2006	462	1,850
2007	802	3,210
2008 onwards p.a.	865	3,460

Of course, actual yields may vary from year to year because anticipated events that affect returns may not materialise as expected, whilst unanticipated events that affect returns may occur.

Following the assessment and testing of Almonds in February each year to determine their maturity and readiness for harvest, the Almonds will be shaken to the ground with the use of mechanical tree shakers. Some Almonds may in fact fall to the ground before this process commences as a result of wind conditions.

After being shaken onto the ground, the Almonds will be swept into rows ready for pick up. Almond pick up machines will collect the rows of Almonds and transfer them into trailers for removal to stock-piles, where they will be covered prior to being transported to Select Harvests' hulling and cracking plant at Kyndalyn Park.

At the hulling and cracking plant, the harvested Almonds are first put through a pre-cleaner to remove excess dirt, sticks and stones. Then, subject to individual customers' orders and specifications, either the husk is removed to produce inshell, or in addition, the shell is cracked to produce whole kernel. After the Almonds are dried to remove excess moisture content, if necessary, they are graded having regard to size, variety and defects, if any, using United States Department of Agriculture specifications as a guide. Finally, the Almonds are put through quality control before being stockpiled in the warehouse.

As required, Almonds will be transported to Select Harvests' sorting, processing and packaging plant at Euston. All Almonds produced from the Project will be of a high grade variety and will be marketed by Select Harvests through established domestic and export channels in accordance with the selling arrangements described in section 5.





## 7 Key Participants

### THE RESPONSIBLE ENTITY TIMBERCORP SECURITIES LIMITED

We are the Responsible Entity of the 2002 Timbercorp Almond Project. As Responsible Entity we are required to operate the Project and perform the functions conferred on us by the Constitution and the Corporations Act. We have the power to appoint an agent or engage a person to do anything that we are authorised to do in relation to the Project. If we do so, we remain responsible for anything the agent or person has done. It is under this power that we have appointed the Custodian to hold scheme assets, comprising the Subscription Moneys and the Proceeds.

On 20 February 2002, the Project was registered by the ASIC as a managed investment scheme. Our securities dealer's licence enables us to operate the Project and to carry on a securities business in relation to the Project.

#### Compliance measures

As required by the Corporations Act, we have prepared and implemented a compliance plan for the Project. The Compliance Plan is designed to ensure your protection in light of the particular characteristics of the Project.

#### The Plan:

- provides an overview of the Project including its key features, documents and parties;
- describes our internal compliance framework and structures, within which the Compliance Plan is intended to operate;
- considers our ongoing obligations under the Constitution and the Corporations Act and identifies the outcomes those obligations are designed to deliver;
- identifies the investment and other risks associated with the Project and the safeguards that we have established to minimise those risks; and
- establishes the structures, processes and systems designed to meet the risks of non-compliance by us in key areas of the Project and to deliver the intended outcomes of the Project.

Within the framework of the Compliance Plan we have developed compliance procedures to meet the outcomes set out in it. We have engaged a registered company auditor to audit our compliance with the plan annually.

### Compliance committee

In order to monitor our compliance with the Compliance Plan and other statutory obligations, we have established a compliance committee. The committee will be required to report to our Board any breaches of the Compliance Plan and regularly assess the adequacy of the Compliance Plan. The Compliance Committee will meet regularly following the issue of this prospectus. The committee comprises two external members and one of our representatives. The members of the Compliance Committee are as follows:

Michael J Walter FCA  
*(external member)*

Michael Walter has over 30 years' experience in advising small and medium businesses across a range of industries on accounting, audit and taxation issues. From 1978 to 1998 he was a partner with Coopers & Lybrand (later PricewaterhouseCoopers), first joining the firm in 1963. He is a fellow of the Institute of Chartered Accountants and currently practises as a chartered accountant under his own name.

Greg Bush LLB BA  
*(external member)*

Greg Bush is a commercial lawyer with over eight years experience in advising both small and medium businesses on general corporate and legal issues.

Gideon Meltzer LLB BEC  
*(our representative)*

Gideon Meltzer is Timbercorp's in-house counsel and is responsible for the delivery of all legal services (including compliance) to the Timbercorp group. Prior to joining Timbercorp, he worked in the corporate and taxation practice group of a top tier legal firm in Melbourne, where he specialized in taxation and commercial law.





### The Directors

Our directors and other staff have extensive experience in forestry, viticulture and other forms of irrigated agriculture. In August 2000, Punters Corner Pty Ltd, which is associated with Timbercorp's largest shareholder and Chief Executive Officer, was awarded Australia's most prestigious wine award, the Jimmy Watson Trophy, for the best one year old red wine. The directors of Timbercorp Securities are:



Gary W Liddell  
Age 60  
*Non Executive Chairman*

Mr Liddell is an Associate of the Institute of Chartered Accountants in Australia and is a partner in the chartered accounting firm, Liddell Weight & Co. He has been the external

accountant to the Timbercorp group of companies since the commencement of operations.

Mr Liddell has vast experience in financial management and compliance work and has a detailed knowledge of primary production structures and operations.



Robert J Hance  
Age 58  
*Chief Executive Officer*

Mr Hance is a co-founder of the Timbercorp group of companies and is the Chief Executive Officer of Timbercorp. He has been in charge of the design and marketing of

Timbercorp's agribusiness investment projects since incorporation.

He has extensive experience in the analysis, design and marketing of primary industries based investment products.

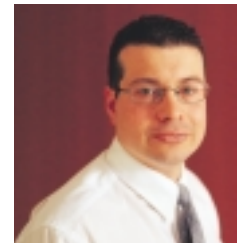


John M Vaughan  
Age 60  
*Executive Director*

Mr Vaughan has been a director of Timbercorp Limited since its incorporation in 1992. He is a Fellow of the Australian Society of Certified Practising Accountants. He has worked

with several Australian and overseas listed natural resource companies at senior or board level and has extensive experience in project development, treasury and corporate management.

He oversees the group's forestry and horticultural operations.



Sol C Rabinowicz  
Age 35  
*Executive Director*

Mr Rabinowicz was appointed to the Board of Timbercorp Limited on 1 July 2000 and oversees the group's corporate operations. He commenced employment with Timbercorp

in 1996 following its ASX listing and has served as both Company Secretary and General Manager – Corporate, responsible for the Company's corporate, legal, IT and administrative functions.

Prior to joining Timbercorp, Mr Rabinowicz was a senior associate in the corporate and financial services division of a Melbourne law firm. He has experience in securities industry and taxation law, having provided both corporate and legal advice to a range of clients, including Timbercorp.



#### **Almond Orchard Contractor**

Select Harvests Limited

Almond Management has engaged Select Harvests, Australia's leading integrated almond producer, processor and marketer of almonds to provide full farm management services in relation to the Orchard. Select Harvests will undertake day-to-day management of the Orchard and thereafter process the Almonds and market them in a variety of packs and sizes, ranging from 50g retail packs to 1 tonne bags, through established domestic and overseas channels.

Select Harvests' appointment is a significant factor in the offer outlined in this prospectus. It is a public company listed on the Australian Stock Exchange and is responsible for the production of approximately 30% of Australia's total crop of almonds on orchards that cover approximately 2,680 hectares of land. The orchards managed by Select Harvests are situated in northwest Victoria along the Murray River, which provides the valuable water resource for growing almonds. These orchards are producing yields and quality in line with world's best practice.

To ensure the quality of its almonds, Select Harvests has invested heavily in recent years in modern harvesting equipment and state-of the-art processing facilities, which it owns and operates. The processing facilities have the capacity to process the yields anticipated for this Project and enable Select Harvests to control all stages of production to ensure high quality almonds are produced at the most efficient cost.

In 1999/2000, Select Harvests sold 2,250 tonnes of almonds of which 31% were exported, mainly to India and China. Importantly, under this Project, Select Harvests guarantees the sale of the entire crop produced each year by the end of the financial year following the year in which Almonds will be harvested. However, Select Harvests does not guarantee the sale price of the Almonds.

Following the acquisition of Lucky Candy Co. in October 1998, the largest retail packer of almonds in Australia, Select Harvests processes, packages and markets almonds and other nut and dried fruit products through Australian supermarkets under the 'Lucky' brand.

Select Harvests is a financially sound and successful company with reported net assets of \$42.3 million as at 30 June 2001. For the year ended 30 June 2001, group operating profit before tax increased by over 35% to \$10.26 million. This result was achieved despite low almond prices in 2000 due to a record US crop in 1999.

Select Harvest's 2001 almond crop yielded 2,380 tonnes, maintaining the major yield improvement and record crop of 2,280 achieved in 1999 (2000: 2,250 tonnes). The yields are now in line with best practice and have increased by almost 135% in the past 5 years. During the same period, production has increased by over 130%. The increased yields and production reflect a major focus in recent years on improved management and horticultural practices.

As a result of increased yields and improved efficiencies in growing and processing activities, Select Harvests reduced costs of almond production by 4% on a per kilogram produced basis for the 1999/2000 financial year, further consolidating the 13% cost reduction achieved in 1999. This places Select Harvests as one of the most efficient producers in the world.





The efficiency gains were assisted by the upgrading of the company's operations in recent years, particularly the modernisation and increased production capacity of its new hulling and shelling facility. Experienced Californian managers were engaged to run its hulling and cracking operation for the 1999 and 2000 seasons and to train its staff. This proved very successful for the company in terms of both efficiency gains and product quality.

Select Harvests has a strong track record as a producer, marketer and exporter of almonds. The yields produced to date have been achieved on mature orchards established over 15 years ago. More recent orchards, including the orchard established under this Project have been developed with modern growing techniques and best practice farm management.

Select Harvests oversaw the establishment of the infrastructure and other capital works on the Land and planted the Almond Trees on the Orchard. It completed the vast majority of these works by 30 June 2001 to the highest standard, with proven techniques that have been developed by it over time. This factor, together with Select Harvests' proven orchard management record, will help maximise almond yields.

Select Harvests' expertise and experience in growing, harvesting, processing and marketing almonds, as well as its established relationships with domestic and overseas almond buyers underpin the commercial viability of the Project.

#### **Land Owner**

Almond Land Pty Ltd

Almond Land is a subsidiary of our parent company, Timbercorp Limited. It owns all of the infrastructure and other capital works established on the Orchard, including the irrigation equipment and Water Licences.

#### **Project Manager**

Almond Management Pty Ltd

Almond Management is also a subsidiary of our parent company, Timbercorp Limited. The board of directors and key personnel of Almond Management have substantial expertise in the management of almond orchards and other horticultural projects.





## 8 The Timbercorp Group

We are a wholly owned subsidiary of Timbercorp. It is, therefore, appropriate that we provide you with information about our parent company and the Timbercorp group.

### The Timbercorp Group

The Timbercorp group of companies was established in 1987 to bring together the forestry, viticulture and silviculture management expertise built up by its founders. In 1991 and 1992, the Timbercorp group began establishing Tasmanian Bluegum plantations with approximately 150 hectares in western Victoria and 840 hectares in the south west of Western Australia.

Timbercorp was incorporated on 21 February 1992 specifically to act as project manager of an annual series of forestry projects called the Timbercorp Eucalypts Projects. Following a period of substantial growth, the company listed on the Australian Stock Exchange in May 1996.

### What does the Timbercorp group do?

Timbercorp is Australia's leading integrated agribusiness investment management company. It specialises in developing, promoting, managing and financing a continuing series of agribusiness investment projects, including olive, almond and eucalypts projects.

The Timbercorp group employs over 80 full time staff in the areas of land acquisition, forestry and horticulture operations, marketing, finance and corporate and legal administration. It has corporate and marketing offices in all capital cities as well as a number of regional offices with an experienced team of scientists qualified in a number of agricultural disciplines including, olive grove management, tree physiology, forestry and research and support staff who have many years' combined experience in large scale agribusiness project development.

Timbercorp also has a research and development and technical forestry and horticultural division. This division provides a range of services including the use of global positioning systems to locate farms accurately and soil sample analysis for optimum planting, maintenance and harvesting. With the consolidation of

information technology operations and services in this division, the Timbercorp group is well placed to evaluate agribusiness opportunities as public interest in agricultural investments remains high.



### Almond division

In August 2000, the Timbercorp group announced a further expansion of its horticultural interests into the almond industry. As a 75% shareholder in Almond Australia Pty Ltd, the Timbercorp group expects to establish up to 4,000 hectares of

almond orchards in the Sunraysia region of north west Victoria.

Under the group's inaugural project, the 2001 Timbercorp Almond Project, approximately 1,000 almondlots were sold to investors.

The strategic alliance with Australian Stock Exchange listed Select Harvests, Australia's leading integrated producer, processor and marketer of Almonds is considered a major benefit to participants in the Timbercorp group's almond projects. Selects Harvests will manage the day-to-day farming operations, harvest and process almonds grown on orchards established by the Timbercorp group and market those almonds through established domestic and export markets.



### Forestry division

After more than a decade of plantation operations, Timbercorp is regarded as one of Australia's leading hardwood plantation investment managers. To date, Timbercorp has raised in excess of \$300 million to establish more than 70,000 hectares of

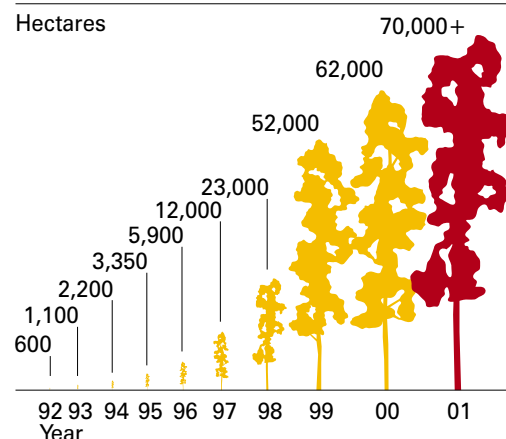
Tasmanian Bluegums on more than 300 separate properties in Western Australia, western Victoria and south east South Australia.



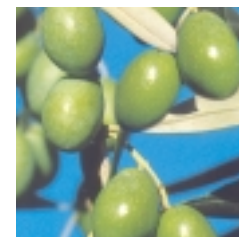
In July 1998, Timbercorp established a treefarming division, Timbercorp Treefarms, which employs a number of the leading participants in the hardwood plantation industry. The group now also produces and supplies genetic eucalypt seedlings comprising superior genetics.

As the Bluegum industry moves into the development phase, Timbercorp has recognised the importance of harvesting, wood processing (primarily chipping) and sale. Over the past two years, Timbercorp has developed an advanced harvesting and in-field chipping system which has been successfully harvesting and processing plantation Bluegums for a leading paper manufacturer. Timbercorp is continually refining this world class technology prior to the first harvest of its growers' wood in approximately two years' time and expects that combined with anticipated improvements in harvesting and processing of Bluegum plantations, it will enhance returns to growers participating in plantation projects..

Cumulative hectares of Bluegum plantations under management by the Timbercorp Group



## Olive division



Approximately three years ago, Timbercorp made the decision to expand its activities and commenced investigating a range of primary production projects. Following a detailed study of the olive oil industry, the company formed the view that the industry fundamentals were conducive to the establishment of large scale olive plantations. As a result of this work, the company, through its subsidiary, Olivecorp Land Pty Ltd, successfully established its first olive grove, approximately 362 hectares, in the 2000 financial year. The grove was established in Boort, in north-central Victoria.

The 2000 project was heavily oversubscribed. A further 1,000 hectares of olive groves were sold under the 2001 Timbercorp Olive Project, which closed on 30 June 2001. Further projects will be on offer in the 2002 financial year, on the way to a planned 3,500 hectare grove.

Timbercorp's olive plantation estate at Boort is the largest in Australia and significant on a world scale.

## Financial accounts

As a listed public company, Timbercorp is required to lodge periodic accounts and other relevant information with the Australian Stock Exchange. Extracts of the Timbercorp group's consolidated audited accounts in respect of the financial years ended 30 June 2000 and 30 June 2001 follow.

A full set of the financial statements including Notes to Accounts is available on request.



**Audited Statement of Financial Position**  
as at 30 June

	2001 A\$ '000	2000 A\$ '000
<b>Current Assets</b>		
Cash	14,316	9,576
Receivables	5,144	5,024
Inventories at cost	832	4,809
Other financial assets	28,200	19,006
Other	6,391	7,347
<b>Total Current Assets</b>	<b>54,883</b>	<b>45,762</b>
<b>Non-Current Assets</b>		
Other financial assets	112,124	154,315
Property, plant and equipment	189,361	159,296
Self-generating and regenerating assets (SGARAs)	18,575	2,383
Intangibles	921	657
Deferred tax assets	713	503
Other	3,572	911
<b>Total Non-Current Assets</b>	<b>325,266</b>	<b>318,065</b>
<b>Total Assets</b>	<b>380,149</b>	<b>363,827</b>
<b>Current Liabilities</b>		
Payables	31,282	41,853
Interest-bearing liabilities	7,731	21,147
Current tax liabilities	10,500	27,024
Provisions	811	8,076
Receipts in advance	18,220	40,148
<b>Total Current Liabilities</b>	<b>68,544</b>	<b>138,248</b>
<b>Non-Current Liabilities</b>		
Payables	1,110	-
Interest-bearing liabilities	103,398	61,791
Deferred tax liabilities	19,174	6,685
Provisions	91	41
Receipts in advance	52,116	55,552
<b>Total Non-Current Liabilities</b>	<b>175,889</b>	<b>124,069</b>
<b>Total Liabilities</b>	<b>244,433</b>	<b>262,317</b>
<b>Net Assets</b>	<b>135,716</b>	<b>101,510</b>
<b>Equity</b>		
Contributed equity	57,418	41,077
Retained profits	76,547	59,692
Parent entity interest	133,965	100,769
Outside equity interest	1,751	741
<b>Total Equity</b>	<b>135,716</b>	<b>101,510</b>

**Audited Statement of Financial Performance**  
for the year ended 30 June

	2001 A\$ '000	2000 A\$ '000
<b>Profit from ordinary activities before income tax expenses</b>	<b>37,834</b>	<b>85,961</b>
Income tax expense relating to ordinary activities	(11,774)	(30,878)
<b>Net Profit</b>	<b>26,060</b>	<b>55,083</b>
Net profit attributable to outside equity interests	(704)	-
<b>Net Profit Attributable to Members of the Parent Entity</b>	<b>25,356</b>	<b>55,083</b>
<b>Total Changes in Equity Other than those Resulting from Transactions with Owners as Owners</b>	<b>25,356</b>	<b>55,083</b>





## 9 Risk Analysis

The Project is a long-term commercial horticultural project and like any agricultural venture involves risks. Growers should carefully consider the risks detailed below, particularly when considering the prospective financial information in section 3.

We have considered these risks and have developed strategies to reduce the incidence, and minimize the impact, of such risks.

### **Project specific risks**

#### *Almond Trees*

Select Harvests sourced and planted all of the Almond Trees on the Orchard and has advised Almond Land of the appropriate mix of almond tree varieties. As one of the largest growers of almonds in Australia, Select Harvests' nurseries adopt best horticultural practices to ensure the production of superior quality almond trees.

Select Harvests had agreed with the Land Owner that it would, at its cost, replace and replant any Almond Tree which failed in the first six months after planting where Select Harvests caused such failure. A small number of trees have been identified in need of replacement. As at the date of this prospectus all other Almond Trees planted on the Orchard are growing in accordance with expectations.

#### *Yields, pests and diseases*

As with any horticultural crop, there are a number of factors that may affect yield including rainfall, storms, water supply, variations in soil types, pestilence, vermin, disease, frost and wind, as well as poor horticultural practices. While we will make every effort to minimise annual variations in yields and production, yields may vary from tree to tree and from harvest to harvest.

Where practicable, we will arrange appropriate insurance cover to protect the Orchard against the risks of fire and other insurable risks but not crop insurance. We will apply disease and pest management practices to control the onset and spread of these risks. The health of the Almond Trees will be constantly monitored and sick trees will be replaced if required.

#### *Water*

The irrigation water from the Murray River is suitable for almonds, having particular regard to its salinity. This may change over time.

#### *Irrigation infrastructure*

The Land Owner has incorporated the most advanced design features in the internal irrigation system, as well as the pipeline, dams, pump and other components of the irrigation infrastructure installed on the Land. The substantial capital outlay involved in acquiring the high quality plant and equipment installed should reduce the possibility of major equipment failure. Regular maintenance and insurance cover will also assist in mitigating this risk.

#### *Water Licences*

An adequate supply of water is crucial to the success of the Project. The Land Owner has secured sufficient Water Licences to irrigate the Orchard for the first two years of the Project. Although these are permanent rights, unexpected changes in climatic conditions may affect future allocation of water rights. The risk of this occurring is small. In fact, according to records held by the Sunraysia Rural Water Authority, holders of water licences received their full water entitlements in 96 of the past 100 years. In the remaining 4 years, holders of water licences received between 60-80% of their full entitlements. The Land Owner's policy for this Project is to purchase sufficient water licences two years in advance to meet the irrigation needs of the Orchard.

#### *Infrastructure and services*

The success of the Project will also depend on our continued access to infrastructure, including power, irrigation and transport, and our ability to obtain all necessary regulatory approvals to operate the Orchard and market the almonds. This may be jeopardised as a result of changes in government policy or the law.



## Revenue and financial risks

### *Almond prices*

Being the world's major supplier of almonds, the size of the Californian crop will have a significant bearing on global almond prices and Growers' returns from year to year. Prices will fluctuate over the life of the Project.

Almonds in world markets are priced in US\$. Therefore, fluctuations in the US\$/A\$ exchange rate will also influence Growers' returns. Further, global economic conditions and actions taken by individual world governments and regulatory authorities, particularly those of the United States, will have an impact on the supply and world price of almonds.

### *Select Harvests*

The risk of not selling the almond crop in any year has been addressed by the Almond Orchard Management Agreement. Under that agreement, Select Harvests guarantees to the Project Manager that the entire annual crop of Almonds available for harvest in a particular season will be sold by 30 June in the Financial Year after the year in which the harvest for that season commences and that it will endeavour to maximise returns. However, Select Harvests does not guarantee the sale price of the Almonds.

### *Returns*

The possible returns described in section 3 are based on our directors' best estimates in respect of almond yields, future prices of almonds and the other assumptions discussed in section 3. The ultimate financial success of the Project will depend on yield rates achieved, the prevailing market conditions when almonds are sold and the other factors discussed.

## Other risks

### *Changes in the law*

The success of the Project and the returns achieved by Growers may also be affected by changes in the taxation, regulatory or legal environment, including changes in legislation and the imposition of new levies, imposts or other taxes.

Growers should be mindful of the fact that adverse changes in income tax laws may affect the timing and ability of Growers to claim deductions for payments incurred in the Project. Product Ruling PR 2002/24: 2002 Timbercorp Almond Project constitutes a binding public ruling in respect of the project, although it may be superseded by a legislative change in tax laws.

We do not, nor does any other person, firm or corporation associated with the issue of this prospectus guarantee the amount or timing of any tax deduction and there remains the risk that the Australian Taxation Office may disallow any claim in this regard. If income tax deductions are disallowed, Growers may be required to pay penalty tax and interest.

The use of appropriate systems and safeguards may mitigate a number of these risks. However, it must be appreciated that many are outside our control.

### *Consumer demand*

While current trends suggest otherwise, there is a risk that local and overseas consumer preference for almonds and almond related products may change during the life of the Project.

### *Changes in technology*

Changes in technology may make other almond orchards more competitive and, therefore, have an impact on forecasted returns. We are committed to using world best management practices and to upgrading these practices, as appropriate, with the best available technology. As Australia's largest producer, processor and marketer of almonds, Select Harvests is focused on leading the market in technology.





#### *Local competition*

There is a risk that local competition may develop for the supply of almonds to the domestic and export markets and this could have a material adverse effect on the Project's operating and financial performance.

#### *Default by Growers*

Our ability and the ability of the Project Manager to provide quality services may be affected by Growers' failure to pay annual management and licence fees when due. If a Grower defaults, we may take all appropriate action to ensure that fees are paid when they fall due. Default provisions are contained in the Constitution and the other Project Agreements.

#### *Project Agreements*

Anything that affects our ability to meet our obligations under the Almondlot Management Agreement and the ability of the Land Owner to meet its obligations under the Licence and Joint Venture Agreement could also constitute a risk to Growers.

#### *Secondary market*

The Project is not intended to be a short-term investment and should be viewed as being one for a fixed term of approximately 20 years. It is expected that interests issued under this prospectus will be relatively illiquid because there is unlikely to be a formal secondary market for the sale of interests.

We are not under any obligation to buy back the interest of Growers in any Almondlot. We will, however, maintain a register of interested buyers and sellers and make the register available for inspection to Growers free of charge. If you wish to sell your interest in any Almondlot during the life of the Project, you should seek independent professional advice, as there may be legal and taxation implications.

#### **Risk management**

We have prepared an initial management plan with the assistance of Select Harvests for the 2002 Financial Year. The plan includes risk mitigation plans that, to the maximum extent possible, will reduce the effect of the risks described above. We will also prepare a management plan for each subsequent Financial Year again with the assistance of Select Harvests.

The management plan also includes a horticultural plan and an operational plan, including human resources and machinery requirements and farming programmes. Each year a horticultural program will be prepared together with financial and operational budgets.

We will manage the Project at all times in the best interests of Growers and in consultation with Select Harvests personnel to ensure that best horticultural and industry practices are used.

Select Harvests' proven ability to undertake:

- the day to day management of the Orchard;
- the processing of the Almonds at a processing facility in which it has recently invested substantial capital outlay; and
- the marketing of the entire crop of Almonds each year through established domestic and overseas channels,

are considered to be a major benefit to Growers participating in the Project. For details on Select Harvests' expertise refer to the section 7 of this prospectus.

# 10 Taxation Advisor's Report

## 2002 TIMBERCORP ALMOND PROJECT

### ADVICE

- 1 My advice has been requested in connection with a proposal whereby Timbercorp Securities Limited ("Timbercorp") will, pursuant to a prospectus lodged with the Australian Securities and Investment Commission, invite persons ("Growers") to become involved in an almond project ("the Project") on land at Liparoo in north-west Victoria. A company associated with Timbercorp, called Almond Land Pty Ltd ("the Land Owner") is the registered proprietor of land at Liparoo, about 125 kilometres south-east of Mildura, upon which it has established almond orchards.
- 2 Each Grower will enter into two principal agreements:
  - i) a Licence and Joint Venture Agreement with the Land Owner ("the Licence Agreement"); and
  - ii) an Almondlot Management Agreement ("the Management Agreement") with Timbercorp.

Each of these agreements will operate subject to the terms and conditions of the Constitution for the Project which will be legally enforceable between Timbercorp and each Grower.
- 3 I have been briefed with final form drafts of each of these agreements.

### The Licence Agreement

- 4 Under the Licence Agreement the Land Owner warrants that it has at its own cost established almond orchards on Almondlots which are separate identifiable areas of land comprising about 0.25 hectares: see cl 2.1.
- 5 Under the Licence Agreement the Land Owner also grants to the Grower a licence to use and occupy specified Almondlots (in joint venture with the Land Owner) for the purpose of growing and cultivating almond trees for the production of almonds for commercial gain. The Licence Agreement continues until 30 June 2022 or the earlier termination of the Joint Venturers' Participating Interest in the Project: see cl 4.1.
- 6 The licence fee payable by each Grower will be:
  - \$774.55 per Almondlot (exclusive of GST) payable on the Commencement Date in respect of the period from commencement to 30 June 2002; and
  - \$774.55 per Almondlot (exclusive of GST and subject to CPI increases in respect of the year ended 30 June 2005 and later years) for each subsequent year commencing on 1 July, which amount is payable on 31 October in each such year during the life of the Project.
- 7 The Licence Agreement is subject to and conditional on the Land Owner and each Grower as joint venturers entering into a Management Agreement with Timbercorp: cl 6. It also provides that the Grower will be entitled to 90% of the Joint Venture Assets and will be entitled to 90% of the almonds and the proceeds of sale: cl 11. The Grower will also be responsible for 90% of the management expenses: cl 11.5(b).

### The Management Agreement

- 8 Under cl 4 of the Management Agreement each Grower together with the Land Owner (as joint venturers and referred to therein jointly as the Grower) engage Timbercorp as manager to generally manage and administer the Project and in particular to carry out the activities set out in cl 5.2 of the Management Agreement.
- 9 The almonds from each Grower's Almondlots will be harvested by the manager and pooled with almonds from other Growers' Almondlots. The manager will process the almonds and then sell the Product. The Growers will be entitled to the almonds and the processed Product in proportion to each Grower's participating interest in the Project.
- 10 The management fee payable to Timbercorp by each Grower and the Land Owner as joint venturers will be:

- \$5,250.50 (excluding GST) per Almondlot payable on or before the Commencement Date in respect of services to be provided in the period from commencement until 30 June 2002;
  - \$1,866.67 (excluding GST) per Almondlot payable on 31 October 2002 and 2003 in respect of each of the next two financial years;
  - ongoing fees as set out in the Management Agreement: cl 11.1(d).
- The Grower is responsible for 90% of these fees.

- 11 Timbercorp will also be entitled to an additional management fee out of the proceeds payable to the Grower: see cl 11.2.
- 12 I am instructed, and assume for the purpose of this advice, that the management fees payable in respect of each period are commercially reasonable having regard to the substantial planning and supervision required, and the expertise of Timbercorp.
- 13 Under cl 7.2 of the Management Agreement the Grower authorises Timbercorp to sell its share of the crop and/or the Product, and Timbercorp must account to the Grower in respect of the Grower's Product.

### Loans

- 14 I understand that Growers may finance part of the fees payable under the Licence Agreement and Management Agreement by a loan from Timbercorp Finance Pty Ltd or other financiers. I understand that such a loan will be fully recourse and negotiated on arm's length terms.

### Product Ruling

- 15 The Commissioner of Taxation has issued a product ruling in respect of the Project (PR 2002/24), which subject to the terms on which the product ruling was issued and subject to the qualification in paragraph 9 thereof, confirms that the various amounts referred to in my advice are deductible.

### Advice

- 16 I have assumed that each of the agreements will be entered into in the form or substantially in the form in which they have been submitted to me, and that all payments will be made in accordance with the terms of the agreements.
- 17 In my opinion the payments to which the Growers will become entitled in respect of the proceeds of sale of almonds whether processed or not, will constitute assessable income under s 6-5 of the *Income Tax Assessment Act 1997* ("the 1997 Act"). Each of the payments made by the Growers under the Management Agreement and the Licence Agreement will be a loss or outgoing incurred in gaining or producing the assessable income to be derived pursuant to the sale of the almonds. In my opinion these payments are not of a capital, private or domestic nature so as to be denied deductibility under s 8-1(2) of the 1997 Act. Accordingly, I believe they will be deductible for income tax purposes under paragraph (a) of s 8-1(1) of the 1997 Act. Depending on whether each Grower can be said to be carrying on a relevant business the payments may also be deductible under paragraph (b) of s 8-1(1) of the 1997 Act.
- 18 The conclusion I have come to about the deductibility of the above payments applies equally whether or not Growers have elected to be STS taxpayers under Division 32 of the 1997 Act.
- 19 The *New Business Tax System (Integrity and Other Measures) Act 1999* has introduced amendments to the pre-payment rules in s 82KZM of the *Income Tax Assessment Act 1936* ("the 1936 Act") which apply to pre-payments made on or after 21 September 1999 by a taxpayer who is not a small business taxpayer. This term is defined in s 960-335 of the 1997 Act as a taxpayer with an average or recalculated turnover of less than \$1,000,000 per year. In the context of the agreements contemplated by the prospectus the consequence of s 82KZM as it applies to small business taxpayers or the amendments as they apply to taxpayers who are not small business taxpayers have largely been superseded by the *New*



*Business Tax System (Integrity Measures) Act 2000*. This Act has introduced ss 82KZME and 82KZMF into the 1936 Act. The effect of these sections will be that a deduction for the management fee and rent will be allowable on a pro rata basis in accordance with s 82KZMF if expenditure is incurred for services which are not to be provided wholly within the relevant year of income: see s 82KZME(2)(b). As the expenditure is only incurred for services to be provided in each relevant year, s 82KZMF will not apply.

- 20 The New Business Tax System (Integrity Measures) Act 2000 also contains provisions which are intended to defer the immediate deductibility of what are described as "non-commercial business activities". These provisions will apply to the income year ending 30 June 2001 and subsequent years. If the provisions apply losses from a relevant non-commercial business activity will be carried forward and will be deductible against future income from that activity. The legislation provides that the relevant provisions (contained in s 35-10 of the 1997 Act) deferring deductibility will not apply in certain circumstances. For present purposes the most relevant circumstance is the discretion given to the Commissioner in s 35-55 of the 1997 Act. It provides as follows:

"(1) The Commissioner may decide that the rule in section 35-10 does not apply to a business activity for one or more income years if the Commissioner is satisfied that it would be unreasonable to apply that rule because:

- (a) the business activity was or will be affected in that or those income years by special circumstances outside the control of the operators of the business activity, including drought, flood, bushfire or some other natural disaster; or

Note: This paragraph is intended to provide for a case where a business activity would have satisfied one of the tests if it were not for the special circumstances.

- (b) the business activity has started to be carried on and:

- (i) because of its nature, it has not yet satisfied one of the test set out in section 35-30, 35-35, 35-40 or 35-45; and
- (ii) there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will either meet one of those tests or will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10 (2)).

Note: This paragraph is intended to cover a business activity that has a lead time between the commencement of the activity and the production of any assessable income. For example, an activity involving the planting of hardwood trees for harvest, where many years would pass before the activity could reasonably be expected to produce income.

- (2) The Commissioner must not exercise the discretion under paragraph (1)(b) for a business activity at a time after the earlier of:

- (a) the time at which it would be reasonable to expect the activity to first produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
- (b) the time at which it would be reasonable to expect the activity to meet one of the tests set out in section 35-30, 35-35, 35-40 or 35-45."

- 21 While the matter is one of discretion it would appear that the intention of this provision is to allow deductions in cases such as the present. In my view, assuming the project will be commercially viable in a reasonable period or where there is at least an objective and reasonable expectation that it will be viable in a reasonable period, it would be reasonable to expect that the Commissioner will exercise his discretion favourably so as to allow the deductions against assessable income from other sources.

The Commissioner has in respect of the product ruling for the Project said that the rule in the s 35-10 of the 1997 Act which might otherwise apply to defer deductibility does not apply provided the Project is carried out in the manner described in the ruling.

- 22 The decisions of the Federal Court in *FC of T v Lau* (1984) 84 ATC 4929 and *FC of T v Emmakell Pty Ltd* (1990) 90 ATC 4319 each involved cases where the material facts were substantially similar to the present proposal save that in each case there were prepayments of fees for services to be provided over a period of time extending well beyond the relevant tax year. In each case the Full Court held that prepayments made under management agreements and leases were deductible under s 51(1) of the 1936 Act. The terms of s 51(1) of the 1936 Act are materially the same as s 8-1 of the 1997 Act. As presently advised I see no basis for distinguishing the facts in these cases from the present proposal, save that these cases involved payments for services to be provided in later years. Even if may be argued that the Growers may not have commenced to carry on a relevant business at the time they make the first payment under the Licence Agreement and Management Agreement, the decision in *FC of T v Emmakell Pty Ltd* makes it clear that in such circumstances a deduction may still be allowable, and was in fact allowed in that case, under the first limb of s 51(1) of the Act notwithstanding that no business had at the relevant time commenced. This view was endorsed by the Full Court of the Federal Court in *FC of T v Brand* (1995) 95 ATC 4633 where the Court accepted that a pre payment of a licence fee to use certain ponds for prawn farming was deductible under the first limb of s 51(1) notwithstanding that the ponds had not then been constructed and no business or income producing activity had yet commenced.
- 23 The Full Court in *Brand's case* accepted that the decisions in *Lau's case* and *Emmakell's case* were correct. It emphasised that although it is necessary for an outgoing to be "incidental and relevant" to the end of gaining or producing assessable income there was no requirement that there had to be any contemporaneity between the payment and the production of assessable income; see for example *FC of T v Osborne* (1990) 90 ATC 4889 where a delay of at least six years was anticipated between incurring the expenditure and the derivation of the expected income. In my opinion the expenditure incurred in this case is directly relevant and incidental to the derivation of assessable income, albeit in the future. The principle that there is no requirement of contemporaneity between the expenditure and the production of assessable income was recently confirmed by the High Court in *Steele v FC of T* (1999) 99 ATC 4242.
- 24 In my view no part of the Management Fee or Licence Fee is to be denied deductibility under s 8-1 on the basis that they are outgoings of capital. In determining whether an outgoing is of a capital or revenue nature one needs to ascertain what the payment was calculated to effect from a practical or business point of view. The character of the advantage sought by the Grower is the chief, if not the critical factor in determining the character of the payment under s 8-1 of the 1997 Act; see *G.P. International Pipecoaters Pty Ltd v FC of T* (1989-90) 170 CLR 124 at p. 137. In the present case the advantages sought by the payment of the Management Fee relates to the management and maintenance of the Almondlot. In my opinion these are advantages of a revenue character and not a capital character. The Licence Fee also has revenue character.
- 25 In my view the payment of the Licence Fee and Management Fee cannot be properly regarded as "an investment" of a capital nature as in *Clowes v FC of T* (1953-4) 91 CLR 209. The distinguishing feature in that case was that "the cultivation of the plantation and the logging and disposal of timber .... [were] ..... the operations of the company conducted on its own behalf and not on behalf of the lot-holders": per Dixon J. at 218. In the present case Timbercorp carries out the relevant management functions on behalf of each Grower, as was the case in *Emmakell* and *Lau*.
- 26 In forming the above opinion I have assumed that the parties to the agreements will intend to be bound by the terms thereof, these terms will be performed, that the agreements are not shams, and that fees charged

are not excessive bearing in mind what the Grower might be expected to pay someone else for providing the services on his or her Almondlot for the relevant period to which the fees relate.

27 In *Fletcher & Ors v FC of T* (1991) 91 ATO 4950, the High Court reaffirmed the principle that amounts paid could be deductible under s 51(1) of the Act notwithstanding that the relevant assessable income was not expected to be derived until a future year. However, the Court also held that if the taxpayer did not intend to derive the assessable income in the future the expenditure would not be incurred for the purpose of producing assessable income but for some other purpose, and would not be deductible under s 51(1) of the Act. On the basis of the financial projections in the prospectus, it would appear there is a reasonable expectation and intention that income in excess of the outgoings will be produced.

28 Subdivision D of Division 3 or Part III of the 1936 Act and in particular, s 82KK of the Act, also provides that in certain circumstances payments made to an associate of the taxpayer will not be deductible until the year in which the service under the agreement is provided. The term associate is widely defined in s 82KH of the Act.

29 In the present case the relevant fees are payable by the Growers to Timbercorp and the Land Owner. These entities will not be associates of a Grower unless the Grower is directly or indirectly able to control Timbercorp either at the level of the board of directors or through any shareholding. None of the Growers will, as I understand it, be able to control Timbercorp and the Land Owner and accordingly s 82KK should have no application.

30 That leaves me to consider the specific anti-avoidance provisions in ss 82KH and 82KL and the general anti-avoidance provisions in Part IVA of the 1936 Act. Section 82KL allows the Commissioner to disallow a tax benefit where the value of any additional benefit and the expected tax saving is equal to or greater than the amount of eligible relevant expenditure. Eligible relevant expenditure is defined in s 82KH(1) and includes:

"(e) a loss or outgoing incurred by the taxpayer in respect of rent to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the Income Tax Assessment Act 1997 in respect of the loss or outgoing;

.....

(w) a loss or outgoing (other than a loss or outgoing referred to in subsection 52A(1) or to which a preceding paragraph of this definition applies) incurred by the taxpayer to the extent to which a deduction would, apart from section 82KL, be allowable to the taxpayer under section 8-1 of the Income Tax Assessment Act 1997 in respect of the loss or outgoing."

In *Lau's case* the Full Court of the Federal Court rejected an argument that there was any relevant additional benefit other than the benefit of having the trees grown and sold. In my opinion the same applies in the present case and in my view section 82KL will not apply in this case.

31 Part IVA of the 1936 Act will only apply if having regard to the 8 matters set out in s 177D(b) of the 1936 Act it can be objectively concluded that the dominant purpose of one of the parties to a scheme was to obtain a tax benefit. The relevant tax benefit would be the amount claimed by a Grower as a deduction in the relevant year of income; see s 177C(1)(b) of the 1936 Act. In my view, looked at objectively, it could not reasonably be said that the dominant purpose of entering into the relevant agreements was to obtain a tax benefit. The Project as it appears from the prospectus is, or will be, a real and professionally managed almond growing project.

32 Objectively speaking and subject to a Grower not having a contrary intention, it seems to me that the arrangements will be entered into by the Grower for the dominant purpose of growing and selling almonds to obtain an overall pre-tax profit. In a case such as this where the Licence Fee and Management Fee is otherwise deductible under s 8-1 and the specific anti-avoidance provisions of s 82KL have no application it is difficult to see how Part IVA could in practical terms apply.

34 The decision of the High Court in *FC of T v Spotless Services Ltd* (1996) 96 ATC 5201 although apparently giving a broad interpretation to Part IVA turned to a very large extent on the peculiar facts of the case and the circumstance that the scheme in that case was identified as "the particular means adopted by the taxpayers to obtain the maximum after tax return on the moneys invested" when an alternative and more conventional means of investment would have yielded a higher rate of interest. In my opinion Part IVA will not apply to deny as deductions the Licence Fee and Management Fee paid by Growers. Subsequent decisions of the High Court and Federal Court concerning Part IVA do not cause me to alter my opinion in this regard: see *CPH Property Ltd v F C of T* [2001] ATC 4343 and *Eastern Nitrogen Ltd v F C of T* [2001] ATC 4164.

### Capital Gains Tax

35 Subject to the provisions of the Constitution, Growers are entitled to assign their respective rights under the various agreements. These rights are assets for Capital Gains Tax ("CGT") purposes and an assignment of these rights will usually give rise to a CGT Event which may give rise to an assessable capital gain. A capital gain will accrue to a taxpayer on the occurrence of a CGT Event when the capital proceeds, i.e. the amount received for the transfer of the rights, exceeds the cost base of the rights. In determining the cost base of the rights any amounts paid by a Grower by way of Licence Fees and Management Fees are disregarded. This is because these fees are on revenue account and therefore fully deductible. No capital amount will be paid by a Grower for the acquisition of the rights under the contracts and accordingly there will be no or a very low cost base attaching to the rights. As such for most Growers an assessable capital gain will accrue, approximately equal to the amount received for the assignment of the rights.

36 A *New Tax System (Integrity and Other Measures) Act* 1999 amended the Capital Gains Tax provisions in Part 3-1 of the 1997 Act. The amendments "freeze" indexation of the cost base of an asset as at 1 October 1999 and provide for a 50% capital gains tax concession for individuals who dispose of assets and a 33% concession for superannuation funds. The effect of these amendments is that an individual Grower who assigns his rights will be taxed on only 50% of any assessable capital gain provided the rights have been held for a minimum of 12 months prior to assignment.

37 Furthermore, the disposal of the rights may also be eligible for the *Small Business Relief* of a further 50% reduction of any remaining assessable capital gain as provided for in Division 152 of the 1997 Act. Any *Small Business Relief* is in addition to the capital gains tax discount of 50% that an individual Grower may receive. As the *Small Business Relief* provisions are complex and their application varies depending on individual circumstances, a Grower must seek independent taxation advice in order to determine whether they are eligible for any *Small Business Relief*.

38 If the contracts are entered into by Growers for the purpose of transferring them to third parties the proceeds of sale may be assessable in full under s 6-5 of the 1997 Act. Moreover the Commissioner's product ruling in respect of the Project is predicated on the basis that Growers intend to remain in the Project for the purpose of deriving assessable income over its duration.

39 The relevant assets of the Grower being the rights under the Licence and Management Agreements will generally have a cost base of the non-deductible incidental costs incurred by the Grower. When the Project is formally completed and terminated and the agreements expire, a CGT Event C2 occurs. The effect of CGT Event C2 which occurs on *cancellation, surrender or similar ending* is detailed in s 104-25 of the 1997 Act.

40 Where the agreements expire the market value substitution rule in sub-s 116-30(1) of the 1997 Act does not apply and so a capital loss may arise to the extent of the amount of the Grower's reduced cost base of these assets: s 104-25 and s 102-22 of the 1997 Act. This interpretation is confirmed in paragraphs 198 to 201 of TR 2000/8.

41 It is essential that any Grower proposing to assign his interest under the agreements obtain advice relating to their individual taxation circumstances.



#### **Good and Services Tax ("GST")**

- 42 The Licence Fee and Management Fee will be consideration for taxable supplies made by the Land Owner and Timbercorp which will incur a liability for GST of 1/10th of the GST exclusive price, and which Growers are liable to pay. I assume that the Land Owner and Timbercorp will provide each Grower with what is called a tax invoice for such supplies. In my opinion the taxable supplies will be made to each Grower for a creditable purpose under s 11-5 of the *A New Tax System (Goods and Services Tax) Act* 1999. If a Grower is registered or is required to be registered for GST purposes, the Grower will be entitled to a credit for the GST paid which can either be set off against other GST liabilities or will be repaid to the Grower. If a Grower is entitled to such input credits, ss 27-5 and 27-30 of the 1997 Act apply to deny tax deductions of the input credits under s 8-1 of the 1997 Act.

#### **Conclusion**

- 43 This opinion is provided for Timbercorp and although it is to be included in the prospectus for the Project, intending Growers should consult with their own professional advisers for further advice based on their own particular circumstances. This opinion is intended as a general guide only. It is based on legislation currently in force, instructions and assumptions set out herein. The Grower should therefore seek and obtain appropriate independent professional advice prior to participating in the Project.

JOHN W de WIJN  
OWEN DIXON CHAMBERS WEST  
7 MARCH 2002

## Product Ruling

Income tax: 2002 Timbercorp Almond Project

### Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

### No guarantee of commercial success

The Australian Taxation Office (ATO) does not sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out below in the Ruling part of this document are available provided that the arrangement is carried out in accordance with the information we have been given and have described below in the Arrangement part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

### Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

### What this Product Ruling is about

- 1 This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the 2002 Timbercorp Almond Project or simply as 'the Project'.

#### Tax laws

- 2 The tax laws dealt with in this Ruling are:
  - Section 6-5 of the Income Tax Assessment Act 1997 ('ITAA 1997');
  - Section 8-1 (ITAA 1997);
  - Section 17-5 (ITAA 1997);
  - Division 27 (ITAA 1997);
  - Division 35 (ITAA 1997);
  - Division 328 (ITAA 1997);
  - Section 82KL of the Income Tax Assessment Act 1936 ('ITAA 1936');
  - Section 82KZL (ITAA 1936);
  - Section 82KZME (ITAA 1936);
  - Section 82KZMF (ITAA 1936); and
  - Part IVA (ITAA 1936).

#### Goods and Services Tax

- 3 In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a Grower) to be entitled to claim input tax credits for the

GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

#### Changes in the Law

- 4 The Government is currently evaluating further changes to the tax system in response to the Ralph Review of Business Taxation and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.
- 5 Taxpayers who are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

#### Note to promoters and advisers

- 6 Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

#### Class of persons

- 7 The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement.
- 8 The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion or who otherwise do not intend to derive assessable income from it.

#### Qualifications

- 9 The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.
- 10 A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

#### Date of effect

- 11 This Ruling applies prospectively from 6 March 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).
- 12 If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

#### Withdrawal

- 13 This Product Ruling is withdrawn and ceases to have effect after 30 June 2004. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

## Arrangement

- 14 The arrangement that is the subject of this Ruling is specified below. This arrangement incorporates the following documents:
- Application for Product Ruling dated 27 August 2001;
  - Draft Prospectus for the 2002 Timbercorp Almond Project, dated 11 February 2002;
  - Licence and Joint Venture Agreement between Almond Land Pty Ltd, Timbercorp Securities Limited and each Grower, received 13 February 2002;
  - Almondlot Management Agreement between Timbercorp Securities Limited and each Grower, received 13 February 2002;
  - Draft Management Agreement between Timbercorp Securities Limited and Almond Management Pty Ltd, dated 11 May 2001;
  - Almond Orchard Management Agreement between Almond Management Pty Ltd, Select Harvests Limited, Timbercorp Securities Limited, Timbercorp Limited, Almond Investments Australia Pty Ltd and Almond Land Pty Ltd, received 5 February 2002;
  - 2002 Timbercorp Almond Project Finance Package, received 5 February 2002;
  - Correspondence from the applicant dated 18 September 2001 and 13 February 2002.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

- 15 The documents highlighted are those Growers enter into or become a party to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are part of the arrangements to which this Ruling applies.
- 16 All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of the agreements may be summarised as follows.

## Overview

- 17 The arrangement is the 2002 Timbercorp Almond Project.

Location	Liparoo and/or Carina, north west Victoria
Type of business each participant is carrying on	Cultivating almond trees on their designated 0.25 hectare Almondlots and harvesting the almonds for processing and sale.
Area under cultivation	Up to 500 hectares, divided into 2000 Almondlots of 0.25 hectares each. Option to accept oversubscriptions and cultivate additional land.
Minimum subscription	No minimum subscription
Number of almond trees	An average of 247 trees per hectare or 62 trees per Almondlot.
Minimum number of Almondlots per Grower	Two, although the promoter reserves the right in its absolute discretion to accept applications for less than two.
The term of the Project	Approximately 20 years commencing on acceptance of a Grower's application and ending on 30 June 2022.\$6050, comprising management fee of \$5198 and licence fee of \$852.
Subscription amount per Almondlot (0.25 hectares)	\$6050, comprising management fee of \$5198 and licence fee of \$852.

Ongoing fees per Almondlots (0.25 hectares)

- Management fees of \$1848 for each of the years ended 30 June 2003 and 30 June 2004.
- Licence fees of \$852 fixed for the years ended 30 June 2003 and 2004 and indexed for CPI each year thereafter.
- From the year ending 30 June 2005, Growers will be required to pay management fees that will be estimated by the Project Manager and adjusted once the actual costs of managing the Growers' Almondlots are determined.
- From the financial year ending 30 June 2004, each Grower will pay its proportion (90%) of the following additional annual fees:
  - (a) a management fee equal to 3% of annual proceeds from the sale of almonds; and
  - (b) an incentive fee, being 25% of so much of the annual proceeds (after deducting the fee referred to in paragraph (a) above) payable to a Grower in a financial year as exceeds the proceeds estimated in the prospectus, less any allowance for inflation arriving at such estimate, but indexed from the date of the Almondlot Management Agreement. This fee will be calculated on a 2 year rolling basis to allow for variations in yields from year to year.

- 18 The Land Owner, Almond Land Pty Ltd, has established approximately 1,130 hectares of almond orchards including all infrastructure and other capital works necessary to operate a commercial almond growing operation on two sites approximately 125 kilometres south-east of Mildura in north-west Victoria. The Liparoo site consists of approximately 900 hectares and the Carina site consists of approximately 140 hectares. Approximately 240 hectares at the Liparoo site were subscribed by applicants under the 2001 Timbercorp Almond Project leaving approximately 650 hectares at this site available for subscription.
- 19 Timbercorp Securities Limited will only provide services following the execution of the Licence and Joint Venture Agreement and the Almondlot Management Agreement. Applications will not be accepted after 30 June 2002. From 1 June 2002, applications will only be accepted where Timbercorp Securities Limited is reasonably satisfied that it can complete the services in respect of which the subscription moneys were payable on application. The subscription moneys payable on application are payable in respect of services to be wholly provided by 30 June 2002. The fees payable on 31 October 2002 and 31 October of subsequent years are payable in respect of services to be wholly provided by the next 30 June after the date the fees were payable.
- 20 Growers (in joint venture with Almond Land Pty Ltd) will enter into the Almondlot Management Agreement with Timbercorp Securities Limited, to perform services in relation to the cultivation and management of their Almondlots. Under the Management Agreement, Timbercorp Securities Limited will engage Almond Management Pty Ltd to carry out the Orchard Services required under the Almondlot Management Agreement and to sell the almonds. Under the Almond Orchard Management Agreement, Almond Management Pty Ltd has engaged Select Harvests Limited to undertake the day to day management of the Almondlots, harvest and process the almonds and sell the almonds through its established domestic and overseas channels.
- 21 Under the Almond Orchard Management Agreement, Select Harvests Limited will pool the Growers' almonds with all other almonds sold by it. Each Grower will receive the same pooled average price as Select Harvests Limited receives. Accordingly, each Grower will receive a pro-rata share of the net sale proceeds less his or her annual costs. Almond Management Pty Ltd, as agent of the Growers, can choose to sell the Growers' almonds outside the pooling arrangements operated by Select Harvests Limited and to direct Select Harvests Limited to sell the almonds separately. Select Harvests Limited guarantees to Almond Management that the entire annual crop of almonds available for harvest in a particular season will be sold by 30 June in the financial year after the year in which the harvest for that season commences. However, Select Harvest Limited does not guarantee the sale price of the almonds.



- 22 Timbercorp Securities Limited will endeavour to arrange insurance on the Growers' behalf. Where this is available, Growers are required to insure their Almondlots against damage or destruction by fire and other insurable risks. Timbercorp Securities Limited will arrange payment of insurance premiums to the appropriate insurers.

#### **Licence and Joint Venture Agreement**

- 23 Under the Licence and Joint Venture Agreement, the land owner, Almond Land Pty Ltd, warrants that it has, at its own cost, established the Almondlots (separate identifiable areas of land comprising allotments of 0.25 hectares) on the Land and constructed necessary infrastructure and carried out capital works. Under this agreement each Grower will be given a right to use and occupy a minimum of ten 0.25 hectare Almondlots for a period of approximately 20 years ending on 30 June 2022, for the purpose of cultivating the Almondlots for the production of almonds for processing and sale. The Responsible Entity has the discretion to accept an application for less than two Almondlots.
- 24 Under the agreement, each Grower will enter into a joint venture arrangement with Almond Land Pty Ltd (on a 90%:10% basis) in respect of the cultivation and management of their Almondlots. As a result, each Grower will be responsible for 90% of all management costs associated with the cultivation and management of their Almondlots and will be entitled to 90% of all produce. In return for paying an annual licence fee, each applicant Grower obtains a non-exclusive licence to use and occupy Almondlots (in joint venture with Almond Land Pty Ltd). Under the terms of the agreement, a Grower may only use the land for the purpose of cultivating and harvesting almonds for processing and sale.
- 25 The Grower must pay Almond Land Pty Ltd a licence fee of \$852 per Almondlot on the Commencement Date for the period ending 30 June 2002 and, for each of the years ended 30 June 2003 and 2004, payable on 31 October of the relevant year. For each year ending 30 June thereafter for the Term of the Agreement a licence fee of \$852 per Almondlot, indexed by the CPI, is payable on 31 October of the relevant year. If a Grower fails to pay an amount payable by the due date, Almond Land Pty Ltd can deduct the amount from any Proceeds of the Grower or offer that Grower's Almondlots for sale.
- 26 At the expiration of the Project, each Grower must return the Almondlots to Almond Land in good condition but is not required to remove the almond trees or restore the Almondlots to their original condition.

#### **Almondlot Management Agreement**

- 27 Under the Almondlot Management Agreement, each Grower (in joint venture with Almond Land Pty Ltd) engages Timbercorp Securities Limited to manage the orchard on behalf of the Grower. Timbercorp Securities Limited is required to perform the services listed in a proper and efficient manner in accordance with good horticultural and environmental practices. Included in the listed services are pruning of the almond trees, vermin control, obtaining water licences and irrigating the orchards, soil testing, fertilising the trees, destruction of diseased trees, keeping improvements in good repair, maintaining fire breaks, soil management, weed control, keeping records of chemicals applied, inspection of stakes, fences and equipment, retying trees to stakes or trellising where required and replacement of trees where required.
- 28 The Grower must pay Timbercorp Securities Limited a management fee of \$5198 per Almondlot fee for the period from the Commencement Date until 30 June 2002, and \$1848 for each of the financial years ended 30 June 2003 and 2004 payable on 31 October of the relevant financial year. If a Grower fails to pay an amount payable by the due date, Timbercorp Securities Limited can deduct the amount from any Proceeds of the Grower or offer that Grower's Almondlots for sale.

#### **Fees**

- 29 Under the terms of the Licence and Joint Venture Agreement and the Almondlot Management Agreement, a Grower will make the following payments per Almondlot:
- the initial management fee of \$5198 payable on application;
  - management fees per Almondlot of \$1848 for the year ending 30 June 2003 payable on 31 October 2002 and \$1848 for the year ending 30 June 2004 payable on 31 October 2003;
  - from the financial year ending 30 June 2005, ongoing management fees that will be estimated, in the first instance, by Timbercorp Securities Limited and adjusted once the actual costs of managing the Grower's Almondlots are determined, payable on 31 October each year;

- licence fees of \$852 per Almondlot payable on application, \$852 on 31 October 2002 and on 31 October 2003 and thereafter, indexed to CPI, on 31 October of each subsequent year;
- from the financial year ending 30 June 2004 an additional management fee of 3% of the proceeds of sale;
- from the financial year ending 30 June 2004, an incentive fee, being the Grower's proportion (i.e., 90%) of 25% of so much of the proceeds of sale (after deducting the fee referred to in the previous dot point) payable to a Grower in a financial year as exceeds the proceeds estimated in the prospectus, less any allowance for inflation arriving at such estimate, but indexed from the date of the Project and Management Agreement. This fee will be calculated on a 2 year rolling basis to allow for variations in yields from year to year.

#### **Finance**

- 30 Growers can either fund their participation in the Project themselves, borrow from an independent lender, or may elect to use financing packages through Timbercorp Finance Pty Ltd (a lender associated with the Responsible Entity).
- 31 Under the financing package offered through Timbercorp Finance Pty Ltd, Growers may enter into the following finance arrangement. The minimum loan is \$5,000. A maximum of \$4,840 is available per Almondlot for the period to 30 June 2002. Further finance will be available up to 80% of the management and licence fees payable in October 2002 and 2003. Interest rates offered are fixed for the loan term. They are 9% per annum for a 3 year term, 10% per annum for a 4 year term and 11% per annum for a 5 year term. In the event of default, a higher interest rate of 13.2% per annum will apply. For some Growers, Timbercorp Finance Pty Ltd may also offer finance of up to 100% of the fees payable in the first 3 years of the project at various terms not exceeding 7 years. In all instances, the loan is repayable by equal monthly instalments of principal and interest deducted from the borrower's bank account under a direct debit authority. All or part of a loan may be repaid at any time without penalty. Corporate borrowers are required to provide guarantees and indemnities. The provision of finance involves full recourse loans and the finance provider will pursue legal action against defaulting borrowers.
- 32 This Ruling does not apply if a Grower enters into a finance agreement that includes any of the following features:
- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
  - entities associated with the Project are involved in the provision of finance for the Project;
  - there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
  - additional benefits will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
  - the loan or rate of interest is non-arm's length;
  - repayments of the principal and interest are linked to the derivation of income from the Project;
  - the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism) back to the lender or any associate;
  - lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
  - entities associated with the Project, other than Timbercorp Finance Pty Ltd, are involved or become involved in the provision of finance to Growers for the Project.

#### **Ruling**

##### **Application of this Ruling**

- 33 This Ruling applies only to Growers who are accepted to participate in the Project on or before 30 June 2002 and who have executed an Almondlot Management Agreement and a Licence and Joint Venture Agreement before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.
- 34 A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

## The Simplified Tax System ('STS') - Division 328

35 For a Grower participating in the Project, the recognition of income and the timing of tax deductions, including those related to capital allowances, is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

- must be eligible to be an 'STS taxpayer'; and
- must have elected to be an 'STS taxpayer'.

### Qualification

36 This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

## Tax outcomes for Growers who are not 'STS taxpayers'

### Assessable Income

#### Section 6-5

37 That part of the gross sales proceeds from the Project attributable to the Grower's share of the gross proceeds from the sale of the product of the joint venture Project, less any GST payable on the Grower's share of those proceeds (section 17-5), will be assessable income of the Grower under section 6-5. Note that the term 'joint venture' is used in this Product Ruling in a general accounting and legal sense, and not as a reference to entities that are entitled to apply to the Commissioner to be treated as an approved GST joint venture within the meaning of Division 51 of A New Tax System (Goods and Services Tax) Act 1999.

38 The Grower recognises ordinary income from carrying on the business of growing almonds for processing and sale at the time that income is derived.

### Deductions for Management fees, Licence fees, and Interest

#### Section 8-1

39 A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee	8-1	\$5198 – See Notes (i) & (ii) (below)	\$1848 – See Notes (i) & (ii) (below)	\$1848 – See Note (i) & (ii) (below)
Licence Fee	8-1	\$852 – See Notes (i) & (ii) (below)	\$852 – See Notes (i) & (ii) (below)	\$852 – See Notes (i) & (ii) (below)
Interest	8-1	As incurred See Note (iii) (below)	As incurred See Note (iii) (below)	As incurred See Note (iii) (below)

#### Notes:

- If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 105.
- The Management Fees and the Licence Fees shown in the Almondlot Management Agreement and the Licence and Joint Venture Agreement are deductible in full in the year that they are incurred. However, if a Grower chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 81 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

- The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Timbercorp Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 75 to 89 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

## Tax outcomes for Growers who are 'STS taxpayers'

### Assessable Income

#### Section 6-5

40 That part of the gross sales proceeds from the Project attributable to the Grower's share of the gross proceeds from the sale of the product of the joint venture Project, less any GST payable on the Grower's share of those proceeds (section 17-5), will be assessable income of the Grower under section 6-5. Note that the term 'joint venture' is used in this Product Ruling in a general accounting and legal sense, and not as a reference to entities that are entitled to apply to the Commissioner to be treated as an approved GST joint venture within the meaning of Division 51 of A New Tax System (Goods and Services Tax) Act 1999.

41 The Grower recognises ordinary income from carrying on the business of growing almonds for processing and sale at the time the income is received (paragraph 328-105(1)(a)).

### Deductions for Management fees, Licence fees, and Interest

#### Section 8-1 and section 328-105

42 A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Management Fee	8-1 & 328-105	\$5198 – See Notes (iv), (v) & (vi) (below)	\$1848 – See Notes (iv), (v) & (vi) (below)	\$1848 – See Notes (iv), (v) & (vi) (below)
Licence Fee	8-1 & 328-105	\$852 – See Notes (iv), (v) & (vi) (below)	\$852 – See Notes (iv), (v) & (vi) (below)	\$852 – See Notes (iv), (v) & (vi) (below)
Interest	8-1 & 328-105	When paid - See Notes (v) & (vii) (below)	When paid - See Notes (v) & (vii) (below)	When paid - See Notes (v) & (vii) (below)

#### Notes:

- If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 105.
- If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.
- Where a Member who is an 'STS taxpayer', pays the Management fees and the Licence fees shown in the Almondlot Management Agreement and the Licence and Joint Venture Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 75 to 89). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 81, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

- (vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with than Timbercorp Finance Pty Ltd,, should read the discussion of the prepayment rules in paragraph 75 to 89 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

## Tax outcomes that apply to all Growers

### Division 35 – Deferral of losses from non-commercial business activities

#### Section 35-55 – Commissioner's discretion

- 43 For a Grower who is an individual and who enters the Project during the year ended 30 June 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2006 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.
- 44 This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:
- the 'exception' in subsection 35-10(4) applies (see paragraph 93 in the Explanations part of this ruling, below); or
  - a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
  - the Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)); or
  - the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).
- 45 Where, the exception in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, ie, any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.
- 46 Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made.

### Sections 82KZME – 82KZMF, 82KL, and Part IVA

- 47 For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Lease Agreement the following provisions of the ITAA 1936 have application as indicated:
- expenditure by a Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 77 to 89);
  - section 82KL does not apply to deny the deductions otherwise allowable; and
  - the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## Explanations

### Is the Grower carrying on a business?

- 48 For the amounts set out in the Tables above to constitute allowable deductions the Grower's almond growing activities as a participant in the 2002 Timbercorp Almond Project must amount to the carrying on of a business of primary production. These almond growing activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.
- 49 For projects such as that of the 2002 Timbercorp Almond Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as FCT v Lau 84 ATC 4929.

- 50 Generally, a Grower will be carrying on a business of cultivating almond trees and harvesting the almonds for processing and sale and hence primary production, if:

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's almond trees are established;
- the Grower has a right to harvest and sell the almonds each year from those almond trees;
- the almond growing activities are carried out on the Grower's behalf;
- the almond growing activities of the Grower are typical of those associated with a horticultural business; and
- the weight and influence of general indicators point to the carrying on of a business.

- 51 In this Project, each Grower enters into the Almondlot Management Agreement and the Licence and Joint Venture Agreement.
- 52 Under the Licence and Joint Venture Agreement each individual Grower will have rights over a specific and identifiable area of land. The Licence and Joint Venture Agreement provides the Grower with an ongoing interest in the specific almond trees on the licenced area for the term of the Project. Under the licence the Grower must use the land in question for the purpose of carrying out almond growing activities and for no other purpose. The licence allows the Project Manager to come onto the land to carry out its obligations under the Almondlot Management Agreement.
- 53 The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the Project's description for all the indicators.
- 54 The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of its almonds that will return a before-tax profit, i.e. a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.
- 55 The pooling of almonds grown on the Grower's Almondlots with the almonds of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled almonds will reflect the proportion of the almonds contributed from their Almondlots.
- 56 The Project Manager's services are also consistent with horticultural practices. While the size of an Almondlot is relatively small, it is of a size and scale to allow it to be commercially viable. (see Taxation Ruling IT 360).
- 57 The Grower's degree of control over the Project Manager as evidenced by the Almondlot Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Almondlots and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Project Manager in certain instances, such as cases of default or neglect.
- 58 The almond growing activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' almond growing activities in the 2002 Timbercorp Almond Project will constitute the carrying on of a business.

## The Simplified Tax System

### Division 328

- 59 Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.
- 60 The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

## Deductibility of management fees and licence fees

### Section 8-1

- 61 Consideration of whether the initial management fees and licence fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:
- the outgoing in question must have a sufficient connection with the



operations or activities that directly gain or produce the taxpayer's assessable income;

- the outgoing is not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

- 62 The management fees and licence fees associated with the almond growing activities will relate to the gaining of income from the Grower's business of almond growing (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of almonds) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

#### *Possible application of prepayment provisions*

- 63 Under the Almondlot Management Agreement and the Licence and Joint Venture Agreement neither the management fees nor the licence fees are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.
- 64 However, where a Grower chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 75 to 89) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

#### *Timing of deductions*

- 65 In the absence of any application of the prepayment provisions, the timing of deductions for the management fees or the licence fees will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.
- 66 If the Grower is not an 'STS taxpayer', the management fees and the licence fees are deductible in the year in which they are incurred.
- 67 If the Grower is an 'STS taxpayer' the management fees and the licence fees are deductible in the income year in which they are paid, or are paid for the Grower (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Grower.

#### **Interest deductibility**

##### **Section 8-1**

##### *(i) Growers who use Timbercorp Finance Pty Ltd as the finance provider*

- 68 Some Growers may finance their participation in the Project through a loan facility with Timbercorp Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of licence and management fees.
- 69 The interest incurred for the year ended 30 June 2002 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing almonds and the licence of the land on which the almond trees have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.
- 70 As with the management fees and the licence fees, in the absence of any application of the prepayment provisions (see paragraphs 75 to 89), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.
- 71 If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

- 72 If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

##### *(iii) Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider*

- 73 The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Timbercorp Finance Pty Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by the Tax Office.
- 74 While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 75 to 89).

#### **Prepayment provisions**

##### **Sections 82KZL to 82KZMF**

- 75 The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g., the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.
- 76 For this Project only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF.

##### *Sections 82KZME and 82KZMF*

- 77 Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).
- 78 The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:
- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year; and
  - the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
  - either:
    - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
    - b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.
- 79 For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier other than Timbercorp Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

80 There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

81 Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

82 In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

#### *Application of the prepayment provisions to this Project*

- 83 In this Project, an initial Management Fee of \$5198 and an initial Licence Fee of \$852 per Almondlot will be incurred on execution of the Almondlot Management Agreement and the Licence and Joint Venture Agreement. The management fee and the licence fee are charged for providing management services or land to a Grower by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.
- 84 In particular, the management fee is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the initial management fee has been inflated to result in reduced fees being payable for management fees in subsequent years.
- 85 There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee and the fees for subsequent years, is for the Manager doing 'things' that are not to be wholly done within the expenditure year. Under the Licence and Joint Venture Agreement, licence fees are payable annually on 31 October for the licence to use and occupy the land from 1 July to 30 June during the expenditure year. Similarly, under the loan agreements to be executed between Growers and Timbercorp Finance Pty Ltd interest is payable monthly in arrears.
- 86 On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 14, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

#### *Growers who choose to pay fees for a period in excess of that required by the Project's agreements*

- 87 Although not required under either the Almondlot Management Agreement, the Licence and Joint Venture Agreement, or the Loan Agreement with Timbercorp Finance Pty Ltd, a Grower participating in the Project may choose to prepay fees/interest for a period beyond the 'expenditure year'. Similarly, Growers who use financiers other than Timbercorp Finance Pty Ltd may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 86 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.
- 88 For these Growers, the amount and timing of deductions for any relevant prepaid management fees, prepaid licence fees or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.
- 89 However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

## **Deferral of losses from non-commercial business activities**

### **Division 35**

90 Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2), a deduction for a loss made by an individual from certain business activities will not be taken into account in an income year unless:

- the exception in subsection 35-10(4) applies;
- one of four tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

91 Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

92 Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is passed, the discretion is exercised, or the exception applies.

93 For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a 'primary production business' activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

94 In broad terms, the tests require:

- (a) at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- (b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);
- (c) at least \$500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or
- (d) at least \$100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

95 A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of two Almondlots in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2009. Growers who acquire more than the minimum allocation in the Project may however, find that their activity meets one of the tests in an earlier income year.

96 Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

97 The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where:

- (i) the business activity has started to be carried on; and
- (ii) because of its nature, it has not yet met one of the tests set out in Division 35; and
- (iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

98 Information provided with this Product Ruling indicates that a Grower who acquires the minimum participation of two Almondlots in the Project is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2007. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2006. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

99 This Product Ruling is issued on a prospective basis (ie, before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 43), in the manner described in the Arrangement (see paragraphs 14 to 32). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

100 In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the report of the independent horticultural expert provided with the application by the Responsible Entity;
- the binding Almond Orchard Management Agreement with Select Harvests Limited for the sale of the almonds at prices that realistically reflect the existing market and/or the projected market in the geographical region where the almonds are grown;
- independent and objective information relating to the almond industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

#### Section 82KL - recouped expenditure

101 The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

#### Part IVA - general tax avoidance provisions

- 102 For Part IVA to apply there must be a 'scheme' (section 177A), a 'tax benefit' (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).
- 103 The 2002 Timbercorp Almond Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 39 and 42 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.
- 104 Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of their almonds. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

## Example

#### Example – Entitlement to GST input tax credits

105 Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	\$4 400*
Carrying out of upgrade of power for your vineyard as quoted	\$2 200*
Total due and payable by 1 January 2002 (includes GST of \$600)	\$6 600

\*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

$$1/11 \times \$4400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4400 less \$400, or \$4000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$$1/11 \times \$2200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2200 less \$200, or \$2000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4000 (not \$4400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2000 only, not one tenth of \$2200).

#### Commissioner of Taxation

6 March 2002

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TD 93/34; TR 97/11; TR 97/16; TR 98/22; TR 2000/8; PR 1999/95; IT 360

*Subject references:*

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance

*Legislative references:*

- |                         |                           |
|-------------------------|---------------------------|
| - TAA 1953 Part IVA     | - ITAA 1997 35-30         |
| - ITAA 1936 82KH(1)     | - ITAA 1997 35-35         |
| - ITAA 1936 82KH(1F)(b) | - ITAA 1997 35-40         |
| - ITAA 1936 82KL        | - ITAA 1997 35-45         |
| - ITAA 1936 82KL(1)     | - ITAA 1997 35-55         |
| - ITAA 1936 82KZL       | - ITAA 1997 35-55(1)      |
| - ITAA 1936 82KZL(1)    | - ITAA 1997 35-55(1)(a)   |
| - ITAA 1936 82KZME      | - ITAA 1997 35-55(1)(b)   |
| - ITAA 1936 82KZME(1)   | - ITAA 1997 35-55(2)      |
| - ITAA 1936 82KZME(2)   | - ITAA 1997 Div 328       |
| - ITAA 1936 82KZME(3)   | - ITAA 1997 Subdiv 328-F  |
| - ITAA 1936 82KZME(4)   | - ITAA 1997 Subdiv 328-G  |
| - ITAA 1936 82KZME(7)   | - ITAA 1997 328-105       |
| - ITAA 1936 82KZMF      | - ITAA 1997 328-105(1)(a) |
| - ITAA 1936 82KZMF(1)   | - ITAA 1997 328-105(1)(b) |
| - ITAA 1936 Pt IVA      | - ITAA 1997 328-285       |
| - ITAA 1936 177A        | - ITAA 1997 328-285(1)    |
| - ITAA 1936 177C        | - ITAA 1997 328-285(2)    |
| - ITAA 1936 177D        |                           |
| - ITAA 1936 177D(b)     |                           |
| - ITAA 1997 6-5         |                           |
| - ITAA 1997 8-1         |                           |
| - ITAA 1997 17-5        |                           |
| - ITAA 1997 Div 27      |                           |
| - ITAA 1997 Div 35      |                           |
| - ITAA 1997 35-10       |                           |
| - ITAA 1997 35-10(2)    |                           |
| - ITAA 1997 35-10(3)    |                           |
| - ITAA 1997 35-10(4)    |                           |

*Case references:*

- FCT v. Lau 84 ATC 4929

*ATO references:*

NO T2001/0016381

ISSN: 1441 1172



# 12 Independent Almond Orchard Expert's Report

## Prepared for the 2002 Timbercorp Almond Project

By Graham Johns [Roseworthy Diploma Agriculture, South Australia]  
Horticultural Development Services Pty. Ltd.

20th February 2002

## Introduction

This independent expert's report has been commissioned by Timbercorp Securities Limited and has been prepared by Mr. Graham Johns from Horticultural Development Services Pty. Ltd. The report is to be included in the 2002 Timbercorp Almond Project Prospectus for the cultivation and management of almond orchards near the town of Robinvale in Northern Victoria ('Project').

Graham Johns, (Roseworthy Diploma Agriculture, Roseworthy South Australia), has had extensive experience in the Australian and International Almond industries, with almost twenty years of continuous involvement. As a result he is very familiar with all aspects of almond development, production, management, processing and marketing. Currently Mr. Johns is a member of the Australian Almond Industries Research And Development Committee. Mr. Johns was invited to participate in the Australian Almond Industry Strategic Planning And Review Forum held in Adelaide South Australia in November 2000. The Forum brought together leaders in the Australian Almond Industry from the key segments including, research, production, processing and marketing to identify detailed development strategies for each segment over the next five years.

This report has been prepared, based on information supplied to Horticultural Development Services Pty Ltd by representatives of Timbercorp Securities Limited, various government and regulatory authorities, companies and individuals associated with the Project and on site inspections.

The evaluation of the 2002 Timbercorp Almond Project has been made after consideration of:

- 1 Site maps locating the properties on which the development is proposed.
- 2 Soil Survey Irrigation And Drainage Management Plans produced by Yandilla Park Services.
- 3 Climatic data from the Mildura Bureau of Meteorology for Mildura approximately 110 km from the Almond Project and the Euston Postal Agency approximately 30 km North West of the Almond Project.
- 4 Water quality data from the Sunraysia Rural Water Authority.
- 5 An irrigation system design prepared by Agri-Hort Developments Pty. Ltd. and a questionnaire prepared by Horticultural Development services Pty. Ltd. and completed by Agri-Hort Developments Pty. Ltd.
- 6 A development questionnaire prepared by Horticultural Development services Pty. Ltd. and completed by Kyndalyn Park Pty. Ltd. (a wholly owned subsidiary of Select Harvests Limited).
- 7 A new development, forecasted water budget, showing annual consumption of water by almonds in mega litres per hectare, from year one to year six of the development, produced by Select Harvests Limited.
- 8 Estimated almond yields during the development of the orchard and mature yields supplied by Timbercorp Securities Limited and supporting documentation.
- 9 Draft prospectus for the Project.
- 10 A report by Timbercorp Securities Limited titled "Soil Amelioration Decision Analysis For Almond Australia Development At Wemen" detailing the criteria used to determine irrigation block design by soil type and amelioration proposed.
- 11 Information sourced from an on site inspection of approximately 1,134 hectares of newly established orchards identified as the Liparoo site and Carina site respectively.
- 12 Yield estimates of mature and young tree production supplied for the 2001 crop from actual harvest and hulling and cracking records provided by Select Harvests Limited.

Graham Johns and Horticultural Development Services Pty Ltd do not have any personal interest in the project. We would be prepared to consult to the project if required. A fixed fee for the preparation of this report was agreed in advance.

## General description of the almond orchard development

Two sites have been secured for the Project. These are known as the Liparoo site and the Carina site. The Liparoo site comprises 992 plantable hectares and the Carina site comprises 142 plantable hectares. The Carina site is an extension of an existing almond development.

The Liparoo site is situated on land approximately 40 km from Robinvale and the Carina site is situated on land approximately 29 km from Robinvale. Robinvale is a township of approximately 2,000 people in the northwest corner of Victoria. The Liparoo site is supplied with an existing 381mm (i.e. 15 inch) mainline from the Murray River. The river pump supplying the Liparoo site mainline has been upgraded to supply sufficient water for the first year of the development. A high quality bituminised road, the Murray Valley Highway, abuts the northern boundary of the property. Three-phase power also borders the property frontage along the highway. The Carina site is supplied by an existing mainline (450mm diameter), which will be boosted by the installation of two additional mainlines. The first additional mainline will be installed in 2001 (i.e. 630mm diameter) and the second is proposed to be installed in 2003 (i.e. 630mm diameter). The additional mainlines will enable sufficient water to be pumped to the Carina site to meet its future demands. The Carina site has access to the north through existing almond orchards and to the west from a gravel country road.

The topography of the Liparoo site is generally elevated and characterised by gently rolling hills with parallel east-west running sand dunes scattered across the property. The highest elevation occurs in the south-western portion of the surveyed area with contours generally falling toward the Murray River and the northern boundary, with the lowest lying area occurring in the northeast corner of the property. The topography of this site is very suitable for almond production. The Carina site topography is also suitable for almond production and is characterised by east-west parallel sand dunes scattered across the surveyed area. The highest elevation on the Carina site occurs in the northeast corner of the block and elevations generally slope down towards the west and northwest area with scattered depressions predominantly located in the southern portion of the surveyed area. The elevated deeper soils are suitable for development at the Carina site however the lower shallower soil type areas are not suitable for development and have been excluded from planting.

The size of the Project will allow for excellent economies of scale to be employed in the management of the orchards, which should minimise the unit costs of production. In addition, the proposed orchards are within approximately 45 km of state of the art almond cracking and packing facilities owned and operated by Select Harvests Limited. The close proximity to these facilities will minimise the transport and double handling costs of field weight product during harvest to the cracker and processed kernel to the packing shed. These facilities are ISO 9002 and HACCP accredited.

Almond production has provided consistent profits to commercial and efficient producers in the industry over many years and has not been subject in the past to boom and bust economic fluctuations. The almond industry is undergoing rapid expansion at present.

## Climate evaluation

The major almond growing areas in the southern and northern hemispheres of the world are located between 35° and 40° latitude. At approximately 34° 50' S latitude the Liparoo site and the Carina site are well positioned for almond production. The area is a Mediterranean semi arid climate, with a mean annual rainfall of 311.2mm (12.25"), which most closely resembles the southern end of the San Joaquin valley in California around Bakersfield, which is one of the largest almond growing areas in the world.

Rainfall is distributed quite evenly throughout the year with approximately 20 to 30mm falling each month of the year. This is important as at critical periods of the year crop losses can occur with high rainfall. Minimal rainfall is required in August during flowering, when pollination of the crop occurs, from mid January when hull split starts to prevent the occurrence of Hull Rot and from late February to late April during the harvest period. With average rainfall in these periods below 29.9mm, there is minimal risk of rain having a significant economic impact on the almond crop in most years. It is possible that when the highest monthly rainfall is received in these critical months, that some crop loss could occur, however there are management practices, which can mitigate any potential losses in high rainfall situations. Select Harvests Limited is aware of such practices and does employ them. In recent history when large rainfall events have occurred during critical times of the crop cycle, these events have not resulted in significant economic losses. Select Harvests Limited will need to ensure it maintains a modern fleet of harvest equipment of sufficient size when the trees are producing, to minimise the risk of crop loss in years of early and high rainfall.

During August when almonds flower, bees are used to cross-pollinate the crop. Bee flight as well as the physiological processes of dehiscence (pollen shedding), pollen germination and pollen tube growth, all have minimum, maximum and optimum temperature ranges to occur. All these processes are critical to good nut

set. With a mean daily maximum temperature for August of 17.3°C the temperature during August is high enough to allow all these processes to occur within the optimal range. During harvest drying temperatures in excess of 20°C are required. This is to allow the kernel to dry in the field to not more than 6.5% prior to being harvested. Mean daily maximum temperatures for the months of harvest, which are February, March and April, are, 32.1°C, 28.8°C and 23.5°C respectively. These temperatures ensure that there will be sufficient drying time available during the harvest period at the proposed sites. Should rain at harvest become a risk to full nut recovery, continuous dryers can be installed ahead of the cracking plant to dry field weight product prior to cracking.

Bee flight is restricted when wind speed below tree level is above 24 km/hour. Mildura weather data suggests that wind speed during the month of August would be lower than at any other time of the year with the exception of the months of April and May. Crop pollination due to reduced bee flight is not likely to be effected by wind speed in the Robinvale district.

Winds can gust to significant speeds in the spring period of between 100 and 139 km/hour. High winds at this time of the year can bend and break soft rapidly growing wood in the first two to three years of tree growth. The integrity of new wood needs to be managed carefully through pruning and fertiliser management, to avoid the need to tie the trees. Tying trees in response to wind damage is not a practical solution on large developments. Healthy mature almond trees and nuts are not affected to any degree by high winds. Select Harvests Limited is aware of the potential for wind damage in young trees and would adopt appropriate practices to minimise any damage by wind in young orchards.

Frost and hail damage pose the most serious risk of all climatic factors to profitability at the location chosen for this almond development. Frosts are most likely and more severe in low lying areas where cold air accumulates. Areas, which have been assessed as high frost risk in the development, have been excluded. The critical period for frost risk is from August to late October. During this period the mean number of days in which temperatures are below 2 degrees Celsius (and nuts are possibly at risk of frost damage if the temperature is less than or equal to zero) for Euston is 6.7 days. These frosts can vary in severity. In the last five years there has been one year in which significant frost damage was incurred by almond trees in the Robinvale district. This damage was confined to the low lying areas of orchards, where in past years the almonds had been planted fence line to fence line, with no consideration to the impact of frost on production. There could be some years during the life of the development when the occurrence of frosts will reduce yield in that year, however frosts are not likely to be economically significant in most years and therefore over the life of the development. Frost tends to affect the nut and not the tree. The risk of frost damage has been minimised by excluding from planting low-lying areas.

Hail damage in the region is less prevalent than frost damage, but significant damage to an almond crop can be incurred if the hail is large. As with frosts, hail affects the nut rather than the tree. The crop is at risk of hail damage during the same months it is at risk from frost damage. During this period however the mean number of days at Mildura in which hail occurs is 0.4 days. Hail in the district tends to fall in bands rather than blanket coverage, which means that when infrequent hail events do occur only isolated damage results. There is a reasonable probability that damage to orchards would be localised rather than general. From local knowledge it has been determined that in the last twenty years there has only been one incidence of severe hail damage in the Robinvale district, which occurred in late October 1999. On this occasion an almond orchard close to the proposed development, which is 174 hectares in area, incurred significant crop loss on approximately 40 hectares; no losses were experienced on the remaining plantations of 591 hectares of almonds in the district owned by the same operator.

#### Soil suitability evaluation

Almonds are most productive on loam textured, deep, uniform soils. Loam soils are preferable to sandy soils because they are inherently more fertile and retain more moisture, allowing for more manageable irrigation. They are also preferable to clay loam or clay soils because drainage and aeration are much better in loam soils than in finer textured soils. Most orchards do not have uniform soils and the Liparoo and Carina sites are therefore not unusual in that the properties have been separated into five and four soil units respectively.

#### Liparoo site

Topsoil textures range from sand to sandy clay loam across the property. Dune formations on the property have deep sand and sandy loam profiles in them. Swales and shallower soil types scattered across the property with 20 to 40 cm of topsoil, which is common in the area, consist of heavier textured light sandy clay, to, clay loam soils. The most predominate carbonate (limestone) layers found were Class 1 and Class 111A. Class 1 carbonates are fine soil carbonate in clay with few if any calcrete fragments present. Class 111A carbonates are compact mixtures of loamy sand to light sandy clay loam with fine soil carbonate. Class 1 carbonates are classified as restrictive to root growth and usually indicate poor

drainage and therefore have been excluded from development. Class 111A carbonates present only slight restrictions to drainage and almond root growth, provided they have at least 55cm of topsoil above them. An inspection of almond root growth into carbonate layers at Kyndalyn Park Pty. Ltd. in existing orchards, concluded that almond roots were growing into all classes of carbonate and almond performance cannot be characterised by carbonate layer classifications; while encouraging, these conclusions were not made based on scientific trials and therefore can only be considered as anecdotal.

The shallow Class 1 carbonate soils in the low lying areas and the occurrence of Blanchetown Clay in the depressions represent the major drainage hazards. Compacted soil layers have been identified on approximately twenty percent of the area of the property, with most of these layers occurring at a depth of less than 80 cm. The compacted soil layers could restrict root development and as they are so close to the surface this is significant. These restrictive layers have been ripped to ensure root development can occur without impediment. Over watering the more elevated areas could result in lower lying areas collecting water and becoming water logged. Based on these findings, 8% of the available area for planting has been excluded, 22% required other amelioration prior to planting apart from ripping. The remaining 70% was planted in accordance with specific recommendations. Trenching and mixing of soil on the contour around the mid slopes in the south west corner of the property was performed to intercept excess water from the higher land before it reaches the lower areas; it is important to realise this water may not be surplus irrigation water, but catchment water from winter rains. All tree rows were cultivated to a depth of 40 cm. Twenty percent of the property was ripped using a multi tyne ripper between 60 and 100 cm.

Chemical analysis has indicated that the pH of the soil surface is generally moderately acidic (pH 6.4) to moderately alkaline (pH 7.7). These pH values are within acceptable limits for almond production. As high amounts of nitrogenous fertiliser will be used to grow the almonds, it has been recommended that annual soil tests be done across all soil types on the property, to ensure the soils are not acidifying with time. Boron levels where they were assessed to be high within the planting area have been marked on the "Irrigation Management Units Plan". In accordance with recommendations most of the high boron sites were not planted.

In the soil types recommended for planting, the soil moisture holding capacities in the predicted root zone for almonds ranges from medium (30mm to 60mm) to high (> 60mm). This means these soils will provide in moderately hot weather probably between three and five days of soil water reserves, which is sufficient to allow efficient irrigation scheduling to be done. Irrigation blocks have been designed as close as is practical to group soils with similar moisture holding capacity, to ensure management can irrigate the orchard efficiently and professionally. Where soil changes do occur in the irrigation blocks, compensation has been made in the irrigation design.

Soil salinity levels in recommended planting areas, in the potential root zones of the almond trees, are within acceptable limits and should not significantly affect the development.

Overall, the soils in the areas planted, are suitable for growing commercial crops of almonds.

#### Carina site

There are a number of similarities between the Carina site and the Liparoo site. The major difference between the sites is the total area of land available for planting. Only 51.6% of the Carina site has been planted compared with 89% of the Liparoo site. The reason for this difference is that the Carina site has a higher incidence of shallow topsoils, that is less than 40cm. Topsoils this shallow have insufficient depth over Class 1 and Class 111A carbonate and clay layers for satisfactory almond growth and have therefore been excluded from development. Overall, the soils in the planted areas, with the appropriate amelioration are suitable for growing commercial crops of almonds.

#### Water supply

Water to the Project will be supplied from the Murray River. At the Liparoo site the mainline length will be up to 5 kilometres from the river pump at the furthest point. At the Carina site water will be supplied through a series of mainlines approximately 7 km from the river. The distance water is being pumped is reasonable given the size of the Liparoo development and the fact that the Carina site is an extension of an existing almond orchard development of approximately 772 hectares. A review of the almond water budget developed by the orchard manager, Select Harvests Limited, from year 1 through to year 6, appears appropriate with approximately 3.0 mega litres per hectare budgeted in year 1 through to 12.5 mega litres per hectare from year 6 onwards. Periods of hot weather could affect the water budget, which would mean additional water would need to be purchased or temporarily leased during a season.

The water supply salinity in the area of the developments is well below any reading that would be detrimental to almonds. At the town of Euston, which is immediately downstream of Robinvale, the EC (Micro Siemens per centimetre) concentration of the Murray River ranges between 150EC (96ppm) and 300EC (192ppm) at varying times of the year.

### **Orchard establishment and operational review**

#### **Orchard geometry and varieties**

The varieties selected for the Project are Non Pareil, Carmel and Price. Non Pareil represents 50% of the orchard, while Carmel and Price are termed pollinators, occupying 33% and 17% respectively of the orchard. All three varieties pollinate one another. Non Pareil is the most widely grown almond variety in the world because of its consistently high productivity and high market demand as kernel and inshell. Carmel is the second most popular variety worldwide at present with significant areas planted. Carmel is sold as kernel, manufacturing product and to a lesser extent inshell. Price is a minor pollinator but within this group is significant. The orchard development will be planted 1:1, pollinator to main variety, which is the acknowledged industry standard when planting an almond orchard. Carmel will be planted every other row alternating with Non Pareil, except for every sixth row, which will be Price.

Trees have been planted 7.25m between the rows and 5.5m down the row. This spacing will allow orchard machinery to travel down the rows without damaging the crop. This planting pattern gives approximately 247 trees per hectare, which is a reasonable compromise between having sufficient tree density in the orchard to achieve early yields, while ensuring there is enough space for individual trees to grow without overcrowding.

Carmel is a good pollinator for Non Pareil and is highly productive when young, but its yields may decline along with tree vigour over time. Price blooms within a day of Non Pareil and therefore is a good pollinator, however it has a tendency toward significant biennial bearing if not properly managed. The close blooming dates of Non Pareil, Carmel and Price and proximity of all varieties in the orchard will ensure the best opportunity for good pollination and nut set each year. Our understanding is that Select Harvests Limited has the technical knowledge and skills to appropriately manage these situations.

Price can be harvested within fourteen days of Non Pareil and Carmel harvests within twenty one days of Non Pareil. This spread of harvest dates assists with the orderly progress of harvest and reduces the likelihood of different varieties being mixed in the orchard during harvest. Providing harvest progresses efficiently, Carmel, the latest harvesting variety would be harvested by mid April each year, minimising the risk of crop losses due to opening rainfall events.

The choice of varieties is commercially sound from a marketing and production perspective. Many new American varieties have been released from quarantine in 2000 such as: Wood Colony, Livingston, Butte, Padre, Sonora and Monterey, which still have to be commercially evaluated in Australia.

#### **Irrigation system and fertigation design**

The orchard is irrigated with a drip system. Drip systems are very efficient in the way they apply water, which reduces the initial capital investment for installation and water purchases and the level of recurring pumping costs during the economic life of the orchard. The disadvantage of drip irrigation systems is that they only wet a percentage of the available soil volume that roots could occupy and therefore the tree has limited reserves of soil moisture. Therefore the system needs to be able to monitor soil moisture accurately and allow management to be able to apply water and fertiliser in a precise and timely manner. We have been given to understand that this will be done through the installation of constant data logging capacitance probes, radio linked to a personal computer. To achieve optimum tree growth rates and yields, soil moisture needs to be maintained within strict limits. Constant data logging monitoring systems allow regular readings to be taken throughout the day, at various depths in the root zone. Response time to soil moisture deficits can be fast with this equipment. The weather station to be established on site will enable with time even more accurate irrigation scheduling and possibly more precisely timed cultural practices, such as overhead spraying. The timing and scheduling of irrigations will be done by using programmable controllers.

Water is applied to the trees using two poly drip laterals with one lateral on each side of the tree row. Dripper outputs will vary from 1.6 litres per hour to 2.3 litres per hour and the drippers will be spaced from 0.4m to 0.75m along the lateral. This range of dripper outputs and spacings allows the system to apply water according to soil infiltration rates, drainage characteristics and moisture holding capacity. In addition, together with the use of two dripper lines per row, these system design parameters will enable a sufficiently large wetted soil volume to be maintained around each tree, to meet the daily water requirements of the tree. Primary and secondary filtration maintenance and regular system flushing will have to be maintained to ensure dripper outputs do not decrease with time, especially in areas where 1.6 litres per hour drippers are used. Lateral pressure

will be maintained at a minimum of 14 psi across the orchard, which will be adequate to maintain dripper outputs and should be sufficient to enable adequate flushing volumes to clean the laterals.

The design application rate for the system is a maximum of 10.8mm/day. The average maximum Mean Daily Pan Evaporation for the area is 10.4mm/day. Trees experiencing very high temperatures, for example in the upper thirties or forties, could extract at least 15mm/day of water from the soil, especially if the prevailing winds at the time are strong. With soil moisture reserves in the root zone of at least 30mm in areas planted, a buffer of at least two days exists before moisture stress develops in the trees. Some modern irrigation systems are designed to be able to apply 12mm/day as a minimum application rate, which gives a little more control in hot weather. However providing irrigation cycling is well managed, the system designed should ensure no trees would be subject to economic losses caused by moisture stress, other than during prolonged days of extreme evapotranspiration. The irrigation dam has been designed to hold two and a half days supply to the orchard. This would provide sufficient time to allow emergency repairs to the irrigation system to be done, in the event that the water supply was totally stopped (e.g. a burst main line, pump or motor failure). To ensure repairs could be completed in this time frame, it would be prudent to have contingency plans in place (i.e. spare main line pipe, joiners, dam and river motors and pumps etc.).

Fertigation of large areas of drip irrigated orchards needs to be done efficiently, accurately and evenly across the orchard. This is important to help ensure trees grow well and evenly and the labour costs associated with fertigation are minimised. We recommend that at the time of commissioning of the fertigation system, independent tests be undertaken to verify that satisfactory dissolution of fertiliser at the pump station and the accurate and even distribution of fertiliser in the orchards can be achieved by the fertigation system installed. After discussion with the irrigation designers, we are satisfied that testing of the fertigation system will be carried out as above.

The average irrigation block is 12 hectares in area, which given the area to be managed is a reasonable compromise between keeping the number of irrigation valves in the orchard to within manageable limits, while still maintaining block units of manageable size. Each irrigation block can water Non Pareil and pollinating varieties separately, which is very important in the management of tree health during harvest. The irrigation blocks have been grouped within uniform soil types according to their different infiltration rates, water holding capacities and drainage characteristics. Where small areas of difference in soil types cannot be excluded in irrigation blocks, compensation has been made in the irrigation design to take account of these differences within practical limits.

#### **Orchard yields**

In the 2000 Select Harvests Limited Annual Report, the orchard manager Select Harvests Limited, reported that total production from its orchards was 2,250 tonnes, slightly down from its record 1999 harvest of 2,280 tonnes but well above the 1998 crop reported of 1,950 tonnes. After adjusting for non bearing and low bearing orchards due to old age, we believe these production figures represent 1.29 metric tonnes per acre in 2000 and 1.30 metric tonnes per acre in 1999. The maximum yield assumed for the Project is 3,460 kg per hectare (1.4 metric tonnes per acre) in year seven. Given the orchard manager's recent performances, which included approximately 93 hectares of low yielding trees, of around 3.2 tonnes per hectare, it is reasonable to assume that over the next seven years production could be increased by 8% to the estimated yield of 3,460 kilograms per hectare or higher.

During a site visit it was observed that trees planted at the Liparoo and Carina site varied in size. To manage this variability trees have been planted in blocks according to there size. In the sandy soils trees among the largest in size have been planted to help offset the predictable slower growth rate on these soil types. Given this tree variability the orchard manager will be required to manage areas with smaller tree size closely if early yield estimates are to be realised. Growth rates of all trees will need to be carefully monitored, recorded and reported, on at least a monthly basis, to enable timely corrective action to be taken should trees not be making sufficient growth to realise early yield estimates. The orchard manager is aware of these issues and reporting requirements and we believe has the capability to manage them appropriately.

The early yields indicated for the Project, have not previously been achieved by the orchard manager in their young orchards. The experience gained by the orchard manager since these young orchards were planted, the very high quality irrigation system being installed, the timely planting of the orchard and the detailed soil amelioration being done in this Project, will all significantly contribute to the attainment of the projected early yields. Taking these factors into account as well as yield estimates provided for three and four year old trees from Select Harvests Limited 2001 harvest and cracking records and these trees' management history, it is reasonable to assume that, although challenging, the orchard manager could achieve the early production assumptions used for the 2002 Timbercorp Almond Project.



The production figures presented in the 2002 Timbercorp Almond Prospectus reflect long term averages, which will be subject to annual fluctuations due to climatic factors and the effects of biennial bearing.

In December 2000 the Australian Almond Growers Association approved in principle an Almond Best Practice Management Demonstration Trial. The trial has been established and aims to develop data, which will provide the basis for the management and economic modelling for optimum economic performance in Australian almond orchards in six years time. To achieve this, crop and tree development during critical stages of the growth cycle will be analysed against various replicated inputs of nutrients, irrigation and pruning. It is planned to run the trial over 5 to 6 years. Assuming the outcomes of the trial are favourable, it could be expected the trial will

assist in achieving future almond yield and profitability targets within the time frames stated in the 2002 Timbercorp Almond Project Prospectus.

One factor, which will have a significant influence upon the achievement of the early yield forecasts in the Project, is weed control. It will be necessary that a policy of zero weed tolerance be in place during the first few years of tree growth. Just a few weeds near a tree rob the young tree of essential water and nutrients and severely inhibit young tree growth rates. If the tree makes insufficient growth in the first few years in the orchard, the achievement of early forecast Project yields would be unlikely. The management team at Select Harvests is aware of the capability of weeds to reduce early tree growth and the subsequent impact on yields and has the knowledge to take appropriate measures to control orchard weed populations.

#### **Orchard management**

The orchard manager Select Harvests Limited, has currently approximately 2,680 hectares of almonds under management (including 1,134 hectares established by Almond Land by June 2001). Of the 2,680 hectares of almond orchards approximately 1,915 hectares are four years old or less. Over the last five years Select Harvests Limited's Horticultural Division has established an ability to perform consistently to world-class industry standards in almond production. As such the orchard manager Select Harvests Limited brings considerable experience to the operational and technical management of the Project. This experience has been clearly demonstrated with the timely and successful establishment to a high standard of approximately 1,140 hectares of the new Timbercorp orchards at Liparoo and Carina sites in 2001.

Resourcing the new development with suitably qualified personnel will need to happen progressively using internal expertise to train and support staff. In addition it will be essential to support internal operational and training programs with external professional advice. It would be of assistance to the orchard manager and the future success of the Project if communication channels are established with other large horticultural enterprises nationally and internationally. In addition the technical base to the existing orchard management structure and the strong projected performance of the Project would be further enhanced with the establishment of a scientific support group that conducted trial work on site, specific to the needs of the project. The strategy to introduce a new layer of management at the level of specialist supervisor's at the Liparoo and Carina sites to support farm managers is an important initiative. This new level of management will increase the depth of technical capability in the orchard manager's organisational structure and contribute significantly to ensuring compliance with, and timely implementation of, the orchard operational plan.

The development of close associations with Industry Research and Development Committees and the peak industry body, the Australian Almond Growers Association, are encouraged. These associations will ensure the project managers can contribute to and take a leadership role in the future development of research and development programs in the Australian Almond Industry and take timely advantage of the newest technology available to the industry.

These approaches to ensuring that adequate and appropriate human resources are engaged in the Project and that technology transfer from external sources occurs in a timely manner, will be needed to ensure a high standard of project performance now and in the future.

From discussions with various members of the Project management team we believe these issues will be properly addressed.

#### **Sandy Rises and Ridges**

Liparoo has several areas of exposed or steeply sloping light sandy soils. Where the slopes of these sandy ridges have been deemed to steep for orchard vehicles to negotiate them satisfactorily, the tops of the ridges have been pushed down the ridge face to reduce their gradient to an acceptable incline. This process, together with the preparation of the soil in these areas for planting, produces large quantities of deep loose sand. Loose sand can be picked up during periods of high wind activity. The combination of loose sand and strong winds can cause

severe sand blasting of young trees. In addition, wind action can erode the lighter sandy soil from around tree roots exposing them to the elements. Both these events can cause poor early tree growth and even death. It is therefore recommended that the high-risk sandy areas be planted to cover crops and mulched as required to minimise the risk of sand drift and its effects. We are satisfied that the orchard manager has the capacity to manage this issue and will take appropriate action to prevent injury to young trees from these sources.

#### **Risks**

In the Robinvale district there are a number of very large mature almond orchards, which are high yielding. The location for the Project therefore has been well selected and has the potential to do very well. The soil analysis has identified areas to be planted and excluded which has minimised the risk of tree and production losses associated with poor soil types. The professionally designed irrigation system will ensure the trees can be supplied with sufficient water to produce commercial yields under most climatic conditions. The decision to contract Select Harvests Limited to be the orchard manager and marketer for the Project, brings considerable experience and expertise to areas of the Project that will be critical to its success. While local climatic conditions and overseas price fluctuations could have an impact on the profitability of the Project from one year to the next, it is not envisaged that these factors will have an extreme impact over the life of the Project. A focus on internal training, ensuring a planned approach to human resourcing is adopted and the engagement of appropriate external expertise at regular intervals, will be valuable in assisting the orchard manager to realise Project targets.

#### **Report Summary**

The Australian almond industry is in a growth phase of its development. This growth is underpinned by the success of the leadership within the industry in the research, production, processing and marketing segments. The Liparoo and Carina orchard locations are climatically well suited to almond production. The water supply to the orchards is secure and of high quality. Soils have been evaluated for their suitability and any unsuitable areas have been excluded from planting. Areas, which required amelioration prior to planting, have been treated as per the soil survey recommendations. An irrigation system required for high and efficient almond production has been installed. The topography of the sites has been reviewed to exclude high frost risk areas. Varieties selected represent a good balance between horticultural and marketing requirements, which have the potential to produce world-class yields of high quality kernel. Consistent demand has existed for almonds nationally and internationally for many years and given the health benefits of almonds and the diversified range of uses for the product, it is reasonable to assume this situation will continue into the foreseeable future. Fluctuations in returns in response to world supply can be expected, however the trend for almond prices with time is upward. Production will vary from long term Prospectus projections with the occurrence of biennial crops and climatic events. There is a focused research and development commitment in the industry toward variety improvement through selection and importation and profit maximisation through understanding how best to manage inputs and production.

It would be anticipated that with the experienced and high quality management being engaged, the 2002 Timbercorp Almond Project has excellent prospects of success.

Horticultural Development Services Pty. Ltd.

Graham Johns

# 13 Independent Price Analysis Expert's Report

## Introduction

This independent price analysis report has been prepared for inclusion in the prospectus for the 2002 Timbercorp Almond Project ('Project'). David Neve & Associates has prepared a more detailed report for Timbercorp Securities Limited ('Timbercorp') relating to almond prices. This short report has been included in the Prospectus for reference and forms the executive summary of the more detailed report.

The author, David Neve, has been practising as a Rural Consultant for 14 years and is a Certified Practising Agriculturalist (CpAg) with the Australian Association of Agricultural Consultants (AAAC). His qualifications include a Bachelor of Business (Ag) and Bachelor of Commerce. He has prepared feasibility studies/strategic reviews on several agricultural commodities such as dairy, broad acre irrigation under centre pivots, wildflowers and benchmarking best practice both in Western Australia and the Eastern states during a period based in Albury NSW.

This report contains the independent opinion of David Neve & Associates in respect of almond prices as they apply to the Project. It refers to the more detailed report and does not replace it. Prospective investors should read the detailed report in its entirety. Nothing in either this report or the detailed report should be relied upon by investors as a promise by David Neve and Associates as to the future volumes and prices for almonds. Prospective investors are advised that actual results may differ from what is contained in these documents, as actual events may not occur as expected and the variation may be significant.

The author has been informed that Timbercorp proposes to make the detailed report available for review on its website.

David Neve & Associates has no responsibility to update this executive summary or the detailed report for events and circumstances occurring after the date of this report. These documents contain information from both Timbercorp and independent sources.

## Pricing Australian Almonds

Australia now produces enough almonds to meet its domestic demand. This means that any production in excess of domestic consumption is and will continue to be sold on the export market. Both the export and domestic price is largely determined by the United States (US), which is responsible for about 75% of the world's total production.

The following factors/steps need to be considered in order to price Australian almonds:

- Crop disposition by variety, size and grade. There are premiums/discounts that apply and it is important to calculate a weighted average price for the orchard on which the Project will be carried out.
- The proportion sold on the domestic and export markets with the former having a premium that theoretically should equal parity price. At present the ratio of sales is approximately 60% domestic and 40% export.
- Converting US\$/lb prices to A\$/kg and weighting the price for (i) and (ii) above.

Potential investors should review the example in the detailed report to familiarise themselves with how to apply the above.

Specific historical price data for Australian almonds is not readily available from Australian companies or the Australian Almond Association due to its commercial sensitivity. This makes it impossible to directly compare Australian and US prices to determine whether or not Australian almonds attract a higher average price due to what is claimed to be a superior product. The Australian Bureau of Statistics and the Almond Growers Association maintain records but the price is a mixture of almonds sold in kernels, in shell, blanched or partly processed, which distorts these data sources considerably.

Based on information provided by Timbercorp and discussions with various Australian almond industry participants, the following premiums have been identified but not verified by actual historical data:

Non Pareil Premium  
Size Premium

US\$/lb  
5-25c/lb  
2c/lb per grade

## Parity Price premiums on domestic sales:

Import duty	5%
Freight to Australia	6c/lb
Insurance	0.5%
Landing (10c/kg)	3c/lb
Finance	2%

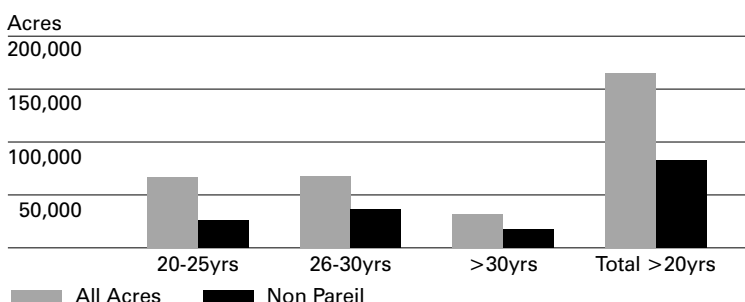
Based on the above, the premium for domestic sales equates to about US\$0.13/lb or 7.4% above the US\$/lb figures. This estimate takes into consideration points (i) to (iii) above.

## Overview of Californian Almond Industry

California produces approximately 75% of the world's almonds. At the date of this report, the Californian almond industry was faced with the following:

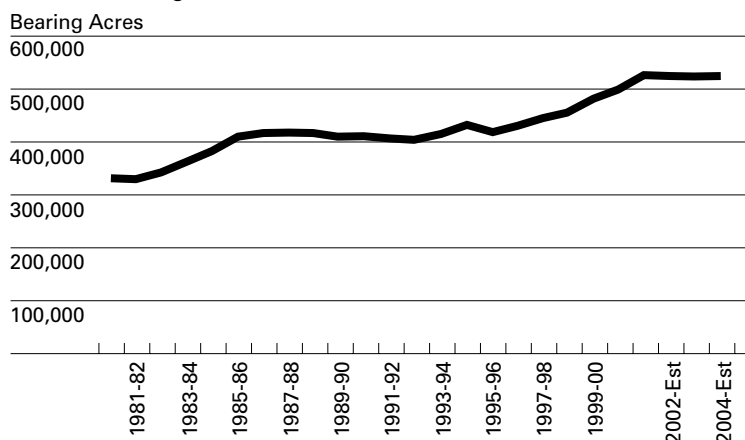
- Approximately 30% (166,000) of the total bearing acres (525,000 acres) are over 20 years old. This has resulted from low "removal" rates in the past and poses a problem for the Californian industry in the future because the theoretical optimum bearing age for a tree is 25 years. Production from the orchards older than 20 years is declining and will need removing.

## Dissection Acres Greater than 20 Years



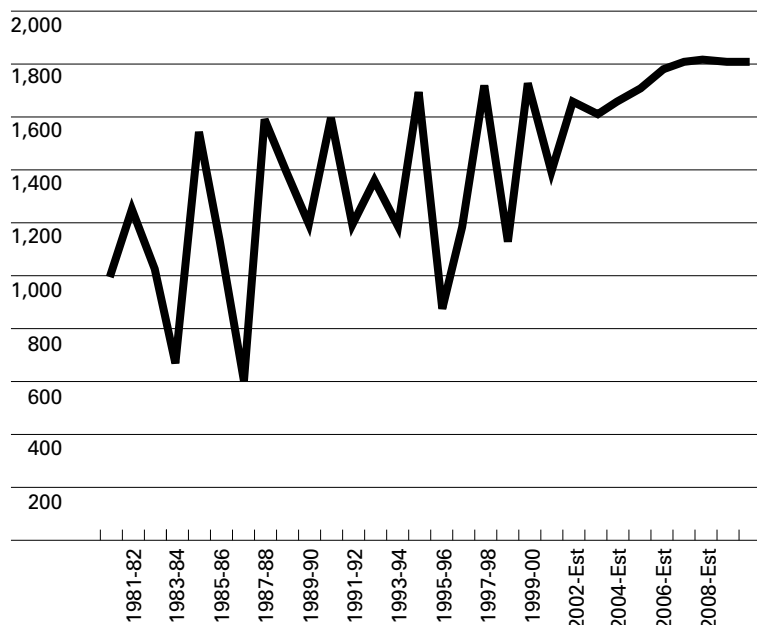
- Blue Diamond Growers, the largest almond growers cooperative in the US, predicts that the acreage age and depressed returns to growers as a result of historically low prices and increased production costs, may see removal rates exceed new acres coming into production in the next few years, which will result in bearing acres plateauing at 525,000 acres.

## California Bearing Acres

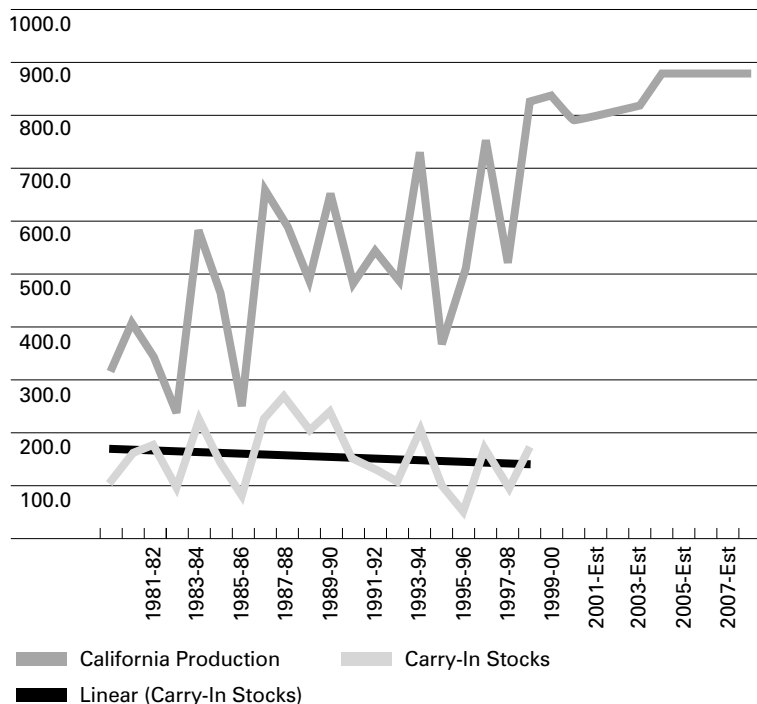


- (iii) Blue Diamond Growers also predicts both Californian production and almond yield per bearing acre will increase for the next few years (to approximately 2005) as new plantings from the late 1990's come into production, prior to plateauing or even declining. The contributing factors to the plateauing are the predicted reduced plantings over the next few years and the lower yields that may occur as acreage age continues to increase.

**California Almond Yield per Bearing Acre**  
lbs/acre

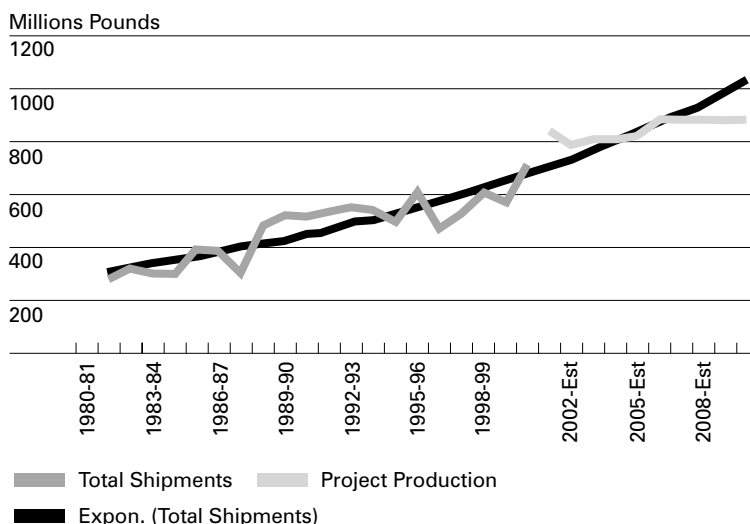


**California Almond Production and Carry-In**  
lbs/acre



- (iv) Carry-in stocks of saleable almonds are maintained in California due to the fluctuations in production from year to year which are caused by climatic events (frost, wind etc) during the blossom period and the bi-annual production of the almond tree. In addition, stocks have not increased with total production, which suggests that California could be left exposed regarding meeting market demand in poor seasons similar to that, which occurred in the mid 1990's. By contrast, it should be noted that Australia has a history of stable almond production, due to less climatic variation.
- (v) Blue Diamond Growers have indicated that all of the above could see total shipments not being met by projected production by the latter half of this decade assuming California does not suffer seasonal disasters. In contrast, consumption (illustrated as total shipments) of Californian almonds has increased at a compound rate of 4.3% p.a. and failing an unprecedented disaster, this rate is expected to be maintained or increased.

**Californian Total Shipments, Projected Production and Shipment Trend**



- (vi) The composition of almond varieties in California have seen the Non-Pareil variety (which is the preferred table almond and which the author understands is the main cultivar used for the Project) reduced from a peak of 63% of the total Californian crop in 1984 to only 39% in 1999/00. Consequently Blue Diamond believes that this trend will result in existing market premiums for the Non-Pareil variety continuing in the future. In addition, the level of new plantings that are Non-Pareil has fallen to the lowest levels since published Almanac records start in the early 1970's with only 34% of total new plantings in 2000/01. Consequently the age of the Non-Pareil acreage is increasing; currently 53% are older than 20 years, which will put further pressure on future Non-Pareil production levels.

#### Factors That Impact Almond Prices

The base price in the analysis has been calculated using both the prices published in the 2000/01 Almond Almanac, published annually by the Californian Almond Board, and a data sample of specific almond grades. Price data from the above was sourced over a twenty one-year period 1980/81 to 2000/01 and converted to real dollars.

Discussions with Australian industry sources have highlighted that the base figure may be conservative given unsubstantiated claims that Australian almonds comprise of a higher proportion of the higher priced grades. For example, claims were made that the US have a higher proportion of "standards" which comprise of cracked, chipped etc. Subsequent discussions with some US handlers confirmed that although no-one had specific data they felt that "standards" made up anything from 10-12% and 20-25% of the total Californian crop. In addition, handlers sited the newer and higher yielding hard seeded varieties could have an impact on the



quantity of "standards" in the future because they were making up a greater proportion of current plantings and were more susceptible to damage during grading due to their hard seed.

Factors that have affected this price series included but are not limited to:

US CPI	Carry-in stocks
Exchange rates	Shipment levels (domestic and export)
Climatic conditions	Bearing acres
Yield per acre (lbs/acre)	Non-bearing acres
Total production (millions pounds)	Total supply

The first three factors were excluded from a total of 16 variables that were "measured" against the past 20 years prices, converted to 1999/00 US\$/lb, to determine which variables had the greatest impact on price variability over the period.

The analysis revealed that Total Supply, Exports and Non-bearing acres (<3 years old) equated for 75% of the variation in the real price of almonds over the period 1980/81 to 1999/00. The model was tested by using the data for these three variables over the period to calculate a "model price" that was graphed against actual real prices for the same period.

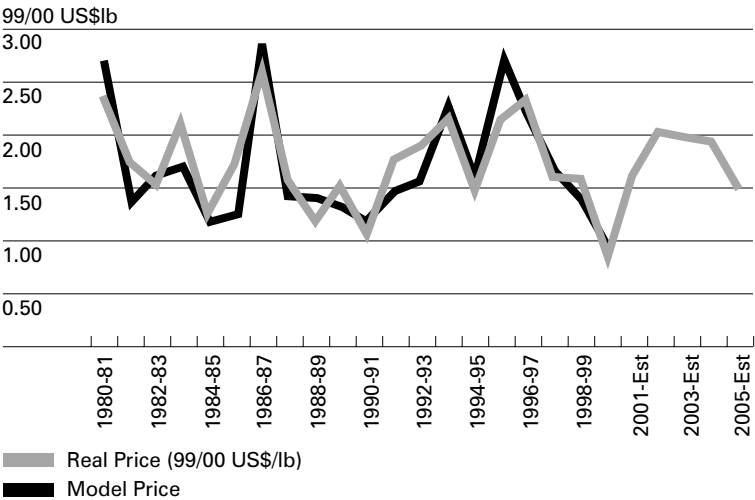
The graphical result was that the model price almost "overlayed" the actual real price, hence demonstrating the "robustness" of the model.

Future Prices

Price forecasting is an inexact science, as actual events may not unfold exactly as predicted. Therefore the following can only be used as a guide.

Using data from Blue Diamond Growers, future projections and past trends for total supply, exports and non-bearing acres were calculated and entered into the model to project prices.

Actual Real Prices (99/00 US\$/lb) vs Model Price (US\$/lb) - 1980/81 to 1999/00 With Estimate to 2005



The result was a price of US\$1.77/lb, which equated to an Australian equivalent real price of \$6.76/kg (using an exchange rate of 62.5 cents). Timbercorp informed the author that it has obtained advice from an independent economist that over the next 20 years, the average exchange rate is likely to be in the range of 60-65 cents. The Australian real price has been adjusted to include premiums for variety, size, grade and proportion sold domestically. It must be emphasised that climatic events/impacts could have a significant impact on the variables but has not been included in the model.

Examples of how movements in total supply, exports and non-bearing acres will impact on price are as follows:

- (i) If the number of non-bearing acres (acres less than 3 years old) is reduced, there will be an upward pressure on the almond price due to the expected future reduction or levelling of total supply. Conversely, if the number of non-bearing acres (acres less than 3 years old) is increased, the market will expect total supplies to increase in the future and hence lower prices will follow.
- (ii) In 1995/96, the actual real price rose to US\$2.68/lb due to a very poor season in the US where total production fell to 366.7 million pounds.
- (iii) If export levels increase as a proportion of total Californian supply, the price would increase, as US domestic demand would not be met. It is possible that if the price rise were too great, US consumers may seek substitute products.
- (iv) In 1999/00, the actual price fell to US\$0.87/lb due to a record supply of 830 million pounds that was caused by high plantings in 1994 to 1998.

Conclusion

Based on an assessment of the information available it is reasonable to assume that the real average price for almonds over the next 20 years will be between A\$6.65/kg to A\$6.95/kg, or for the purpose of forecasting returns, a real average price of A\$6.80/kg. It is also reasonable to assume that the price of almonds will track inflation, which Timbercorp has estimated at 2.5% p.a over the term of the Project. The author has been informed that Timbercorp's CPI estimate is based on a report commissioned from an independent economist. However, prospective investors should note that based on price variances over the past 20 years, it is quite possible that at any given time, actual prices may vary considerably from the stated range.

Note:

This report has been prepared for the express use of Timbercorp Securities Limited using information supplied from both Timbercorp and independent sources. The content of this report does not constitute advice and to the extent permitted by law, all responsibility to third parties is disclaimed. Prospective investors should seek independent professional advice prior to investing in the project.

David Neve  
Principal  
David Neve & Associates  
Agricultural and Management Consultants

6 March 2002

# 14 Lawyers' Report



7 March 2002

The Directors  
Timbercorp Securities Limited  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

Dear Sirs,

**2002 Timbercorp Almond Project**

This letter has been prepared for inclusion in a prospectus to be issued by Timbercorp Securities Limited for the offer to cultivate and manage up to 500 hectares of almond orchards, with an option to accept oversubscriptions.

In our opinion the summaries of the Constitution and agreements contained in the section of the prospectus titled "Summary of Significant Documents" are not false or misleading, do not have a material omission and contain a representation of the Constitution, the other agreements, the rights, terms and conditions that is fair and accurate.

Yours faithfully

Norm Taylor  
N M Taylor Lawyers

# 15 Summary of Significant Documents

## Introduction

Terms or expressions used in this section that are capitalised and are not defined elsewhere in this prospectus have the same meaning as in the relevant document unless the context implies the contrary.

## The Constitution

The 2002 Timbercorp Almond Project has been registered as a managed investment scheme under the Corporations Act. The Constitution establishing the Project is between us as Responsible Entity and each several Grower. The Constitution is a legally enforceable deed.

Important features of the Constitution and of the Corporations Act now follow. Figures in square brackets are references to clause numbers in the Constitution.

### 1 Appointment of Responsible Entity as agent, attorney and representative

Under the Constitution, each Grower (either alone or jointly with or in association with one or more other persons) appoints the Responsible Entity as its agent, attorney and representative. The Responsible Entity's powers and responsibilities include:

- (a) to receive and hold the Application Moneys;
- (b) to invest the moneys in the Agency Account in any Authorised Investment;
- (c) to use the Application Moneys of a Grower in discharging the Grower's obligations under the Agreements or under the Constitution;
- (d) to prepare reports and accounts in relation to the Orchard Services and in relation to the processing of Crop and the sale of Product or Crop;
- (e) to monitor the performance of all parties to the Project Documents and to exercise all rights and powers of the Grower under any Project Document;
- (f) to execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity;
- (g) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are a part of or relate to or are incidental to the Orchard Services on behalf of a Grower;
- (h) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project; and
- (i) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and to bring legal or arbitration or alternative dispute resolution proceedings and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Grower and relating to any Agreement. [11]

In particular, the Grower authorises the Responsible Entity:

- (a) to store its Participating Interest in the Crop;
- (b) to procure the processing of its Participating Interest in the Crop;
- (c) to enter into any processing agreement as agent and attorney for the Grower; and
- (d) as its agent and attorney, to sell its Participating Interest in the Product or Crop using its reasonable endeavours to seek to maximise returns. [13.3 and 13.4]

Prior to the sale of the Product or Crop, the Responsible Entity may gather in all of the Growers' Product or Crop it may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots. [13.4]

## 2 Rights of Growers

### (a) Limitation of Liability

Except as provided by any express indemnity given by any Grower to the Responsible Entity, the entire liability of each Grower is limited to the balance of the Application Money and the Grower's Participating Interest in the Proceeds and no Grower has any liability to make any further contribution to the Project or payment to the Responsible Entity in respect of the Project, other than the fees payable under the Almondlot Management Agreement and the Licence and Joint Venture Agreement. [24.1] It is not, however, possible to give an absolute assurance that each Grower will be protected from all liability to third parties.

### (b) Information

Each Grower has the right to inspect and copy any document or other information relevant to the activities of the Responsible Entity on its behalf (except for information which is confidential because its disclosure could in the reasonable opinion of the Responsible Entity assist competitors or otherwise prejudice the interests of all Growers), provided that on each occasion on which a Grower seeks to exercise such right the Grower will sign a suitable undertaking to keep confidential the document or other information. [19.1(a)]

### (c) Opinions

Each Grower has the right to express opinions and to give recommendations relating to any matters the subject of the Licence and Joint Venture Agreement and the Almondlot Management Agreement and the Responsible Entity will give due consideration to any such opinions or recommendations received in writing. [19.1(b)]

### (d) Right to Remove Responsible Entity and Auditors

Growers may take action under Part 2G.4 of the Corporations Act for the calling of a meeting of Growers to consider and vote on an extraordinary resolution that Timbercorp Securities should be removed as responsible entity of the Project. The resolution to remove Timbercorp Securities must be decided on a poll and will be passed if at least 50% of the votes cast by Growers entitled to vote on the resolution vote in favour of it. [section 601FM and Part 2G.4 of the Corporations Act].

### (e) Right to Extend Project

The Project may be extended for additional periods not exceeding three (3) years each, as Growers may by Special Resolution agree. [26.2]

### (f) Right to Terminate Project

A meeting of Growers may by Special Resolution terminate the Project at any time by agreement. [26.4]

## 3 Almondlots

### (a) Rights of Growers Differ

Each Grower has rights to a particular Almondlot and in that regard the rights of that Grower differ from the rights of any other Grower.

### (b) Almondlot Statements

Almondlot Statements will be sent by the Responsible Entity to Growers not more than 2 months after the Almondlots are issued and also when next accounting to the Grower after any change in the holding of the Grower. [10.1]

### (c) Transfer or Assignment

No Grower may transfer, encumber or otherwise dispose of its Almondlots unless the Grower transfers, encumbers or disposes of the Almondlots individually to the one legal person (including joint owners) who agrees to become a party to the Constitution and the Agreements. Otherwise, Growers may assign their Almondlots subject to a deed of assignment (set out in the Constitution) being delivered to the Responsible Entity [20.1, 21.1].



#### 4 Provisions Relating to the Receipt of Applications and the Flow of Money

##### (a) Application Moneys and Interest on those Moneys

The Responsible Entity holds all Application Money and any income earned on it as bare trustee for Applicants until Minimum Subscription (if any) is reached. There is no Minimum Subscription. The moneys are held in a special Trust Account kept solely for the purpose and may be pooled with moneys of other Applicants. [4.1, 4.2, 4.3]

On an Applicant becoming a Grower, any interest earned from money in the special Trust Account will be paid to the Responsible Entity as part of its fees. [4.4]

On any refusal by the Responsible Entity of any Application, the Responsible Entity must repay to the Applicant the moneys paid by the Applicant to the extent refused with interest, if any, and without any deduction except for bank fees and government charges. [7.3]

If Minimum Subscription is not reached by the date specified in the Document, the Responsible Entity must within 7 days repay to each Applicant the moneys paid by the Applicant with any interest earned in relation to them and without deduction except for bank fees and government charges. [8.2] It should be noted again that there is no Minimum Subscription specified in this prospectus.

If Application Money is not released in payment of fees under the Licence and Joint Venture Agreement or the Almondlot Management Agreement within 13 months after the date of issue of the prospectus, then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Application Money paid, with interest and without deduction except for bank fees and government charges. [9.3(b)]

##### (b) Application Procedure

Every Applicant must deliver to the Responsible Entity an Application and Power of Attorney Form signed by the Applicant appointing the Custodian or the Responsible Entity to be the Applicant's attorney to enter into the Agreements and, subject to the following paragraph, a cheque as required by the prospectus in payment of the Application Money. [6.3]

If an amount is shown in an Application against the words "LESS amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) agrees to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured. [6.5]

The Responsible Entity may in its absolute discretion, within 15 Business Days after receipt of an Application, notify an Applicant that its Application has been refused, wholly or partly without giving reasons for the refusal. On repayment of the Application Moneys, the Applicant will cease to be an Applicant under the Constitution. [7.1, 7.2, 7.4]

On an Application being accepted in whole or in part, and Minimum Subscription being reached, the Applicant will become a Grower. [8.1] An Application received and not refused is deemed to be accepted immediately on receipt, subject to the Application Money being paid and Minimum Subscription being reached. [8.4]

On acceptance of an Application, the Responsible Entity will prepare the Licence and Joint Venture Agreement and Almondlot Management Agreement in accordance with the details on the Application which will commence from such date as is determined by the Responsible Entity. [9.1]

##### (c) Allotment of Almondlots and Entry into Agreements

At the times specified in the prospectus, the Responsible Entity must:

- immediately allocate Almondlots to the Grower and within 21 days thereafter enter the Grower's details in the Register; and
- either itself or procure the Custodian to enter into the Licence and Joint Venture Agreement and Almondlot Management Agreement and any other ancillary or related documents. [8.7]

##### (d) Release of Application Money

Before release of the Application Money, the Responsible Entity must be reasonably satisfied that:

- the Licence and Joint Venture Agreement, and Almondlot Management Agreement are in the form required by the Constitution and have been

duly entered into by all parties;

- the Land Owner has the capacity to grant the Licence and that all necessary consents to the grant of the Licence and entry into the Agreements;
- the property the subject of the Licence and Joint Venture Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the prospectus;
- any other matter required to be attended to, which is necessary for the creation of the Licence and the effective vesting in the Grower of its Agreements, whether by reason of the Constitution or otherwise, has been attended to; and
- there are no outstanding material breaches of any of the provisions of the Constitution which are detrimental to the interests of the Growers whose Application Money is to be allocated. [9.2]

Within 2 Business Days of the Responsible Entity being satisfied of the above matters, it must release the Application Money and apply it in payment of the fees payable under the Agreements. [9.3.1]

##### (e) Contribution of Further Moneys

Each Grower is required to contribute further moneys to the Responsible Entity on the dates, in the amounts and in the manner set out in the Licence and Joint Venture Agreement and Almondlot Management Agreement. The Responsible Entity will give to each Grower at least one month's prior written notice as to the amount due. [17.1]

##### (f) Payment of Expenses

Subject to the Responsible Entity's right under the Almondlot Management Agreement to a management fee for the estimated costs of operating the Almondlots, the Responsible Entity will be responsible for payment of all expenses relating to the operation and administration of the Project up to the harvest stage. [14.3]

##### (g) Agency Account

The Responsible Entity must keep one or more Agency Accounts for the purpose of recording Proceeds and other moneys held for a Grower, other than Application Money and interest thereon. [12.1] The Agency Account may be interest bearing and any such interest will be treated as Proceeds. [12.3] Moneys held for any of the Growers may be pooled in one or more bank accounts with moneys held for other Growers. [12.4] The Responsible Entity must as the agent for each of the Growers pay moneys pursuant to any obligations on the part of the Grower under the Constitution or under the provisions of the Agreements. [15.1] Expenditure will be shared between all of the Growers such that each Grower pays the Participating Interest (ie. its pro rata share) of the aggregate expenditure. [15.2]

##### (h) Authorised Investments

The Responsible Entity may apply moneys standing in any Agency Account to acquire Authorised Investments. [16.1] Any interest or other income earned from Authorised Investments will be paid to the Responsible Entity as fees. [16.3] Authorised Investments are defined as money, interest bearing deposits at call or for a term not exceeding three months with or without security with any Financial Institution, negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank and deposits in the short term money market. [1.1 Definition of "Authorised Investments"]

##### (i) Payment into Agency Account

The Responsible Entity must pay into the Agency Account proceeds from the sale of Product or Crop attributable to the Growers' Almondlots, proceeds of any insurance policy to which the Growers are entitled to benefit and any other amount properly related to the proceeds from the Growers' Almondlots. [13.6]

##### (j) Grower's Entitlement

A Grower is entitled to the money in Agency Account which represents its Participating Interest in the gross income from the sale of the Product or the Crop, as applicable, for a particular Production Period less

- any fees payable under the Grower's Licence and Joint Venture Agreement;

- any fees payable under the Grower's Almondlot Management Agreement; and
- any other amounts payable by the Grower under the Constitution and the Agreements.

If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments, then the above deductions must be made in the priority in which they are listed. [13.7]

The surplus available to each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Grower. The payment must be made within five (5) months after 30 June each year in which there is a Production Period. [13.7]

## 5 Meetings

Under the Constitution, the Responsible Entity may at any time convene a meeting of Growers and must do so when required to do so by the Corporations Act. [22.1]

Meetings may be convened by Growers in accordance with Part 2G.4 of the Corporations Act.

Meetings of Growers must be called and convened in accordance with the Corporations Act, except that:

- in relation to section 252R of the Corporations Act, no business will be transacted at any meetings of Growers unless a quorum is present when the meeting proceeds to business. The quorum necessary for a meeting at which an Ordinary Resolution is to be proposed is five persons holding or representing by proxy at least ten per cent of the aggregate number of Almondlots issued to the Growers concerned, and for a meeting at which a Special Resolution is to be proposed, is five persons holding or representing by proxy at least twenty-five per cent of the aggregate number of Almondlots issued to the Growers concerned;
- in relation to section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Grower and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual more than once;
- in relation to section 252R(3) of the Corporations Act, a proxy is entitled to speak and vote for a Grower (to the extent allowed by the appointment) even if the Grower is present at the meeting (but only so long as the Grower does not speak or vote, as the case may be);
- in relation to section 252Z(5) of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting;
- in relation to section 253K(2) of the Corporations Act, a poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting;
- in relation to section 253L(2) of the Corporations Act, at a meeting of Growers, a poll may be demanded by at least one Grower concerned holding or representing by proxy at least ten per cent of the aggregate number of Almondlots for the time being on issue to the Growers concerned and entitling the holders to vote on the resolution or the chair. [22.2]

## 6 Liabilities and Indemnities

- Liability of the Responsible Entity

To the extent permitted by the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Grower) arising out of any matter unless, in respect of that matter, it acted both otherwise than in accordance with the Constitution and its duties, and without a belief held in good faith that it was acting in accordance with the Constitution and its duties. [23.1]

In particular, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter, to the extent permitted by the Corporations Act, it relied in good faith on the services of, or

information or advice from, or purporting to be from, any person appointed by the Responsible Entity, it acted as required by Law, it relied in good faith upon any signature, marking or document, or it followed a direction given to it by a resolution passed at a duly convened meeting of Growers. [23.1]

The Responsible Entity may decide how and when to exercise its powers in its absolute discretion. [23.1]

- Indemnity of Responsible Entity

In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.

Such right of indemnity in respect of a matter ("Indemnified Matter") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of the Constitution.

The right of indemnity continues to be available after the Responsible Entity retires or is removed as responsible entity. The Responsible Entity may pay out of the Agency Account any amount for which it is entitled to be indemnified. [23.2]

- Liability and Indemnity of Growers (refer also paragraph 2.1)

The Responsible Entity indemnifies each Grower against all debts and liabilities which may be incurred by the Grower at any time in relation to the Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity. [24.2]

Despite any other provision of the Constitution or provisions deemed to be included in the Constitution, no Grower will, by reason of the Constitution or by reason of the relationship created under the Constitution with the Responsible Entity be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the Almondlots, out of any Application Money of the Grower or other moneys held in the Agency Account in relation to the Grower or the payments required under the Agreements. [24.3]

## 7 Termination of Agreements

If any Agreement is terminated for whatever reason, including failure to pay any further moneys, the parties acknowledge that the Responsible Entity has rights in respect of all Almondlots including rights of access to control pests, weeds, undergrowth or similar alien material, rights to continue to fertilise and irrigate the Almondlots and rights to enter the Almondlots to inspect their condition and the condition of the plant life growing on the Almondlots. [18.3]

If a Grower ceases to participate in the Project due to a breach of any of the Agreements or the Constitution, the Responsible Entity may exercise any of the following rights:

- sue the Grower for any amount or amounts due; [18.4(b)]
- sell the Grower's Almondlots by public auction and apply the proceeds first in payment of fees owing by the Grower to the Responsible Entity and then treat any residue as Proceeds; [18.4]
- pay out of its own funds such fees, expenses, rent, costs or other amounts as may be due by the Grower, and be reimbursed out of the Agency Account in the amount of such fees plus the rate of interest fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) from the time of such payment until the date of reimbursement. [18.5]

## 8 Accounts and Audit

The Responsible Entity will keep such accounting records as correctly record and explain the transactions and financial position of the Project in such a way as will enable true and fair profit and loss accounts and balance sheets to be prepared and conveniently and properly audited. The accounts will be lodged in accordance with the requirements of the Corporations Act.

The Responsible Entity has appointed Deloitte Touche Tohmatsu to be the Auditor of the Project to audit its accounts. The Responsible Entity, with the consent of the Commission, may remove the Auditor. The Auditor's fees are payable by Responsible Entity.

## 9 Complaints Procedure

The Responsible Entity is a member of Financial Industries Complaints Services Limited. The Responsible Entity must appoint an internal complaints officer with authority to review any complaints from Growers in relation to the Project or to the Responsible Entity. His roles and responsibilities include receiving and processing complaints from Growers, reviewing and considering complaints in a timely manner and communicating directly with Growers in relation to complaints. He must also:

- (a) make readily available to Growers information on how, when, where and to whom to make complaints and any documented policies and procedures for the resolution of complaints;
- (b) periodically develop and review the Responsible Entity's policies and procedures for the resolution of complaints, in accordance with Australian Standard AS 4269:1995, Complaints Handling; and
- (c) provide information relating to the Responsible Entity's complaints handling procedures to employees of the Responsible Entity. [25.2]

The Constitution sets out detailed procedures that apply to the receipt and processing of complaints. [25.3] If a complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay. No later than 90 days following the Lodgement Date, the Complaints Officer must notify the complainant of the decision of the Responsible Entity, the reasons for the decision, available remedies and further avenues available. [25.4]

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the complaint, the complainant may refer the complaint to the external complaints resolution scheme for determination. Subject to any right of appeal, the complainant and the Responsible Entity agree to accept the determination of the external complaints resolution scheme as final and binding. If the Responsible Entity is not a member of an external complaints resolution scheme approved by the Commission, the complainant may take any appropriate lawful action. [25.5, 25.6.2]

## 10 Termination of the Project

The Project terminates on the completion by the parties of their obligations under the Constitution and the Agreements. [26.1]

On the termination of the Project, the Responsible Entity must realise all assets for the time being in relation to the Project after paying all proper outgoings and allowing for contingencies. The Responsible Entity must prepare final accounts of the Project and cause the Auditor to audit and report on those accounts. The balance obtained after the sale of all assets must be distributed by the Responsible Entity, as if the balance represented Proceeds payable under the Project Documents, but if the aggregate amount to be distributed is less than \$1,000, Indexed from 30 June 2002, then at the discretion of the Responsible Entity, the amount will be either distributed to Growers or donated to the Salvation Army of Victoria. [26.5]

On so distributing, the Responsible Entity must forward to the Grower a final statement setting out the details of the sale, calling in and conversion of the assets and the balance obtained in relation to the Project and the distribution and all payments otherwise made or allowed for, at which time the Responsible Entity will be released from all further duties and obligations incurred under the Constitution in relation to the Grower without prejudice to any liability of the Responsible Entity previously incurred under the Constitution to the Grower for any breach of its duties imposed by Law or otherwise. [26.6]

Each of the Growers will be released from all further duties and obligations incurred under the Constitution in relation to the Project, without prejudice to any liability of the Growers incurred under the Constitution to any party to the Constitution for any breach of its duties imposed by Law or otherwise. [26.7]

## 11 Modification of the Constitution

The Corporations Act provides for the Constitution to be modified either by a special resolution of Growers or by the Responsible Entity if it reasonably considers that the proposed change to the Constitution does not adversely affect the interests of Growers.

## Summary of the Custody Agreement

We have elected to appoint Permanent Trustee Company Limited as custodian in relation to the Project under the terms of the Custody Agreement summarised below.

Important features of the Custody Agreement follow.

### 1 Appointment as Custodian

Timbercorp Securities appoints Permanent as custodian to:

- (a) receive and hold the Scheme Assets and all income accruing in respect of them and any document of title to them in safe custody;
- (b) if directed by Timbercorp Securities and if duly appointed as attorney for and on behalf of the Growers, execute as attorney for and on behalf of the Growers, such of the Scheme Agreements as are entered into by the Growers; and
- (c) retain in safe custody executed copies of the Scheme Agreements.

"Scheme Assets" is defined as Application Moneys, until they are expended, and Proceeds, until they are distributed, in accordance with the Constitution.

### 2 Powers of the Custodian

The Custodian's powers include the following powers:

- (a) to establish bank accounts in Timbercorp Securities' name designating the Scheme Assets and to operate on the account in accordance with instructions from Timbercorp Securities;
- (b) to execute or make on behalf of Timbercorp Securities any certificates, declarations or affidavits which are required to receive into or transfer out of its custody any Scheme Assets;
- (c) to appoint or engage, at Timbercorp Securities' expense, professional advisers; or
- (d) to comply with any obligations imposed on it by law or do any other things which it considers necessary, desirable, incidental to or in furtherance of the above matters.

Subject to the Custody Agreement, the Custodian has absolute discretion as to the exercise of all powers, authorities and discretions vested in it under the Custody Agreement.

### 3 Duties of the Custodian

Timbercorp Securities is responsible for making all decisions in relation to the Scheme Assets and properly communicating to the Custodian instructions in relation to the Scheme Assets. Subject to the Custody Agreement, Permanent must act on Timbercorp Securities' instructions in relation to any Scheme Asset. If Permanent does not have any instructions, Permanent is required, subject to the Custody Agreement, not to make any payment or take any other action in relation to any matter concerning any Scheme Assets.

To the extent required by the Corporations Act, as modified by any relief granted by ASIC, the Custodian must ensure that the Scheme Assets are clearly identified as property of the Project and held separately from the Custodian's own assets, the assets of any other scheme or any other assets held by the Custodian in any other capacity whatsoever. The Custodian must notify Timbercorp Securities in writing immediately if the Custodian becomes aware that it no longer satisfies the requirements of ASIC Policy Statement 133.



#### 4 Acting on Instructions

The Custodian is authorised to act, or to cause any other person to act, on any instructions given to it in accordance with the Custody Agreement by any of Timbercorp Securities' Authorised Persons. This includes instructions provided by electronic means or procedures agreed between Timbercorp Securities and the Custodian. The Custodian is not liable for acting on any instructions which appear to it to have been properly and regularly signed, transmitted electronically or given, nor is it liable for acting on any instructions which contain any error or ambiguity.

#### 5 Books and Records

The Custodian must properly maintain adequate books and records relating to the Scheme Assets in accordance with generally accepted accounting principles. It must provide Timbercorp Securities and its auditor with certain information as required by the Custody Agreement.

#### 6 Fees and Expenses

Timbercorp Securities agrees to pay the Custodian an initial fee of \$20,000 for processing up to 1,500 Growers' applications and a further amount of \$1,000 per each additional 100 Growers' applications, an ongoing annual fee of \$3,000, (Indexed) and a termination fee equivalent to the greater of 0.1% of total net Proceeds paid to all Growers or \$50,000 (together with any GST payable by the Custodian in respect of those amounts). The Custodian is also entitled to recover from Timbercorp Securities the amount of all Taxes and bank charges, and all other liabilities, costs, charges and expenses which it suffers or incurs in connection with the performance of its duties and the exercise of its powers under the Custody Agreement including, without limitation, settlement, delivery, registration and transactions charges and foreign currency costs and charges.

#### 7 Termination

The Custody Agreement continues for the term of the Project. A party may terminate the Custody Agreement by notice to the other party if:

- (a) a receiver or a receiver and manager is appointed to the undertaking of the other party either in relation to the capacity in which it acts under the agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance under the Custody Agreement;
- (b) the other party goes into liquidation, is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs;
- (c) the other party ceases to carry on business in relation to the Project in the case of Timbercorp Securities and in relation to custodial services in the case of the Custodian;
- (d) the other party materially breaches any provision of the Custody Agreement or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to the Custody Agreement in a material respect, subject to a 14 day period to remedy the default; or
- (e) the other party sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking.

The Custodian may terminate the Custody Agreement if ASIC or a Court having jurisdiction makes a written order vesting any property of Timbercorp Securities in relation to the Project in ASIC or some body other than Timbercorp Securities.

### Summary of the Licence and Joint Venture Agreement

#### 1 Parties

The Licence and Joint Venture Agreement will be between Almond Land Pty Ltd ("the Landowner"), Timbercorp Securities Limited ("the Responsible Entity") and each several Grower ("the Grower").

#### 2 Joint Venture

Under the Agreement, the Grower and the Landowner associate themselves as Joint Venturers for the purposes of engaging in a primary production business of growing and cultivating an Almond Orchard and producing and processing Almonds for commercial gain. The Grower is entitled to a Prescribed Proportion of the Joint Venture Assets of 90% and the Landowner is entitled to a Prescribed Proportion of the Joint Venture Assets of 10%.

#### 3 Grant of Licence

Under the Agreement, the Land Owner grants to the Grower a licence to use and occupy the JV Almondlots (in joint venture with the Land Owner) for the purpose of growing and cultivating Almond Trees on the JV Almondlots for the sole purpose of the joint venture operations between the Land Owner and the Grower. The licence granted under the Agreement does not entitle the Grower to exclusive occupation of the JV Almondlots.

#### 4 Establishment of Orchard

The Land Owner warrants that it has, at its own cost, established, or procured the establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices, constructed necessary infrastructure and carried out the Capital Works and for those purposes has:

- (a) identified the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organised various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
- (c) organised block layout in relation to the Almondlots and the pegging of those blocks;
- (d) acquired rights to, constructed and installed, as the case requires the Internal Irrigation Equipment and Internal Irrigation System and the Irrigation Infrastructure;
- (e) carried out drainage work and work to help prevent soil erosion on all Land;
- (f) cleared any vegetation or trees from the Orchard, performed broadacre weed spraying, disc ploughing, ripping and mounding of tree rows, applied preplant fertiliser spreading and undertaken discing, x-planning tree rows and marking out of tree location;
- (g) planted the Almond Trees on the Orchard during June and July 2001; and
- (h) provided or undertaken, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Land Owner, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a) – (g) above.

The Grower acknowledges that the Capital Works on the Grower's Almondlots, and the Water Licences attributed to the Project, are, and will at all times remain, the property of the Land Owner.

#### 5 Water Licences

The Land Owner must do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximise the use and enjoyment of them by the Grower. It must also take all steps to avoid interfering with the supply of water to the Grower's Almondlots and to avoid any actions that would prejudice the Grower's rights under the Agreement.

Furthermore, the Land Owner must purchase and maintain the Water Licences during the Project and purchase any additional water rights on a temporary or permanent basis that may be required from time to time in order to irrigate the Almondlots.

## 6 Term

Unless terminated earlier by the Grower, the Land Owner or the Responsible Entity (see below), the term of the Agreement will be from the Commencement Date until the earlier of:

- (a) 30 June 2022;
- (b) the termination of the Joint Venturers' Participating Interest in the Project; and
- (c) the termination of the Project.

At the expiration of the term, the Grower must return the JV Almondlots to the Land Owner in good condition, but the Grower is not required to remove Almond Trees or restore the JV Almondlots to their original condition. Any structures or plant and equipment of any description which belong to the Joint Venture must be removed from the JV Almondlots within 30 days after the end of the Agreement and if the parties do not comply with this requirement, all structures and plant and equipment remaining on the JV Almondlots at the time will become the absolute property of the Land Owner. The Land Owner has no obligation to pay the Grower any compensation.

The Grower may terminate the Agreement:

- (a) immediately, if either the Land Owner or the Responsible Entity goes into liquidation or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or the Responsible Entity or any part of its undertaking;
- (b) immediately, if either the Land Owner or the Responsible Entity ceases to carry on business;
- (c) immediately, if either the Land Owner or the Responsible Entity fails or neglects to pay any moneys due to any Grower, or is in default of any material obligation under the Agreement and such default continues for a period of 3 months after receipt by the Land Owner or the Responsible Entity as appropriate of written notice from the Grower specifying the default and requesting that the default be remedied;
- (d) by giving four months' written notice to the Land Owner, if the whole or a substantial part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever, or if an independent horticultural consultant commissioned by the Grower reasonably determines that the whole or a substantial part of the JV Almondlots is no longer commercially viable (termination in these cases taking effect on and from the 30 June next following the expiration of the notice period);
- (e) in relation to only part of the JV Almondlots, by giving four months' written notice to the Land Owner, if that part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever, or an independent horticultural consultant commissioned by the Grower reasonably determines that part of the JV Almondlots is no longer commercially viable (termination in these circumstances taking effect on and from the 30 June next following the expiration of the notice period).

The Land Owner or the Responsible Entity may terminate the Agreement, with immediate effect, if the Grower fails to make a payment within the time required under the Agreement, or commits a material breach of the Agreement, and fails to remedy the breach or make reasonable compensation in money within 30 days after the Land Owner or the Responsible Entity has served a written notice on the Grower requiring the Grower to remedy the breach. If the Land Owner terminates the Agreement in this manner, the Grower will lose all its rights and interest as a participant in the Project.

The Agreement will also immediately terminate if the Almondlot Management Agreement is terminated for any reason.

Termination of the Agreement by the Grower or Land Owner in these circumstances is without prejudice to any rights and obligations which may have accrued prior to the date of termination and does not affect the rights or obligations of the parties in respect of any JV Almondlots or part of any JV Almondlot which continues to be subject to the Agreement.

## 7 Government Approvals

The Responsible Entity must maintain for the Term of the Agreement all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the JV Almondlots.

## 8 Condition Precedent

The Agreement is subject to and conditional on the Joint Venturers entering into the Almondlot Management Agreement on or before the Commencement Date.

## 9 Licence Fees and Expenses

The initial licence fee payable to the Land Owner for the period from the Commencement Date until 30 June 2002 is \$774.55 per JV Almondlot. The licence fee payable in respect of Financial Years ending on 30 June 2003 and 30 June 2004 is also \$774.55 per JV Almondlot.

Thereafter, on each subsequent 31 October during the life of the Project, commencing 31 October 2004 in respect of the Financial Year ending 30 June 2005, the Grower must pay an annual licence fee of \$774.55 per JV Almondlot that is Indexed.

The Agreement provides that licence fees payable to the Land Owner are to be increased to cover the GST payable by the Land Owner.

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due by the Joint Venturers under the Almondlot Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate the Licence and Joint Venture Agreement and:

- (a) pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank of Australia's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full; and
- (b) deal with the Grower's interest in accordance with clause 18 of the Constitution.

## 10 The Grower's Obligations

The Grower agrees at the Grower's expense to:

- (a) use the JV Almondlots solely for the purpose of the Joint Venture Operations;
- (b) comply with good horticultural and environmental practices;
- (c) comply with all laws and regulations relating to the use and occupancy of the JV Almondlots;
- (d) maintain the JV Almondlots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) permit the Land Owner and its employees, agents or contractors to enter upon the JV Almondlots from time to time with or without equipment for the purposes of observing the state of the JV Almondlots and provide to the Land Owner sufficient rights of access to the Almond Trees in order for the Land Owner to perform its duties and obligations under the Agreement;
- (f) permit the Responsible Entity and its employees, agents or contractors to enter on the JV Almondlots for the purposes of performing its obligations under the Almondlot Management Agreement;

(g) comply or procure compliance with the provisions of the Almondlot Management Agreement; and

(h) give such rights to occupiers of other Almondlots adjoining the JV Almondlots as are necessary for their proper use and enjoyment of their land, but such rights are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the JV Almondlots.

## **11 The Land Owner's Obligations**

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of all Almondlots; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.

## **12 Terms of Joint Venture**

Subject to the terms and conditions of the Almondlot Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Almonds and the Proceeds;
- (b) must contribute to the Responsible Entity in proportion to its Prescribed Proportion of the management expenses; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

The Joint Venture commences on the date that the Grower's application for Almondlots is accepted and, unless terminated earlier as set out above, terminates at the end of the term as described in section 6.

On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Grower and the Land Owner in their Prescribed Proportions, or be sold. In the event that they are sold, the net proceeds of sale must be divided amongst the Grower and the Land Owner on a pro rata basis in accordance with their Prescribed Proportions.

## **13 Assignment**

The Land Owner or the Responsible Entity may assign its rights and interests under the Agreement, provided that the Land Owner or Responsible Entity enters into a deed with the assignee containing a covenant in favour of the Grower to observe and perform all of the covenants contained or implied in the Agreement and required to be observed or performed by the Land Owner or the Responsible Entity. This requirement also applies where the Land Owner sells the Land.

Subject to the requirements of the Constitution, the Grower may only assign its rights under the Agreement if the Grower first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and the Responsible Entity stating that the assignee will at all times during the term of the Agreement observe and perform all of the terms and conditions of the Agreement, the Constitution and the Almondlot Management Agreement applying to the Grower. Once the Grower has assigned its interest under the Agreement, it ceases to remain liable under the Agreement in respect of any act done or omitted to be done after the assignment is effected.

## **14 Limitation of Liability of Grower**

Subject to the terms of the Agreement, the Grower will not be obliged to incur any liability under the Agreement in excess of the annual licence fee, its Prescribed Proportion of the fees and expenses payable under the Almondlot Management Agreement and the Prescribed Proportion of the Joint Venture Proceeds.

## **15 Proper Law**

The Agreement is governed by the laws of Victoria. The rights and obligations of the parties under the Agreement are subject to the terms and conditions of the Constitution.

# **Summary of the Almondlot Management Agreement**

## **1 Parties**

The Almondlot Management Agreement will be between each several Grower (together with the Land Owner as joint venturers, collectively referred to in this section as "the Grower") and Timbercorp Securities Limited ("the Responsible Entity").

## **2 Appointment of Project Manager**

The Grower engages the Responsible Entity, as an independent contractor, generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower, perform the Orchard Services.

The Responsible Entity must use reasonable endeavours to perform all its functions, exercise its powers under the Agreement and conduct the Project Operations:

- (a) in a commercially reasonable manner;
- (b) honestly;
- (c) generally in accordance with good horticultural management and environmental practices which are generally recognised and adopted in Australia and are known and acceptable to the Responsible Entity and suitable for use on the Orchard; and
- (d) in the best interests of all the Growers and not in the interests of the Responsible Entity if those interests are not the same as those of the Growers.

## **3 Orchard Management**

The Responsible Entity must cultivate and manage the Orchard in accordance with the Management Plan and good horticultural and environmental practices.

The Responsible Entity must commence to carry out the Orchard Services on behalf of the Grower on the Commencement Date of the Agreement. The Orchard Services to be provided by the Responsible Entity include:

- (a) pruning the Almond Trees by mechanical or other methods;
- (b) as permitted by law, eradicating vermin which has caused or may cause damage to the Almond Trees or the Grower's Almondlots and putting in place measures to control such vermin;
- (c) providing the Orchard with necessary irrigation water made available by the Land Owner through Water Licences and operating the irrigation system licensed to Growers on the Grower's Almondlots at various times in order to irrigate the Grower's Almondlots;
- (d) at the Responsible Entity's discretion, conducting tests to ascertain the availability of nutrients in the soil on the Grower's Almondlots and, based on the results, taking whatever action is required to maintain the growth rate and productivity of the Almond Trees;
- (e) fertilising the Grower's Almondlots as required, in accordance with good horticultural practices, to maintain satisfactory rates of growth and productivity of the Almond Trees;
- (f) in the Responsible Entity's absolute discretion and without need for the Grower's consent, destroying any of the Almond Trees or Almonds which have contracted an exotic, noxious or incurable disease;
- (g) keeping the improvements on the Grower's Almondlots in good and substantial repair;
- (h) maintaining fire breaks in accordance with regulatory and insurance requirements and good horticultural practices;
- (i) maintaining the Grower's Almondlots in accordance with good horticultural practices including using soil management technique methods to reduce erosion and maintain soil quality;
- (j) as far as reasonably possible, keeping the Grower's Almondlots free from competitive weeds or other vegetation which may affect the growth or yield of the Almond Trees;



- (k) protecting the Almond Trees from insect infestation, disease and competition from competing growth using good horticultural practices, including applying herbicides or pesticides to the Grower's Almondlots and spraying under the Almond Trees as permitted by law;
- (l) keeping proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Grower's Almondlots or Almond Trees;
- (m) regularly inspecting and repairing all stakes, fences and irrigation equipment on the Grower's Almondlots;
- (n) inspecting and, where appropriate, re-tying the Almond Trees to stakes and attaching Almond Trees to trellising in accordance with good horticultural practices;
- (o) replanting any of the Almond Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Almond Trees;
- (p) complying with the Grower's licence obligations under the Licence and Joint Venture Agreement (except for those relating to payment of fees);
- (q) not discriminating between Growers in the supply of water under the Water Licences;
- (r) each Financial Year commencing the Financial Year ending 30 June 2002, preparing, or arranging for the preparation of, the Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and financial and operational budgets in relation to those horticultural matters, reviewing the Management Plan and, if necessary, making amendments to it;
- (s) providing any other service or thing which, in the reasonable opinion of the Responsible Entity, is incidental or ancillary to the ongoing management of the Grower's Almondlots; and
- (t) complying with all laws and regulations relating to the use and occupancy of the Grower's Almondlots.

The Responsible Entity must give the Land Owner a copy of any notice (other than rates notices) which it receives from any Government Agency with respect to the Grower's Almondlots or the Orchard within seven days after receipt of the notice.

#### **4 Harvesting**

Each year during the Term, the Responsible Entity will, in accordance with good horticultural practices, test the maturity of the Almonds to determine whether the Almond Trees are ready for harvesting and, having done so, harvest the mature Almond Trees.

Harvesting must be done by the Responsible Entity in accordance with good horticultural practices by any method (including machine harvesting) deemed appropriate by the Responsible Entity.

The Responsible Entity will promptly deliver all harvested Almonds to a delivery point or points to enable the Almonds to be processed or sold. Until the harvested Almonds are delivered, the Responsible Entity will store them in an appropriate manner to minimise the deterioration of the Almonds' quality. The Almonds may be stored on the Orchard or any other premises whether or not owned or operated by the Responsible Entity.

#### **5 Processing and Sale**

The Responsible Entity will procure the processing of the Crop into Product and will enter into a Project Document as agent and attorney for the Grower.

The Responsible Entity will:

- (a) sell the Product, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as the Responsible Entity determines in its absolute discretion and, for this purpose, will enter into an agreement for sale of the Product as agent and attorney for the Grower; and
- (b) in the event that the Responsible Entity determines that any part of the Crop should not be processed into Product, put such Crop to commercial use, using its reasonable endeavours to seek to maximise returns, on such

terms and conditions as the Responsible Entity in its absolute discretion determines and, for this purpose, will enter into any agreement as agent and attorney for the Grower.

Before the Crop is sold, the Responsible Entity may gather in all of the Growers' Product or Crop and the Responsible Entity may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots. The proceeds of sale of the Product or Crop gathered in will be divided pro rata according to the Growers' participating interests in the Product or Crop.

The Grower acknowledges and agrees with the Responsible Entity that the Responsible Entity can call for a first and paramount lien at any time in respect of the Grower's Participating Interest in the Almonds until such time as any outstanding fees or expenses due and payable to the Responsible Entity under the Agreement have been paid.

#### **6 Administrative Services**

The Responsible Entity agrees to provide the following administrative services throughout the term of the Agreement:

- (a) prepare reports to Growers on the allocation and location of Growers' Almondlots;
- (b) prepare reports to Growers detailing the work to be done on each Grower's Almondlot;
- (c) prepare all other reports to Growers required under the Almondlot Management Agreement;
- (d) prepare a statement to the Grower to assist with income tax preparation;
- (e) record the Grower's transactions and make payments on behalf of the Grower;
- (f) general administrative management of the Project;
- (g) review the sales and marketing plan for the Project; and
- (h) co-ordinate visits of Growers to inspect their Almondlots.

#### **7 Access to Orchard**

The Responsible Entity and its invitees will be entitled to such access to the Grower's Almondlots as is necessary or desirable to perform the Responsible Entity's obligations under the Agreement.

The Responsible Entity may remove from the Grower's Almondlots such plant and equipment, implements, furniture and other items brought onto the Grower's Almondlots within one month after the termination of the Agreement and may enter the Grower's Almondlots for the purpose of removing such items.

The Responsible Entity is entitled (but has no obligation) to construct and maintain roads and tracks on the Grower's Almondlots primarily and principally to provide access to and from the Orchard from a public road for the cultivation, maintenance and tending of the Almond Trees and the Almonds, harvesting of the Almonds and removal of the Almonds.

Provided the Grower first gives the Responsible Entity 7 days' prior written notice, the Responsible Entity must permit the Grower or its duly authorised representatives to have access, at the Grower's expense and risk, at all reasonable times to the Grower's Almondlots and the facilities located on them.

#### **8 Responsible Entity's Fees**

The Responsible Entity will be paid the following management fees and charges in respect of all services provided under the agreement in the periods set out below:

- (a) in respect of the services to be provided in the period commencing on the Commencement Date and ending on 30 June 2002, an amount of \$5,250.50 per Almondlot payable in advance on or before the Commencement Date;
- (b) in respect of the services to be provided in the period commencing on 1 July 2002 and ending on 30 June 2003, \$1,866.67 per Almondlot payable on 31 October 2002;

- (c) in respect of the services to be provided in the period commencing on 1 July 2003 and ending on 30 June 2004, \$1,866.66 per Almondlot payable on 31 October 2003; and
- (d) thereafter, in respect of the services to be provided in each subsequent Financial Year during the term of the Agreement, an amount per Almondlot calculated by the Responsible Entity as the reasonable costs of managing the Almondlot, payable on 31 October during that Financial Year.

The Responsible Entity will be entitled to be paid the following additional management fees in a Financial Year out of, and immediately prior to, any distribution:

- (a) on and from 31 October 2004 and each subsequent year thereafter on 31 October, the estimated costs of operating the Almondlots (which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per Almondlot Indexed (adopting 30 June 2002 as the base date);
- (b) 3% of the proceeds of the sale of Crop and Product in a Financial Year; and
- (c) 25% of so much of the annual Net Proceeds payable to the Grower in a Financial Year in excess of the annual Net Proceeds estimated in the prospectus to be received by the Grower in that Financial Year, less any allowance for inflation made in the prospectus in arriving at such estimate, but Indexed from 30 June 2002 (the "Incentive Fee Threshold"). But, if in the immediately preceding Financial Year, the Proceeds were less than the Incentive Fee Threshold, the sum of the deficit must be deducted from the Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made.

After the actual costs for a Financial Year are determined by the Responsible Entity, the Responsible Entity will, when notifying the Grower (under paragraph (a) above) of the forecasted costs for the succeeding Financial Year, notify the Grower of those actual costs per Almondlot, and either deduct the surplus per Almondlot from, or add the excess per Almondlot to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs estimated by the Responsible Entity under paragraph (a) above.

The Agreement provides that fees payable to the Responsible Entity will be increased to cover the GST payable by the Responsible Entity.

It should be noted that the Grower, as a joint venturer with the Land Owner, will be required to pay 90% of these fees.

## 9 Insurance

The Responsible Entity will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Grower, with a reputable insurer against damage to the Orchard, which is caused by fire or other insurable risks, including public risk and occupier's liability, provided that the cost of any such insurance is economically justified and it does not include crop insurance unless specifically agreed between the Responsible Entity and the Grower from year to year.

## 10 Management Plan and Reports

In performing its obligations under the Agreement, the Responsible Entity must observe and act in accordance with the Management Plan.

The Responsible Entity must consider any recommendation or direction made by a Grower and where it is satisfied that any such recommendation or direction is in the interests of the Growers and the Project generally, the Responsible Entity must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in the Agreement.

Within four months after the end of each Financial Year, the Responsible Entity will send an annual report to the Grower that addresses, and contains information concerning, matters such as the results of the harvest of Almonds, the condition of the Orchard, the Almondlots and the Almond Trees, any other matters which the Responsible Entity considers material and which ought reasonably to be made known to the Grower or any other matter reasonably requested by the Grower.

Once the Almond Trees start producing Crop, the Responsible Entity will also send to Growers annual statements of income and expenses.

## 11 Distributions

Subject to the Agreement, the Responsible Entity must pay to each Grower the amount of Proceeds standing to the credit of the Grower in the Agency Account in accordance with the Constitution.

## 12 Term

Unless terminated earlier by the Grower or the Responsible Entity (see below), the term of the Agreement will be from the Commencement Date and continue until the earlier of:

- (a) termination of the Grower's Participating Interest in the Project;
- (b) 30 June 2022; and
- (c) termination of the Project.

The Grower may terminate the Agreement by notice in writing to the Responsible Entity:

- (a) immediately, if the Responsible Entity:
  - goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to its undertaking;
  - ceases to carry on business; or
  - fails or neglects to pay any moneys due to any Grower, or the Responsible Entity is in default of a material obligation under the Agreement and this default continues for a period of 3 months after receipt by the Responsible Entity of written notice from the Grower(s) specifying the default and requesting that the default be remedied; or
- (b) 6 months, or such shorter period as the parties may agree, after the Growers by Special Resolution at the meeting of Growers resolve to terminate the engagement of the Responsible Entity under the Agreement.

The Responsible Entity may terminate the Agreement if the Grower fails to make a payment within the required time under the Agreement, or commits a material breach of the Agreement and fails to remedy the breach or make reasonable compensation in money within 30 days after the Responsible Entity has served a written notice on the Grower specifying the breach and requiring the Grower to remedy the breach. If the Responsible Entity exercises its right to terminate the Agreement, then:

- (a) the Grower loses all rights as a participant in the Project;
- (b) the Grower remains liable for payment of all fees in respect of work done by the Responsible Entity; and
- (c) the procedure for the consequence of termination as set out in the Constitution must be followed.

Termination of the Agreement by the Grower or the Responsible Entity is without prejudice to any rights and obligations which may have accrued prior to the date of termination.

The Agreement terminates in respect of the Grower immediately if the Licence and Joint Venture Agreement is terminated in respect of the Grower for any reason.

## 13 Excuses for Non-Performance

A party to the Agreement will not have any obligation to observe or comply with the terms of the Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

Force Majeure means any event or circumstance not reasonably within the control of the Responsible Entity or which the Responsible Entity is not reasonably able to prevent and includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;

- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery or the necessity to repair equipment or machinery to prevent its breakdown.

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by an inability to use available funds resulting from Force Majeure.

A Party's failure to observe or comply with the terms of the Agreement will not give rise to any liability to the other Party for any direct or indirect, consequential or special loss of any kind to the extent that the failure to comply with those terms is attributed to Force Majeure.

#### **14 Limitation of Grower's Liability**

The Grower is not obliged to contribute any money in respect of the Project Operations beyond the Licence Fee payable to the Land Owner under the Licence and Joint Venture Agreement and the fees payable to the Responsible Entity under the Constitution, the Licence and Joint Venture Agreement and the Almondlot Management Agreement.

The liability of the Grower is absolutely limited to the Licence Fees payable to the Land Owner, the fees and costs paid or payable to the Responsible Entity under the Licence and Joint Venture Agreement and the Almondlot Management Agreement and to any Proceeds of the Grower.

#### **15 Proper Law**

The Agreement is governed by the laws of Victoria. The rights and obligations of the parties under the Agreement are subject to the terms and conditions of the Constitution.

### **Other Agreements**

#### **Management Agreement**

The Almondlot Management Agreement permits the Responsible Entity to delegate any of its obligations under that Agreement to its contractors. Accordingly, under a Management Agreement between the Responsible Entity and Almond Management Pty Ltd ("AMPL"), the Responsible Entity will engage AMPL as an independent contractor to carry out the Orchard Services set out in the Almondlot Management Agreement and to market and sell the almonds. This delegation does not release the Responsible Entity from liability under the Almondlot Management Agreement.

Under the Management Agreement, AMPL agrees to:

- (a) manage and administer the Project;
- (b) cultivate and manage the Orchard;
- (c) cultivate and harvest the Almond Trees;
- (d) procure the processing of the Crop into Product and sell the Product or Crop, as agent for Growers, for commercial gain; and
- (e) provide certain administrative services.

In performing its obligations under the Management Agreement, AMPL must observe and act in accordance with the Management Plan.

#### **Almond Orchard Management Agreement**

The Management Agreement permits AMPL to appoint agents and sub-contractors to perform any of its duties under the Management Agreement, provided that AMPL at all times remains primarily responsible to the Responsible Entity for the performance of those duties. AMPL has entered into the Almond Orchard Management Agreement with Select Harvests Limited ("Select") under which it has engaged Select, as an independent contractor, to:

- (a) provide Orchard Services, including cultivation, maintenance and management services, and harvesting the Almonds;
- (b) provide Processing Services relating to the Almonds; and
- (c) provide Marketing Services relating to the sale of the Almonds.

In performing its obligations under the Almond Orchard Management Agreement, Select must observe and act in accordance with the Management Plan.

Under the Almond Orchard Management Agreement, Select has guaranteed to AMPL that all Almonds produced from the Project and available from any harvest for a particular Season will be sold by Select by 30 June in the Financial Year after the Financial Year in which the harvest for that particular season commenced.

Following harvest, the Almonds from the Project will be pooled with all other almonds that are proposed to be sold by Select. It should be noted that, under the Almond Orchard Management Agreement, ownership of the Almonds will pass from the Growers to Select immediately prior to the payment for the pooled Almonds by the purchaser of them. However, Select will not be required to pay to AMPL the proceeds of sale of the Almonds until 7 days after the end of each month. Ordinarily, Growers would retain title to the Almonds until the proceeds of sale were received on their behalf. Therefore, there will be a short time gap, before receipt of sale proceeds, during which Growers will not have title to their Almonds. However, given the involvement of Select in the Project, and the nature of the pooling arrangements implemented by Select, we do not consider this will give rise to any difficulties.

# 16 Additional Information

## 1 Registers

We will maintain the registers of Growers at our registered office at Level 8, 461 Bourke Street, Melbourne, Victoria. The registers may be inspected by a Grower between the hours of 9.00 am and 5.00 pm on Monday to Friday inclusive, excluding public holidays.

## 2 Our allocation and issue policy

Unless we agree otherwise with any particular Grower or financial intermediary and subject to our absolute discretion to refuse an application, we will allocate Almondlots in order of receipt of completed applications. We reserve the right, in our absolute discretion, to accept an application for less than two Almondlots.

## 3 Repurchase and secondary market

We are not obliged to purchase from any Grower any Almondlots issued under this prospectus. However, we will assist to create a secondary market for Almondlots, subject to the provisions of the Corporations Act, by:

- maintaining a register of interested buyers and sellers; and
- making that register available for inspection by Growers and shareholders respectively at no charge.

## 4 Commissions

We may pay commissions or brokerage of up to 5% of the funds subscribed in relation to Almondlots for which you apply to those persons who may legally receive such commissions or brokerage under the Corporations Act. In addition, we may reimburse those persons at standard rates of up to 3% of the funds subscribed for reasonable marketing and other administrative costs incurred in relation to Almondlots sold.

Alternatively, we may pay equivalent amounts by way of trailing commissions over periods not exceeding ten years.

## 5 Interests of directors

### *Directors' fees – Timbercorp Limited*

Our directors, in their capacity as directors of Timbercorp (our parent company) are entitled to be paid an aggregate sum to be fixed by the directors, which sum may not exceed \$200,000 per annum or such sum as the members may at general meeting from time to time determine. For the financial year ending 30 June 2001, the directors' fees totalled \$60,000 plus out of pocket expenses. The only directors' fees paid in the past 2 years were amounts of \$60,000 paid to D WA Muir and G W Liddell for the financial year ended 30 June 2001 and \$60,000 paid to J M Vaughan and GW Liddell for the financial year ended 30 June 2000. They have also been reimbursed for out of pocket expenses. No fees are otherwise payable to our directors. Mr Muir ceased to be a director of Timbercorp on 1 July 2001. Mr Vaughan became an executive director on 1 July 2000 and is no longer paid director's fees.

### *Directors' Interests in Shares and Options*

Our directors and the directors of GH Limited hold the following interests in Timbercorp Limited:

Director	Ordinary Shares	Converting Preference Shares	Options
R J Hance*	69,291,332	Nil	780,000
G W Liddell**	187,618	Nil	480,000
J M Vaughan	300,866	Nil	340,000
S C Rabinowicz	455,000	Nil	868,000

- \* The majority of shares are held by Timbercorp (WA) Pty Ltd, in which Mr Hance has a 50% beneficial interest.
- \*\* G W Liddell is a partner of the chartered accounting firm, Liddell Weight & Co, which derives fees for professional services provided to the Timbercorp Group.

## Service agreements and other benefits

As at the date of this prospectus, no director is party to an executive agreement and no amount has been agreed to be paid as a bonus in respect of this Project.

Gary Liddell is a partner with the firm Liddell Weight & Co, Chartered Accountants, which provides accounting services to the Timbercorp group of companies. During the financial year ended 30 June 2001 Timbercorp paid an amount of \$89,100 to Liddell Weight & Co and during the year ended 30 June 2000, Timbercorp paid an amount of \$83,350 to Liddell Weight & Co at normal commercial rates. Liddell Weight & Co will not receive any fees in respect of this issue.

## 6 Previous Issues

We were incorporated on 4 April 2000 as a wholly owned subsidiary of Timbercorp and this represents our second issue of interests in an almond project, following our first issue under the 2001 Timbercorp Almond Project. We have also issued or propose to issue interests in the 2001 and 2002 Timbercorp Eucalypts Projects and Timbercorp Olive Projects.

## 7 Minimum subscription

There is no minimum number of Almondlots that must be applied for under this prospectus before any Almondlots will be allocated. This means that the Project will proceed irrespective of how many Almondlots are applied for.

## 8 Inspection of documents

During the application period of this prospectus, copies of the Constitution, Custody Agreement, Licence and Joint Venture Agreement, Almondlot Management Agreement and the reports issued by BIS Shrapnel Pty Ltd and David Neve & Associates may be inspected or obtained, free of charge, during normal business hours at our registered office at level 8, 461 Bourke Street, Melbourne, Victoria.

The detailed Independent Price Analysis Expert's Report prepared by David Neve & Associates may also be inspected free of charge during the application period during normal business hours at our registered office. A copy of the detailed report is also available on our website and has been lodged with ASIC. The Independent Price Analysis Expert's Report reproduced in section 13 forms the executory summary to the detailed Independent Price Analysis Expert's Report.

## 9 Experts and advisors

Other than as set out below or elsewhere in this prospectus, no expert or any person named in this prospectus as performing any functions nor any firm in which any expert or such person is a partner or employee has, or has had within the two years before lodgement of this prospectus, any interest in the formation or promotion of the Project, in any property proposed to be acquired in connection with the formation or promotion of the Project, or in the offer of interests in the Project.

## Interests and fees

Horticultural Development Services Pty Ltd is entitled to receive fees of \$7,782.50 for the preparation of the Almond Orchard Expert's Report.

John de Wijn of Queen's Counsel is entitled to receive fees of \$14,000 for the preparation of the Taxation Advisor's Report.

David Neve & Associates is entitled to receive fees of \$25,500 for the preparation of the Independent Price Analysis Report.

N M Taylor, Lawyers have acted, and continue to act, as our lawyers and performed work in respect of this prospectus, the due diligence enquiries, and other aspects of the Project. They have received, or are entitled to receive fees of \$58,000 (plus disbursements) for these services and further amounts for any future services in accordance with their usual time-based charges.

Deloitte Touche Tohmatsu has been paid a fee of \$232,000 (plus disbursements) for the audit of Timbercorp's financial statements for the year ended 30 June 2001 and a fee of \$93,650 (plus disbursements) for the audit of Timbercorp's financial statements for the year ended 30 June 2000.

BIS Shrapnel Pty Ltd has provided us with reports as to the expected CPI and the US\$-A\$ exchange rate over the term of the Project. It has received or is entitled to receive fees of \$900 for its services.

## Consents

Horticultural Development Services Pty Ltd, J W de Wijn of Queen's Counsel, David Neve & Associates and N M Taylor Lawyers have given their written consents to the inclusion in this prospectus of their respective reports in the form and context in which they appear and have not withdrawn such consents prior to lodgement of this prospectus with the ASIC.

David Neve & Associates has also consented to the incorporation by reference in this prospectus of a detailed Independent Price Analysis Expert's Report of which the Independent Price Analysis Expert's Report reproduced in section 13 forms the executive summary and to the lodgement of the report with ASIC.

Deloitte Touche Tohmatsu has consented and has not before lodgement of this prospectus withdrawn its written consent to the inclusion of extracts of Timbercorp's audited accounts in this prospectus in the form and context in which they appear.



BIS Shrapnel Pty Ltd has given its written consent to the incorporation by reference in this prospectus of reports prepared by it in relation to CPI and US\$ - A\$ exchange rate forecasts in the form and context in which they appear in this prospectus and to the lodgement of those reports with ASIC.

#### **Disclaimers**

Horticultural Development Services Pty Ltd has acted as almond orchard expert and has authorised the issue only of the Almond Orchard Expert's Report. Horticultural Development Services Pty Ltd disclaims and takes no responsibility for any other part of this prospectus.

David Neve & Associates has acted as independent almond price expert and has authorised the issue only of the Independent Price Analysis Experts' Report. David Neve & Associates disclaims and takes no responsibility for any other part of this prospectus.

N M Taylor, Lawyers have assisted in preparing the Project Agreements, our Compliance Plan and in undertaking due diligence enquiries in relation to this prospectus. They have reviewed this prospectus to ensure that its contents are consistent with the Project Agreements and they have authorised the issue of the Lawyers' Report only. N M Taylor, Lawyers expressly disclaim and take no responsibility for any other matter referred to in this prospectus.

JW de Wijn of Queen's Counsel has acted as independent tax advisor and has authorised the issue only of the Taxation Advisor's Report. He expressly disclaims and takes no responsibility for any other matter referred to in this prospectus.

BIS Shrapnel Pty Ltd has prepared and authorised the issue only of the reports in relation to the CPI and US\$-A\$ exchange rate forecasts and the references to those reports in this prospectus. BIS Shrapnel Pty Ltd expressly disclaims and takes no responsibility for any other matter referred to in this prospectus.

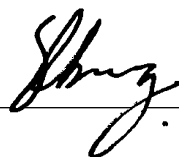
Deloitte Touche Tohmatsu has not been involved in any aspect of this prospectus. It expressly disclaims and takes no responsibility for any part of this prospectus.

#### **10 Directors' consents and signing of prospectus**

As required by law, each of the Directors of Timbercorp Securities Limited has given his written consent to the issue of this prospectus. Further, this prospectus has been signed by those of the directors stated below.



Robert J Hance



Sol C Rabinowicz

# 17 How to Apply

- Before signing the Application and Power of Attorney Form, you should read the whole of the prospectus relating to the 2002 Timbercorp Almond Project.
- You should then carefully read the declarations relating to the Application and Power of Attorney Form and then complete the form in full.
- The form must be signed and dated by individuals in the presence of an adult witness who must also sign as witness.
- Please lodge your completed Application and Power of Attorney Form together with your cheque or bank draft made payable to "Timbercorp – 2002 Almond Project" and crossed "Not Negotiable" with your financial advisor or deliver it to:

Timbercorp Securities Limited  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

- It should be noted that no applications for Almondlots will be processed until after the expiry of the exposure period for this prospectus and no preference will be conferred on applications received during the exposure period. The purpose of the exposure period is to enable the prospectus to be examined by market participants prior to the raising of funds. That examination may result in the identification of deficiencies in the prospectus, in which case any application that has been received may need to be dealt with in accordance with section 724 of the Corporations Act.

## Your details

- Applicants must be one or more individuals or a company.
- Joint applicants will be deemed to be holding their Almondlots as tenants in common.
- All communications from us will be sent to the address shown. For joint applicants, only one address is required.
- Please provide your full telephone, fax and e-mail details in case we need to contact you quickly.
- Please also provide your ABN if one has been issued to you.

## Your Almondlots and payment details

- You must apply for a minimum of two Almondlots, although we reserve the right, in our absolute discretion, to accept an application for less than two Almondlots. Thereafter, you may apply for any number of Almondlots.
- Complete the payment details in this section. Your Application Moneys per Almondlot payable on application are \$6,050 (including \$545.45 GST) made up of initial management fees of \$5,198 (including \$472.55 GST) and licence fees of \$852 (including \$77.45 GST). If you fill in the item "LESS amount subject to finance", your application will only be accepted on receipt of the Application Moneys in relation to your Almondlots. We do not warrant or undertake that such finance will be provided or procured.
- Please pay by cheque or bank draft made payable to "Timbercorp – 2002 Almond Project" and cross the cheque or bank draft "Not Negotiable".

## Signature and declarations

Each application must be signed by the applicant personally. Joint applicants must each sign the Application Form. An application by a company does not require a company seal but must be signed in accordance with its constitution. A copy of its constitution need not be produced. The form should also be dated.

## Electronic Prospectus

The Corporations Act prohibits any person from passing on to another person the Application Form which was attached to the electronic copy of the Prospectus unless the Application Form is attached to a complete and unaltered copy of the electronic prospectus.

Timbercorp Securities will send you, at no charge, a paper copy of the electronic prospectus if you ask for one during the offer period described in the prospectus.

If you apply for Almondlots on the basis of the Application Form attached to the electronic prospectus, you are deemed to declare to us that you received personally the electronic prospectus, or a print out of it, attached to the Application Form before applying for Almondlots.

## Your Personal Information

The Timbercorp group is comprised of several companies which have specific functions in the establishment, promotion, administration, project management and resourcing of eucalypt, olive, almond and other agribusiness and related investment projects. It also includes a finance company and entities which have interests in land utilised for these projects.

When submitting your Application Form, you will be providing entities within the Timbercorp group with your personal information. Your personal information will be treated strictly in accordance with the National Privacy Principles outlined in the federal Privacy Act. At any time upon request you may gain access to the information the Timbercorp group holds about you in accordance with the National Privacy Principles.

We have requested this information to enable us to issue Almondlots offered under this prospectus in your name and to keep you updated during the life of the Project as to the progress of your Almondlots by, for example, sending you reports, Almondlot statements, invoices and other correspondence in relation to the Project and other activities of the Timbercorp group. We are required by law to maintain a register of Growers under the Corporations Act and to make the register available for inspection by any person. We may also be required to provide details of Growers to ASIC and other regulatory bodies from time to time.

The Timbercorp group may disclose your personal information to:

- financiers or other such organisations in connection with its corporate activities;
- rating agencies; and
- your financial planner or adviser.

The Timbercorp group may use your personal information for:

- marketing Timbercorp group products and services to you; and
- developing an understanding of the products and services you may be interested in obtaining from the Timbercorp group

By signing the Application Form, you consent to the Timbercorp group using and disclosing your personal information as described above.

You can gain access to any information the Timbercorp group holds about you by calling (03) 8615 1200 or going in person to Level 8, 461 Bourke Street, Melbourne Victoria 3000.

If you do not provide us with the information requested in the Application Form, we will be unable to allot Almondlots to you. If you provide us with incomplete or incorrect information, we will be unable to inform you as to the progress of your Almondlots.

**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

Persons intending to use an electronic version of the Application Form should note the following:

- 1 The Application Form relates to the 2002 Timbercorp Almond Project ARSN 099 611 935 ('**project**') pursuant to a prospectus dated 7 March 2002 as supplemented by the supplementary prospectus dated 13 March 2002 ("**prospectus**"). The prospectus expires 13 months after the date of the prospectus. However it should be noted that no applications will be accepted after 30 June 2002, or such later date determined by Timbercorp Securities Limited. From 1 June 2002, applications will only be accepted where Timbercorp Securities Limited is reasonably satisfied that it can complete the services to which the application moneys relate by 30 June 2002.
- 2 The Application Form is accompanied by an electronic version of the prospectus which contains information regarding investing in securities referred to in the Application Form.
- 3 Persons who access the prospectus in electronic form should note that interests in the project offered by this prospectus are not intended to be a short-term investment and will be subject to the risks generally associated with commercial almond orchards.
- 4 A person who gives another person access to the Application Form must at the same time and by the same means give the other person access to the prospectus and any supplementary document.
- 5 Interests in the project will only be processed and issued on receipt of the Application Form issued together with the prospectus.
- 6 The offer to subscribe for interests referred to in the prospectus is available to Australian residents. The prospectus does not constitute an offer of securities in any jurisdiction where, or to any person to whom, it would be unlawful to issue the prospectus.
- 7 Whilst the prospectus is current, Timbercorp Securities Limited will send copies of the prospectus and any supplementary document and the Application Form, on request and without charge. In this regard, please contact:

**Timbercorp Securities Limited**

Level 8, 461 Bourke Street,

Melbourne, Victoria, 3000

Telephone: 03 8615 1200

Facsimile: 03 9670 4271

Email: [n.williams@timbercorp.com.au](mailto:n.williams@timbercorp.com.au)

To be completed by the Advisor

<b>Dealer's Stamp</b>	Dealer's Name
	Advisor's Name
	Telephone
	Facsimile
	Email

[illegible][illegible][illegible]

--	--	--	--	--	--	--	--	--

[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]

--	--	--	--	--	--	--	--	--

[illegible]

Number of Almondlots applied for	<b>Almondlots</b>
Amount payable (@ \$6,050 per Almondlot inclusive \$550 GST)	\$
<b>Less</b> amount subject to finance	\$
<b>Balance</b> enclosed with this application	\$

**Return this form to Timbercorp Securities Limited – Level 8, 461 Bourke Street, Melbourne, Victoria 3000**



**Declarations**

By signing the front of this application and power of attorney form, you make the following declarations:

- That you have read the prospectus dated 7 March 2002 to which this application is attached.
- That you acknowledge that Timbercorp Securities Limited has the right to accept or reject your application.
- That you agree to be bound by the Constitution and irrevocably appoint Permanent Trustee Company Limited and Timbercorp Securities Limited, severally, as your attorney to enter into the Licence and Joint Venture Agreement and the Almondlot Management Agreement.
- That you understand that by becoming a party to the Constitution and the Almondlot Management Agreement you irrevocably appoint Timbercorp Securities Limited as your attorney to enter into any agreement for the sale of the Almonds.

**Terms and conditions of power of attorney**

By granting the power of attorney to Timbercorp Securities Limited you do so on the following terms and conditions.

- 1 you will ratify and confirm whatever the Attorney does in the exercise of the power granted by you;
- 2 you will indemnify and keep indemnified the Attorney against all claims, demands, costs, damages, losses and expenses, however arising, consequent upon the exercise of the power granted by you except in the event of gross neglect, fraud or wilful default by the Attorney;
- 3 the Attorney may, and where required will, stamp and register this instrument at the cost of the applicant;
- 4 any person or corporation dealing with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this Power of Attorney has not been revoked as conclusive evidence of that fact;
- 5 this Power of Attorney is irrevocable until the expiration of the Project under the Constitution;
- 6 the authorisation in writing of any variations, replacements or cancellations referred to above may be by facsimile or any other form of written confirmation; and
- 7 this Power of Attorney will be governed by and construed in accordance with the laws of Victoria; and
- 8 words and expressions used in this Power of Attorney have the same meanings as in the Constitution unless the contrary requires.

**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

Persons intending to use an electronic version of the Application Form should note the following:

- 1 The Application Form relates to the 2002 Timbercorp Almond Project ARSN 099 611 935 ('**project**') pursuant to a prospectus dated 7 March 2002 as supplemented by the supplementary prospectus dated 13 March 2002 ("**prospectus**"). The prospectus expires 13 months after the date of the prospectus. However it should be noted that no applications will be accepted after 30 June 2002, or such later date determined by Timbercorp Securities Limited. From 1 June 2002, applications will only be accepted where Timbercorp Securities Limited is reasonably satisfied that it can complete the services to which the application moneys relate by 30 June 2002.
- 2 The Application Form is accompanied by an electronic version of the prospectus which contains information regarding investing in securities referred to in the Application Form.
- 3 Persons who access the prospectus in electronic form should note that interests in the project offered by this prospectus are not intended to be a short-term investment and will be subject to the risks generally associated with commercial almond orchards.
- 4 A person who gives another person access to the Application Form must at the same time and by the same means give the other person access to the prospectus and any supplementary document.
- 5 Interests in the project will only be processed and issued on receipt of the Application Form issued together with the prospectus.
- 6 The offer to subscribe for interests referred to in the prospectus is available to Australian residents. The prospectus does not constitute an offer of securities in any jurisdiction where, or to any person to whom, it would be unlawful to issue the prospectus.
- 7 Whilst the prospectus is current, Timbercorp Securities Limited will send copies of the prospectus and any supplementary document and the Application Form, on request and without charge. In this regard, please contact:

**Timbercorp Securities Limited**

Level 8, 461 Bourke Street,

Melbourne, Victoria, 3000

Telephone: 03 8615 1200

Facsimile: 03 9670 4271

Email: [n.williams@timbercorp.com.au](mailto:n.williams@timbercorp.com.au)

To be completed by the Advisor

<b>Dealer's Stamp</b>	Dealer's Name
	Advisor's Name
	Telephone
	Facsimile
	Email

[illegible][illegible][illegible]

--	--	--	--	--	--	--	--	--

[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]

--	--	--	--	--	--	--	--	--

[illegible]

Number of Almondlots applied for	<b>Almondlots</b>
Amount payable (@ \$6,050 per Almondlot inclusive \$550 GST)	\$
<b>Less</b> amount subject to finance	\$
<b>Balance</b> enclosed with this application	\$

**Return this form to Timbercorp Securities Limited – Level 8, 461 Bourke Street, Melbourne, Victoria 3000**

**Declarations**

By signing the front of this application and power of attorney form, you make the following declarations:

- That you have read the prospectus dated 7 March 2002 to which this application is attached.
- That you acknowledge that Timbercorp Securities Limited has the right to accept or reject your application.
- That you agree to be bound by the Constitution and irrevocably appoint Permanent Trustee Company Limited and Timbercorp Securities Limited, severally, as your attorney to enter into the Licence and Joint Venture Agreement and the Almondlot Management Agreement.
- That you understand that by becoming a party to the Constitution and the Almondlot Management Agreement you irrevocably appoint Timbercorp Securities Limited as your attorney to enter into any agreement for the sale of the Almonds.

**Terms and conditions of power of attorney**

By granting the power of attorney to Timbercorp Securities Limited you do so on the following terms and conditions.

- 1 you will ratify and confirm whatever the Attorney does in the exercise of the power granted by you;
- 2 you will indemnify and keep indemnified the Attorney against all claims, demands, costs, damages, losses and expenses, however arising, consequent upon the exercise of the power granted by you except in the event of gross neglect, fraud or wilful default by the Attorney;
- 3 the Attorney may, and where required will, stamp and register this instrument at the cost of the applicant;
- 4 any person or corporation dealing with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this Power of Attorney has not been revoked as conclusive evidence of that fact;
- 5 this Power of Attorney is irrevocable until the expiration of the Project under the Constitution;
- 6 the authorisation in writing of any variations, replacements or cancellations referred to above may be by facsimile or any other form of written confirmation; and
- 7 this Power of Attorney will be governed by and construed in accordance with the laws of Victoria; and
- 8 words and expressions used in this Power of Attorney have the same meanings as in the Constitution unless the contrary requires.



# Glossary

In this document, the following expressions have the meanings set out below:

**Almondlot**

means a discrete area of the Orchard of 0.25 plantable hectares that is licensed to a Grower under the Licence and Joint Venture Agreement. The expression "**Almondlots**" means all of the Almondlots to which a Grower is entitled.

**Almondlot Management Agreement**

means the agreement of that name between us and each several Grower (comprising the Grower and Almond Land) by which the Grower engages us to cultivate and manage the Grower's Almondlots.

**Almond Orchard Management Agreement**

means the agreement of that name between Almond Management and Select Harvests by which Almond Management engages Select Harvests to undertake the day-to-day management of the Orchard, process the Almonds and sell the Almonds.

**Almonds**

means the almonds grown on the Orchard.

**Almond Land**

means Almond Land Pty Ltd (ACN 091 460 392).

**Almond Management**

means Almond Management Pty Ltd (ACN 094 468 845).

**Almonds Trees**

means the trees planted or to be planted on the Orchard.

**Application Moneys**

means the amount of \$6,050 per Almondlot payable by a Grower.

**ASIC**

means the Australian Securities and Investments Commission.

**Capital Works**

means the infrastructure and capital works that Almond Land has carried on the Orchard and any other capital works that the Land Owner may, in future, carry out on the Orchard, if required.

**Constitution**

means the deed that governs the rights and obligations of Growers, and us as Responsible Entity under the Project.

**Grower or You**

means a person (or in the case of joint applicants, those persons) who becomes a party to the Licence and Joint Venture Agreement and the Almondlot Management Agreement as a Grower, as a result of either the allotment of Almondlots in the Project or a transmission, transfer, mortgage, assignment or other disposal of Almondlots.

**GST**

means GST as defined in the GST Law.

**GST Law**

means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

**indexed**

means adjusted on the date on which a relevant payment is due (or the date upon which a relevant calculation is made, whichever is applicable) (**the Date**), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date).

**Land**

means the Liparoo and Carina sites on which the Orchard has been established and the Project is conducted and includes the Water Licences and capital works.

**Land Owner**

Means Almond Land Pty Ltd (ACN 091 460 392).

**Lease**

means the lease and sublease of those parts of the Land on which the Project will be conducted between the Land Owner as lessor and us as lessee.

**Licence and Joint Venture Agreement**

means the agreement between the Land Owner, us and each several Grower by which the Land Owner grants to the Grower a licence in respect of the Almondlots and enters into a joint venture with the Grower to cultivate and manage the Almond Trees on those Almondlots.

**Management Agreement**

means the agreement of that name between us and the Project Manager by which we appoint the Project Manager to manage the Orchard and procure the processing of the Almonds and marketing of the Almonds.

**Orchard**

means the almond orchard established on that specified and identifiable part of the Land on which the Project will be conducted and on which Growers will each carry on the business of primary production.

**Proceeds**

means proceeds from the sale of Almonds; any moneys payable to a Grower under any policy of insurance in relation to the Grower's Almondlots, the Almonds or the Project; interest earned on the proceeds; and any other moneys payable to a Grower from or in relation to the Project. The expression Net Proceeds means Proceeds to which a Grower is entitled under the Constitution less all annual licence and management fees and costs incurred by a Grower.

**Project**

means the 2002 Timbercorp Almond Project.

**Project Agreements**

means the Constitution, Licence and Joint Venture Agreement and the Almondlot Management Agreement.

**Project Manager**

means Almond Management Pty Ltd (ACN 094 468 845).

**Responsible Entity**

means us as Responsible Entity under the Project.

**Select Harvests**

means Select Harvests Limited (ACN 000 721 380).

**Sub-Leases**

means the sub-lease and sub underlease (as applicable) of those parts of the Land on which the Project will be conducted between us as lessor and Almond Land as lessee.

**Tax Act**

means Income Tax Assessment Act 1997 (as amended)

**Timbercorp**

means Timbercorp Limited (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria.

**us, we or Timbercorp Securities**

means Timbercorp Securities Limited (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria.

**Water Licences**

means permanent rights to draw water annually from the Murray River.

# 2002 Timbercorp Almond Project Prospectus



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS