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Our ref: SPS:NXM:0491046

21 September 2011

Michael Johns  
Maddocks  
By email [michael.johns@maddocks.com.au](mailto:michael.johns@maddocks.com.au)

Dear Mr Johns

### **LETTER TO GROWERS ISSUED BY RECEIVERS OF FEA**

- 1 We are aware that on 8 August 2011, the Receivers of FEA sent letters to the growers in the pre-2000 schemes (**Growers**), demanding the payment of rent purportedly due by the Growers to FEA (**Letters**).
- 2 The purpose of this letter is to put you on notice of our client's potential claims against the Receivers for misleading and deceptive conduct.

### **FEA has no right to invoice Growers for rent**

- 3 No rent is due from the Growers to FEA.
- 4 In respect of the properties planted pre-2000, the relevant sub-leases have been since 2000 between FEAP, as responsible entity of the schemes, and the Growers. This is made clear by the scheme Constitutions, the 2000 Master Lease and by the Growers' practice of paying rent to FEAP, as detailed at paragraphs 6 to 8 below.
- 5 Accordingly, FEA was not entitled to invoice the Growers for the payment of rent.

### **FEAP has the right to collect rent from Growers**

- 6 The accounts of FEA and FEAP make it plain that it was FEAP, rather than FEA, that received lease fees and management fees from Growers. The auditors of the accounts, Pitcher Partners, have confirmed this view.
- 7 Further, FEAP had historically invoiced all Growers for their annual rent and maintenance contributions, including the annual contributions required from Growers in Schemes 1994 to 1999. We **attach** copies of invoices issued by FEAP to Growers, requiring the payment of rent and maintenance fees to be made to FEAP. These invoices are in line with the treatment of management fees and lease fees in the accounts.
- 8 The clear practice, and the clear intention of the parties, was that the Growers would pay rent and other contributions to FEAP; the rent and other

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contributions being FEAP's source of income as Responsible Entity. This was the case across all schemes.

**The Letters are intentionally misleading**

- 9 The Letters are intentionally misleading and wholly inflammatory. They have had the effect of causing the Growers further confusion and anxiety.
- 10 FEA is aware, and it acknowledged in the Letters, that FEAP had already invoiced the Growers for that rent, and that some Growers may have already paid that rent to FEAP.
- 11 The Letters assert that payment of rent is due to a party that has no such rights to payment. They assert that FEAP has no right to payment of rent, where it clearly has always held such a right. The Letters suggest that the Growers should promptly make payment to FEA to avoid termination of their sub-leases; but that termination could ensue in any event. These suggestions are flagrantly misleading.
- 12 If the Receivers legitimately held the view that rent was properly payable to FEA, rather than FEAP, to whom rent had been paid to since it was appointed as Responsible Entity of the schemes, then the proper course would have been for the Receivers to seek a declaration to that effect from the Court. Absent such a declaration, the Receivers' Letters to the Growers seeking the payment of rent that is simply not due to it are clearly likely to mislead and/or deceive.

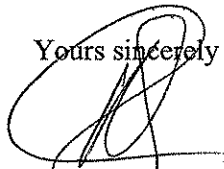
**Retraction of letters**

- 13 We demand that the Receivers retract the Letters **by no later than 23 September 2011**, by writing to growers directly and by publishing a letter of retraction on its website.

**Notice**

- 14 You are now formally on notice of our client's rights against the Receivers. This letter will be used as evidence of knowledge in any proceedings for damages.

Yours sincerely



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