

10

of 1977

No.

3

of 1979

**IN THE PRIVY COUNCIL**

**ON APPEAL**

**FROM THE COURT OF APPEAL OF NEW ZEALAND**

**BETWEEN**

**THE TAUPO TOTARA TIMBER COMPANY LIMITED**

**Appellant**

**AND**

**DARCY KEVIN ROWE**

**Respondent**

**RECORD OF PROCEEDINGS**

**EARL KENT MASSEY PALMER &  
HAMER  
AUCKLAND  
NEW ZEALAND**

**Solicitors for Appellant**

**McCAW SMITH & ARCUS  
HAMILTON  
NEW ZEALAND**

**Solicitors for Respondent**

*Agents:-  
Wray, Smith & Co.,  
1, Kings Bench Walk,  
London, EC4Y 4DD*

*Agents:-  
Ryth Dutton Holloway,  
9, Lincoln's Inn Fields,  
London, WC2A 3DW*

**IN THE PRIVY COUNCIL**

**ON APPEAL**

**FROM THE COURT OF APPEAL OF NEW ZEALAND**

**BETWEEN**                      **THE TAUPO TOTARA TIMBER COMPANY LIMITED**  
**AND**                              **DARCY KEVIN ROWE**

**Appellant**  
**Respondent**

**RECORD OF PROCEEDINGS**

**EARL KENT MASSEY PALMER &  
HAMER  
AUCKLAND  
NEW ZEALAND**

Solicitors for Appellant

**McCAW SMITH & ARCUS  
HAMILTON  
NEW ZEALAND**

Solicitors for Respondent

*Agents:-  
Wray, Smith & Co.,  
1, Kings Bench Walk,  
London, EC4Y 7DD*

*Agents:-  
13/14 Dutton Holloway,  
9, Leinster Inn Fields,  
London, WC2A 3DW*

**IN THE PRIVY COUNCIL**

**ON APPEAL**

**FROM THE COURT OF APPEAL OF NEW ZEALAND**

**BETWEEN**                      **THE TAUPO TOTARA TIMBER COMPANY LIMITED**  
**Appellant**

**AND**                              **DARCY KEVIN ROWE**  
**Respondent**

**RECORD OF PROCEEDINGS**

**INDEX OF REFERENCE**

**PART 1**

<b>NO.</b>	<b>DESCRIPTION OF DOCUMENT</b>	<b>DATE</b>	<b>PAGE</b>
1	Further Amended Statement of Claim	5 August, 1975	1
2	Statement of Defence to further Amended Statement of Claim	14 August, 1975	4
3	Notes of Evidence of Witnesses for Plaintiff at hearing before the Honourable Mr. Justice Moller	25 August, 1975	6
	D. K. Rowe      Examined		6
	Cross-examination		9
	Re-examination		13
	O. F. Haylock   Examined		13
	Cross-examination		17
	J. N. Thompson   Examined		19
4	Reasons for Judgment of Moller J. in Supreme Court	21 October, 1975	21
5	Formal Judgment of Supreme Court	16 March, 1976	25
6	Notice of Motion of Appeal to Court of Appeal	16 January, 1976	26

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
7	Appellants Synopsis		27
8	Memorandum on Behalf of Respondent as to its grounds for opposing appeal		29
9	Reasons for Judgment of Richmond P. in Court of Appeal	5 July, 1976	32
10	Reasons for Judgment of Cooke J. in Court of Appeal	5 July, 1976	41
11	Reasons for Judgment of Woodhouse J. in Court of Appeal	5 July, 1976	44
12	Formal Judgment of Court of Appeal	5 July, 1976	46
13	Order of Court of Appeal granting final leave to Appeal to Her Majesty in Council	1 November, 1976	47

**PART 2  
EXHIBITS**

EXHIBIT MARK	DESCRIPTION OF EXHIBIT	DATE	PAGE
1A	Service Agreement	20 January, 1972	124-125
1B	Previous Service Agreement	26 June, 1969	122-123
1C	Letter of Resignation	28 May 1973	148
1D	Documents Arising out of Letter of Resignation		
	(a) Dr O. F. Haylock letter to Plaintiff	1 June, 1973	149
	(b) Plaintiff's letter to J. T. Currie	5 June, 1973	150
	(c) Defendant Company letter to Plaintiff	25 July, 1973	151
	(d) Plaintiff's Memorandum to Defendant's Secretary	9 August, 1973	152
	(e) J. T. Currie Notice to Defendant's staff	6 August, 1973	153
1E	Relevant Minutes of Defendant 23 February, 1965 to 16 July, 1973 and Seal Register of 28 January, 1972	23 February, 1965 to 16 July, 1973 28 January, 1972	93-121.
1F	Defendant's Statement required by the Second Schedule of the Companies Amendment Act 1963 in respect of take-over offer from N.Z. Forest Products Ltd.	26 April, 1972	126-127
1G	(a) Plaintiff's letter of Demand	8 August, 1973	154
	(b) Defendant's reply	21 August, 1973	155
2	Memorandum of Association and Articles of Association of The Taupo Totara Timber Company Limited	30 March, 1915 and 14 August, 1968	48-92
3	Letter to Shareholders/Noteholders by Dr. O. F. Haylock	26 April, 1972	128-129
4	N.Z. Forest Products Ltd., Take-over Offer	26 April, 1972	130-138
5	Covering letter Questionaire Page 29 of Compiled answers (rest of compiled answers not reproduced)	7 July, 1972	139-145
B	Letter to Shareholders and former shareholders by Dr. O. F. Haylock	21 July, 1972	146
C	Letter to Noteholders by Secretary	25 July, 1972	147

**LIST OF PLEADINGS AND ORDERS WHOLLY OMITTED  
FROM THE RECORD**

1. Writ and Statement of Claim.
2. Warrant to Sue.
3. Declaration of Authority to act for Defendant.
4. Statement of Defence.
5. Order for Discovery by Plaintiff.
6. Order for Discovery by Defendant.
7. Affidavit of Documents by Plaintiff.
8. Affidavit of Documents by Defendant.
9. Warrant to Defend.
10. Amended Statement of Defence.
11. Praecipe to set down before a Judge alone.
12. Notice of Motion for leave to file Amended Statement of Claim.
13. Amended Statement of Claim.
14. Praecipe for Subpoenae (Plaintiff).
15. Notice of Motion for leave to file further Amended Statement of Claim.
16. Motion for Order that Defendant begin.
17. Notice of Motion for an Order fixing Security.
18. Certificate of payment of security lodged.
19. Exhibit A – Same as Exhibit 1F.
20. Appellants Memorandum of Grounds of Appeal and Issues of Appeal.
21. Notice of Motion for Conditional Leave to Appeal to Her Majesty in Council.
22. Affidavit in support of Motion for Conditional Leave to Appeal to Her Majesty in Council.
23. Order granting Conditional Leave to Appeal to Her Majesty in Council.
24. Notice of Motion for grant of final leave to Appeal to Her Majesty in Council.
25. Affidavit in support of Motion for grant of final leave to Appeal to Her Majesty in Council

**No. 1: FURTHER AMENDED STATEMENT OF CLAIM  
IN THE SUPREME COURT OF NEW ZEALAND  
ROTORUA REGISTRY**

No. A. 124/73

**BETWEEN: DARCY KEVIN ROWE  
Plaintiff**

**AND: THE TAUPO TOTARA TIMBER  
COMPANY LIMITED  
Defendant**

In the Supreme  
Court of New  
Zealand  
No. 1  
Further Amend-  
ed Statement of  
Claim  
5 August 1975

**FURTHER AMENDED STATEMENT OF CLAIM**

10

Tuesday, the 5th day of August, 1975

THE PLAINTIFF by his Solicitor SAYS:

1. THE Defendant is a duly incorporated Company having its registered office at Princes Street, Putaruru, and carrying on business as Timber Merchants.

2. BY agreement made on or about the 20th day of January, 1972 between the Plaintiff as employee of the one part and the Defendant as employer of the other part (hereinafter referred to as "the Company") it was agreed inter alia that the terms of the Plaintiff's employment should be recorded in writing in the said agreement.

3. CLAUSE 7 of the said agreement provides:

20

"Notwithstanding the foregoing provisions of this agreement, in the event of any person or other Company or Companies or any person or organisation or group of persons on their behalf acquiring either by means of a take-over offer or otherwise not less than 50% of the issued capital of the Company, the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the Company not less than three months notice in writing of his desire to do so. Should the employee resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in the paragraph 7 hereof, or should he receive from the Company at any time during the said period of twelve months, notice of termination of his employment for any cause whatsoever then and in either such case the employee shall be entitled to receive from the Company (in addition to any superannuation benefits or other rights to which he is entitled) on the date on which he ceases to be employed by the Company and the Company shall pay to the employee on that date, a sum of money equivalent to five times the gross annual salary being paid by the Company to the employee immediately prior to the date of acquisition of such share capital of the Company as aforesaid AND IT IS EXPRESSLY DECLARED that all income and other taxes on the sum of money to be paid to the employee pursuant to this Paragraph 7 shall be payable by the Company TO THE END AND INTENT that the said sum of

30

40

money will not be taxable in the hands of the employee at any time after the date of receipt thereof by him.”

In the Supreme  
Court of New  
Zealand  
No. 1  
Further Amend-  
ed Statement of  
Claim  
5 August 1975

4. ON or about the 23rd August, 1972, N.Z. Forest Products Limited acquired either by means of a take-over offer or otherwise not less than 50% of the issued capital of the Defendant, and accordingly the provisions of Clause 7 of the said agreement became operative from that date.

10 5. ON or about the 28th day of May, 1973, the Plaintiff by letter to the Chairman of Directors of the Defendant gave not less than three (3) months written notice of his intention to resign his office as Managing Director of the Defendant Company to take effect as at the 31st day of August, 1973. The Plaintiff also sent a copy of the said letter to N.Z. Forest Products Limited by letter dated the 5th day of June, 1973.

6. THE Plaintiff's gross annual salary immediately prior to the 23rd August, 1972 was not less than \$13,500.00 and, therefore, the net amount due to the Plaintiff on the 31st day of August, 1973 from the Defendant by virtue of Clause 7 of the said agreement was \$67,500.00.

7. THE Plaintiff has requested the Defendant to pay him the said sum of \$67,500.00 but the Defendant has refused or neglected to do so.

WHEREFORE the Plaintiff claims:

- 20 (a) Judgment for the said sum of \$67,500.00;  
(b) Interest on the said sum of \$67,500.00 as from the 1st September, 1973 down to the date of judgment at eight per cent (8%);  
(c) The costs of and incidental to these proceedings;  
(d) Such further or other relief as to this Honourable Court may seem just.

AND AS A FURTHER AND/OR ALTERNATIVE CAUSE OF ACTION the Plaintiff by his Solicitor says:

8. HE repeats the allegations contained in paragraphs 1 to 7 hereof both inclusive.

30 9. THAT if it is held that the Plaintiff did not give the requisite notice in terms of Clause 7 of the said agreement (which is denied) then by letter dated the 25th day of July, 1973 the Plaintiff received from the Defendant notice of the termination of the Plaintiff's employment. The Plaintiff further received a second such notice by notice from the Defendant dated the 6th day of August, 1973.

10. THE said notices (2) from the Defendant were received by the Plaintiff during the period of twelve months from the acquisition by N.Z. Forest Products Limited either by means of a take-over or otherwise of not less than 50% of the issued capital of the Defendant in terms of Clause 7 of the said agreement.

WHEREFORE the Plaintiff claims:

- (a) Judgment for the said sum of \$67,500.00;
- (b) Interest on the said sum of \$67,500.00 as from the 1st September, 1973 down to the date of judgment at eight per cent (8%);
- (c) The costs of and incidental to these proceedings;
- (d) Such further or other relief as to this Honourable Court may seem just.

In the Supreme  
Court of New  
Zealand  
No. 1  
Further Amend-  
ed Statement of  
Claim  
5 August 1975

THIS FURTHER AMENDED STATEMENT OF CLAIM is filed by JOSEPH GILBERT DILLON Solicitor for the Plaintiff, whose address for service is at the offices of Messrs. Urquhart, Roe & Partners, Solicitors, Haupapa Street, Rotorua.

**No. 2: STATEMENT OF DEFENCE TO FURTHER AMENDED STATEMENT  
OF CLAIM DATED 5th AUGUST, 1975**

THURSDAY the 14th day of August, 1975.

In the Supreme  
Court of New  
Zealand  
No. 2  
Statement of  
Defence to  
further Amend-  
ed Statement of  
Claim  
14 August 1975

1. IT ADMITS the allegations set forth in paragraph 1 of the Further Amended Statement of Claim filed herein.
2. AS to paragraphs 2 and 3 of the said Further Amended Statement of Claim, it admits that on or about the 20th day of January, 1972 the parties purported to enter into an Agreement containing the provisions referred to in the said paragraphs BUT SAVE as is herein expressly admitted IT DENIES each and every of the allegations set forth in the said paragraphs 2 and 3.
3. AS to paragraph 4 of the said Further Amended Statement of Claim IT ADMITS that on or before the 23rd August, 1972 N.Z. FOREST PRODUCTS LIMITED had acquired, either by means of a take-over offer or otherwise, more than fifty per cent of the issued capital of the Defendant BUT SAVE as is herein expressly admitted IT DENIES each and every of the allegations set forth in the said paragraph 4.
4. IT ADMITS the allegations set forth in paragraph 5 of the said Further Amended Statement of Claim.
5. AS to paragraphs 6 and 7 of the said Further Amended Statement of Claim IT ADMITS that the Plaintiff's gross salary immediately prior to the 23rd day of August, 1972 was not less than \$13,500.00 BUT SAVE as is herein expressly admitted IT DENIES each and every of the allegations set forth in the said paragraphs 6 and 7, and more particularly IT DENIES that there is any amount due to the Plaintiff.
6. IT repeats paragraphs 1 to 5 hereof.
7. AS to paragraph 9 of the said Further Amended Statement of Claim IT ADMITS that it sent to the Plaintiff a letter dated the 25th day of July, 1973 and a Notice dated the 6th day of August, 1973 BUT SAVE as is herein expressly admitted IT DENIES each and every of the allegations set forth in the said paragraph 9.
8. IT DENIES each and every of the allegations set forth in paragraph 10 of the said Further Amended Statement of Claim AND SAYS that the acquisition by N.Z. Forest Products Limited, either by means of a take-over or otherwise, of not less than fifty per cent of the issued capital of the Defendant took place prior to the 20th day of July, 1972 and was effective and/or accepted by both the Plaintiff and the Defendant as being effected not later than the said 20th day of July, 1972.

AND AS A FURTHER OR ALTERNATIVE DEFENCE THE DEFENDANT SAYS:-

9. IF the purported Agreement of the 20th day of January, 1972 was valid and enforceable (which is denied) the Plaintiff did not give notice in writing of his desire to resign within the requisite time, and further did not in fact resign within twelve months as and from either the said 20th day of July, 1972 or as and from the said 23rd day of August, 1972.

In the Supreme  
Court of New  
Zealand  
No. 2  
Statement of  
Defence to  
further Amend-  
ed Statement of  
Claim  
14 August 1975

AND AS A FURTHER OR ALTERNATIVE DEFENCE THE DEFENDANT SAYS:-

10 10. THE purported Agreement dated the 20th January, 1972 is not valid or enforceable against it by virtue of any one or more of the following grounds:-

- (a) The position and capacity of the Plaintiff as Managing Director of the Defendant disqualified him from taking any benefit from the said Agreement.
- (b) There was no provision in the Defendant's Articles of Association authorising its Directors to approve such an Agreement.
- (c) Neither the said Agreement nor its execution was authorised or approved by the Defendant's Board of Directors.

20 AND AS A FURTHER OR ALTERNATIVE DEFENCE THE DEFENDANT SAYS:-

11. THE Plaintiff is estopped from asserting that he is entitled to any retirement allowance under the terms of the said Agreement by virtue of the fact that he jointly made (or did not demur from) a statement contained in the Directors' Statement issued in respect of the takeover offer for the Defendant made by N.Z. Forest Products Limited in 1973, which statement was in the following terms:-

“2(d) It is not proposed in connection with the offer that any payment or other benefit shall be made or given to any Director by way of compensation for loss of office or as consideration for or in connection with his retirement from office.”

30 THIS STATEMENT OF DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM DATED 5th AUGUST, 1975 is filed by BERNARD HUGH CLARK Solicitor for the Defendant, whose address for service is at the offices of Messieurs Davys, Burton, Henderson & Moore, Solicitors, Fenton Street, Rotorua.

**No. 3: NOTES OF EVIDENCE OF WITNESSES FOR PLAINTIFF  
AT HEARING BEFORE THE HONOURABLE MR. JUSTICE MOLLER**

HEARING: 25th August, 1975.

COUNSEL: J. G. Dillon and Ross for Plaintiff.

B. H. Clark for Defendant.

MR. DILLON produces a catalogue of documents produced in connexion with this case which may be used as evidence, with the consent of MR. CLARK. CATALOGUE.

EXHIBIT 1.

- 10 ALSO PRODUCED by consent, are the Memorandum and Articles of Association of the Defendant Company.

EXHIBIT 2.

Mr. Dillon opens and calls:-

DARCY KEVIN ROWE (Sworn):

- I am a Retired Managing Director residing in Rotorua, I am the Plaintiff in these proceedings. I was formerly the Managing Director of the Defendant Company. Worked for the Defendant Company for a total of 24 years? Yes. I think you became a Director of Company on 23rd February, 1965? Yes. (Ref. catalogue E. minute of 23.2.65). At that time you held the position of Secretary of Defendant Company? Yes. Later you were made General Manager of Defendant Company? Yes. On the 9th December, 1971, were you appointed Managing Director? Yes. Your task as Managing Director was that of responsibility for the operations of the Defendant Company? Yes. And its subsidiaries? Yes. Administration and conduct of company and you were answerable for that? Yes. On the 20th January, 1972, did you enter into a service agreement with the Defendant Company in your capacity as managing Director? Yes. (Catalogue Exhibit 1A.) Did that agreement supercede a previous agreement that had been entered into on 26th June, 1969? Yes. (Catalogue Exhibit 1B). As at the date of the previous agreement you were general manager of the Defendant Company? Yes. Both of those agreements were in writing and were executed by you? Yes. You are aware of the registered documents of the company its memorandum and articles of association? Yes (Although the copies of the documents dated 26th June, 1969 and 9th December . . . sorry, 20th January, 1972, in the catalogue Exhibits 1B and A have not affixed to them the seal of the defendant company counsel are agreed that indeed the seal was so affixed to certain original documents). With knowledge of the memorandum and the articles of Defendant Company what was the position concerning such agreements and the use of them . . . COURT INTERPOSED. Was the seal register of the 28th January, 1972, that is an item in your catalogue, (under Exhibit 1E) recorded affixing of the seal to the revised service

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
D. K. Rowe  
Examination

agreements between yourself as Managing Director and another document made in respect of the general manager as at 28th January, 1972? COURT: I think you had better have a look at it . . . . There seem to be 2 entries towards the bottom of the page, I think that is what Mr. Dillon is referring to? Yes. With the addition that one of those concerns you, that being to revised service agreements with Managing Director and with the General Manager? Yes. There was a separate agreement for the General Manager? Yes. COUNSEL: And the affixing of the seal as shown on that seal register would then come before the Board for approval on the following board meeting? Yes. (Dated 17th February, 1972) . . . .

10 At this point Mr. Dillon refers to the Minutes of Directors Meeting held on Thursday 17th February, 1972 and the item "Seal Book", reading "the action of Messrs. D. K. Rowe O. F. Haylock and G. L. Pulham in the signing of documents as listed was approved." Does that mean as listed? Yes as listed in the seal register. N.Z. Forest Products Ltd., became interested in the Defendant Company can you say when about you were aware of their interest in take-over of company? I have always remembered it about early February, 1972. As a result of that were you quite closely involved in preparation of documents in respect of take-over? Yes that was the very first contact, and from memory, it moved fairly slowly for the next few weeks. What was required as far as your position of Managing Director

20 in dealing with take-over approach from N.Z. Forest Products? As a Director I was involved, but as far as the actual documentation that was a secretarial matter. Eventually later in 1972, was the take-over effected? by N.Z. Forest Products? Yes. Do you refer to the Articles again, concerning the transfer of shares, as Article 26 of the Articles of Defendant Company? Yes. A transfer of shares was effected into N.Z. Forest Product's name pursuant to that article, on what date do you understand that to have been effected by? MR. CLARK OBJECTS –

30 COULD BE INVITING HEARSAY – COURT: Mr. Clark I think you are wrong – it is directed to man's knowledge . . . TO COUNSEL: On the – about the 23rd August, 1972. To your knowledge was it written up in the seal register. QUESTION WITHDRAWN. As a member of the Board of Directors, were the list of documents to the seal register brought to the Board for approval subsequent to the date you mentioned? for approval? Yes, there were many transactions at the time, I am not sure whether they all went through on the 23rd August or a further stage it came up before the Board exactly. You then were the Managing Director as at 23rd August, 1972? Yes. Did you continue in that position until 28th . . . well until the 31st August, 1973? Yes.

40 COURT: By that Mr. Rowe do you mean that 31st August, 1973 was the last day you worked for the company? I have got an idea that that was on a week-end. I have a feeling that is the date, but as a working day the previous Friday it would be. If the 31st was on a weekday? Yes. You sent on the 28th May, 1973 a letter to the Chairman of Directors of the Defendant Company on that day? Yes.

COURT: That is EXHIBIT C in EXHIBIT 1.

COUNSEL: You received an acknowledgement from Dr. Haylock, that being dated 1st June, 1973? Yes. Exhibit 1D in Catalogue (a). You then forwarded a copy of your resignation to Mr. J. T. Currie of N.Z. Forest Products Ltd. Kinleith on 5th June, 1973? Yes. Exhibit 1D in Catalogue (b). You received back a letter from Mr. Currie of the 25th July, 1973? Yes. Exhibit 1D (c). You subsequently arranged for the second letter to bring to the notice of senior staff a

memorandum, and that had been prepared by Mr. Currie, dated 6th August, 1973, which you had been asked to bring to the attention of the senior staff? Yes.

COURT: You did that sending it to the Secretary on 9th August, 1973? Yes. Exhibit 1D (d) and (e).

COUNSEL: Your gross annual salary immediately prior to 23rd August, 1972 was not less than \$13,500. After receiving the letter, letter 25th July, 1973 Exhibit 1D (c), did you consult Solicitors concerning your claim under the service agreement and arrange for them to send a letter of demand dated 8th August, 1973? Yes. Exhibit 1G (a). And did you receive through your Solicitors a reply dated the 21st August, 1973 Exhibit 1G (b)? Yes. Now the service agreements in 1969 and 1972 were prepared by a firm of Solicitors? Yes.

10

COURT: But why are we talking about 1969 . . . . .?

And who were the Solicitors that prepared the agreement? Clancy, Fisher, Oxner & Bryant of Putaruru. Who were the Company Solicitors? at that time? The same firm. Do you know who arranged for the preparation of this agreement in 1972 through such firm of Solicitors? The Chairman of the Company Dr. Haylock, and Mr. H. B. Woollet. The agreement in 1972 as opposed to any previous agreement who prepared . . who arranged for that agreement to be prepared?

20

COURT: Do you really know, for all you know perhaps some other Director took it along and said do it? Do you know from seeing anything happen or seeing correspondence who went first to Solicitors on behalf of the company to have this 1972 agreement of yours prepared? There was only a mechanic change in agreement as to my title, and it would be something done very quickly. You don't know who gave the instructions? I would be fairly sure it would be our Secretary. I am interested in what you know or what you don't know? I don't know Sir. Minutes Exhibit 1. item E.

30

(The answer in respect of Mr. Woollett and Dr. Haylock Mr. Dillon concedes was really in reference to the prior agreement of 1969 which does not come up for direct consideration in these proceedings). You would have been familiar with the memorandum and articles of association of the Defendant Company? in your previous capacity as Secretary of the Company? Yes. Before you entered into this agreement of the 20th January, 1972, did you yourself seek or obtain any legal advice? No. I would just like to correct a point. When I was Secretary these are different articles. These are updated.

COURT: From when? 1968.

(1968 when these articles were adopted on 14th August that year). By which time what was your position? General Manager.

XXD. CLARK: Witness on former oath.

The Taupo Totara Timber Co. in 1972 was a public company was it not? Yes a Public Company. Am I correct that the provisions of the agreement dated 20th January, 1972 were never disclosed to the shareholders of the company in general meeting or any other way, is that correct?

10 COURT: Did you yourself ever disclose to the shareholders as a body in general meeting or otherwise what the terms of that agreement were? No. Did you ever hear any other director or officer of the company disclose to the general shareholders in general meeting or otherwise, the terms of that agreement? No. Did you personally attend every general meeting of shareholders that took place from the time the agreement was signed until the time you left the company? I was overseas occasionally. I would say annual general meetings, yes. The special general meeting I would be doubtful.

20 COUNSEL: I think, would I be correct in saying that you held 4,256 ordinary shares of the company? As at the time of the take-over? I don't think I did. I subsequently held that with a bonus issue which was made in August September 1973. I show you to refresh your memory, document issued by the Taupo Totara Timber Co. under the Chairman's signature, EXHIBIT A. Same as EXHIBIT 1 F. Statement re the take-over by N.Z. Forest Products of Taupo Totara Timber dated 26th April, 1972 above the signature of O. F. Haylock Chairman, have you seen that document before? Yes. You observe its date 26th April, 1972? Yes. You observe item 2 purports to show the number of shareholdings by all the directors including yourself? Yes. Are you not able to tell the Court the accurate indication of your shareholding at April, 1972? I would accept what is in this report.

COURT: Do you now accept that as at April, 1972 you held 4,256 ordinary shares in Taupo Totara Timber? Yes. Did you in your capacity as a shareholder ever receive any written notice or advice as to the terms of the agreement on which the present proceedings are being brought?

30 COURT: Mr Clark is asking you to divorce yourself for the moment from being Managing Director and look upon yourself as a plain ordinary shareholder, in that capacity, did you ever have sent to you by the Company any information about the contents of your agreement with the company dated 20th January, 1972? No.

40 COUNSEL: Witness referred to documents produced under Exhibit 1 item E. Minutes of the Defendant Company . . . . You may want to have reference to documents. I will ask you in first instance can you recall the minutes of the meeting of directors held on Wednesday 14th June, 1972 page 305 and there being a record under the sub-heading N.Z. Forest Products Ltd. "It was noted that N.Z. Forest Products had received acceptances in respect of 90% of the capital in this company. It was also noted that N.Z. Forest Products Ltd. proposed to offer debentures in that company to existing holders of Taupo Totara Timber debentures, . . . . Do you recall that record? I wouldn't be at that meeting.

COURT: But you were? Yes. I accept that minute as being a correct record. Would I be correct that your directors including yourself as Managing Director had previously unanimously resolved to accept N.Z. Forest Products take-over offer in respect of all your own shares and to recommend acceptance of offer to all other shareholders? Yes. Witness shown next item, relating to minutes of a meeting held Thursday 20th July 1972? Heading "Persons Present" – You were

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
D. K. Rowe  
Cross Exam-  
ination

present at that meeting as indicated by minutes? Yes. Does the minutes correctly recall the Chairman Dr. Haylock welcomed J. T. Currie, and D. O. Walker, in their capacities as directors appointed by N.Z. Forest Products Ltd.? I was at the meeting and I remember the words of welcome. I readily recall what was said afterwards. I certainly remember the welcome to the meeting.

COURT: Do you or do you not specifically remember whether or not that welcome was in terms as directors appointed by N.Z. Forest Products? I thought at the time it was nominees of N.Z. Forest Products. In your evidence this morning if I understood you correctly, you said that you understood that there had been a take-over on or about the 23rd day of August, 1972, I put it to you, that the matters that we have been discussing but more specifically the approval of your directors, the 90% acceptance by shareholders, of the take-over offer, and finally the presence thereafter of N.Z. Forest Products Ltd. directors or nominees on the 20th July, 1972, was a clear indication that the take-over operation was already being effective? No I don't agree with that. The acceptance had been received but I am sure I didn't say that the take-over was effective.

COURT: Mr. Clark says you in your evidence this morning said that the take-over was completed on 23rd August, 1972. What Mr. Clark is saying is this: Look at all those steps that he has just mentioned to you, would you agree that if every one of those steps had been taken, by 20th July, 1972, would you agree that the take-over was by then complete? . . . Not effectively Sir.

COUNSEL: I ask you to look at this document.

COURT: Mr. Rowe, will you look at the end of the Minutes of the Meeting of Directors held on 20th July, 1972, look at the date on which those Minutes were confirmed and tell us what it is? 17th August, 1972. Turn over the page, there you will find the minutes of 17th August, 1972? Yes. Were you present at that meeting? Yes. You were part and parcel were you not of the directors who confirmed that the two gentlemen were welcomed as directors appointed by N.Z. Forest Products? Yes. Have a look at those present as directors on the 17th August and do they not include the names of Mr. Walker, Mr. Currie as full directors of the company? Yes. Is not Smythe House Auckland the registered office of N.Z. Forest Products Ltd. and the only occupier of that very large building in Penrose is N.Z. Forest Products Ltd? COURT INTERPOSED. . . . .

Reverting if I may to further documents there is a hand written draft, the day following the meeting of directors of 20th July, 1972, I think you are aware that a notice to shareholders was sent out by company, under the name of Chairman Dr. Haylock, are you aware of that? Yes. Do you now produce a copy of such notice? Yes. (Original draft by Mr. Haylock plus a typed copy of it? EXHIBIT B.) Do you agree with the statement by the Chairman in paragraph 3, where he says "earlier this year the offer by N.Z. Forest Products Ltd. for the shares in the Taupo Totara Timber Co. Ltd. was accepted by virtually all our shareholders and thereby terminating 71 years of independent activity". Do you agree with that statement? Yes, I agree with it. Finally if the witness could be shown document dated 25th July, Exhibit C. Are you aware of that notice referred to as Exhibit C? Yes. It followed very closely on the meeting of 20th July? Yes. This sentence in the second paragraph "Under its recent take-over N.Z. Forest Products has acquired most of the ordinary shares in company". I ask you did you not know the position was as there stated by the time you had attended the

meeting of combined directors held on 20th July, 1972? I would have favoured the use of the word "acceptance", not "acquired." How old are you? 52. In July, 1972, depending on when your birthday fell what was your age in July, 1972? My birthday is in November. I will be 53 this November. I was 50. You have described yourself as a Retired Managing Director in your evidence in chief, I put it to you, that since . . . have you worked outside of N.Z. in the period since 6th August, 1973? Yes. You have had income since August, 1973 from your work out of the country? Yes. Would that be more or less than \$13,500? It would have been more.

10 COURT: In what sort of work? I was Managing Director of a timber operation in Singapore.

COUNSEL: While you were in this country you paid income tax at the maximum rate of your salary? I don't know. It would depend on deductions. Your resignation was completely voluntary? Yes. Do you know or not know whether the provisions of the agreement dated 20th January, 1972, were put to a full board meeting prior to execution of such? I was told at a meeting . . . . to attend to the change of title in that agreement, as related to 1969 agreement. To attend to change of title from General Manager to Managing Director? Yes. Do you know or not know whether the text of the agreement dated 20th January, 1972, was put  
20 before a properly constituted meeting of the Board at any time? It was tabled at the subsequent meeting of the Board for examination and inspection by the Director present.

COURT: When you say subsequent meeting do you mean the meeting subsequent to its having been signed? Yes. Do you also mean that it was a signed agreement executed by both you and Taupo Totara Timber that was placed before the Board? Yes.

COURT: It does appear that the meeting of directors of 17th February, 1972 was the first meeting after the signing of your agreement. It also is clear that you were not present at that meeting because apologies were received from a Mr. Fraser and you were overseas, with that in your mind, . . . .  
30

COUNSEL: Can you point to any resolution of your Board on that day, or at any other time, which formally sanctioned the sealing of the contract on which you relied? By virtue of entry of . . . in the seal book, and the document would accompany the seal book. It would form part of the seal book for that meeting.

COURT: Let us take it in stages, there is an agreement between you and the company which is waiting to be signed by you, before it is signed by you or executed by the company by affixing its seal does any entry about it appear in the seal book? Not before the seal. Then let us assume for the moment that you sign it first but the company hasn't affixed its seal at that point, does any reference to  
40 it appear in the seal book? No. Is the next step that it is executed by the company by the affixing of its seal once that has been done, is that the point at which an entry is made in the seal book? The entry in the seal book would be made the morning of the meeting or the day before the meeting. But must it be made always subsequent at some date to the affixing of the company's seal to document? Yes. Now, you have a meeting of directors, at which there is an agreement that has been sealed since the last meeting and which now is referred to in the seal book just assume that, is that seal book produced to the directors at their meeting? Yes. At the same time as the seal book is produced to the directors at

the meeting are all documents which have been sealed since the last meeting also produced to the directors so that they know what the document is and can see what it is that is referred to in seal book? Yes.

COUNSEL: There is no resolution, however, of the directors making any express reference to the terms of the contract that we are concerned with, is there any express reference to the terms of this contract we are concerned with? the minutes of meeting of directors? No.

COURT: When you said earlier that you believed that it was placed before this particular meeting that is what you said? Yes. Does that statement of yours have any reference to the minute now shown to you headed Seal Book? No this was at a prior meeting. No, this is the meeting of February, that is the 4th page of the February meeting? Did I not say that I was told at a previous meeting to update my agreement. Yes you did say that but also said that you believed that the agreement once signed was placed before the directors at the next meeting that took place after its signing? That is a record of the first meeting after the signing? Yes. Is there anything on that page which in your view justifies you in saying that the agreement was placed before the directors at that meeting of February, 1972? Yes. What is it? The agreement or all documents accompanying, are relevant to entries in seal book total with the seal book. The document referred to in take-over, dated 26th April, 1972, Exhibit 1 F. I think you told us already that you were familiar with that document. It contains does it not clause 2 (d) a statement in the following terms: . . . ‘It is not proposed in connection with the offer that any payment or other benefit shall be made . . . . retirement from office’; with that in mind, I ask you, you were a director at this time? Yes. The contract on which you rely if valid, does provide for compensation in connection with your retirement does it not? Yes. Are you able to tell the Court why that fact was not disclosed in this statement? Firstly, I understand it was a management contract, and secondly, the matter had been discussed between the Chairman of the Taupo Totara Timber Co. and the Managing Director of N.Z. Forest Products and I was not present at that meeting. I understand it was mutually agreed between those present at the meeting that it wasn’t applicable, and thirdly, at that point of time the contract was not worth anything, because the necessary acquisition of shares had not been made. Has your company prior to the possibility of take-over ever entered into agreement to pay any director tax free moneys?

COURT: I want you to appreciate that you are not in any way to guess, if you don’t know, if you can’t truly remember then that is what you are to tell me? And it seemed to me that it was a very wide question since it referred to at any time?

COUNSEL: During your period of service with the company and apart from the possibility of a take-over of your company has your company ever paid to your knowledge any director or any other member of staff tax free moneys in respect of . . . COURT INTERPOSED . . . .

While you were a director, was any payment or other benefit tax free, ever given by your company either by way of compensation for loss or in connection with retirement? No. Five years salary tax free, would represent very much more than 5 years salary with liability for taxes, would it not? It would depend on what annual income would come in during the succeeding five years.

RE-EX DILLON:

In your evidence-in-chief you indicated the take-over date as 23rd August, 1972, there were put to you three grounds for suggesting an earlier date in XXM, one was the approval of directors and the document of the 26th April, 1972, was quoted to you, what was the state of the take-over as at the time that statement was issued by your Board of Directors? I gathered there had been an acceptance, a minimum acceptance of 50%. That document dated 26th April, 1972, was sent to the company's shareholders wasn't it? Yes. I might add that the acceptances only went out with this document.

10 COURT: The form to accept? Yes.

COUNSEL: Then in the minutes of Wednesday 14th June, 1972, the minutes record that it was noted, "N.Z. Forest Products heading" . . . . . It was noted that N.Z. Forest Products had received acceptances in respect of 90% . . . . . in this company, do you know where that information came from to the Board? I think that, I don't recall any formal letter from N.Z. Forest Products but there was an announcement in newspaper early in June stating that they had acceptances for over 50%. And that at that point the offer became unconditional. Then at the subsequent meeting of the 20th July, 1972, the minutes record Messrs.

20 J. T. Currie and D. O. Walker, being welcomed to the meeting? Yes. Prior to that meeting had there to your knowledge been any alteration to the articles of the company concerning the number of directors? I don't recall any. It would have had to have been done at a special meeting of shareholders to amend the articles. COURT: Are you really saying that you don't know the accurate answer to that question? Yes.

COUNSEL: Article 82 (a) of the company's articles, made provision for the number of directors? Yes.

Mr Dillon calls:-

OWEN FILLBRIDGE HAYLOCK (Sworn):

30 of Lethanty. I am a Company Director and Farmer. I also hold degree of Dr. of Philosophy. I was the Chairman of Directors of Defendant Company from July 1965 until 16th July, 1973. I was a director of Defendant company from 1955 until my appointment as Chairman of Directors in July, 1965. That is not quite correct. I was a Director from 1955 until March 1974.

COURT: So you remained a director after you ceased to be Chairman of Directors? Yes.

40 COUNSEL: There has been produced to Court a service agreement between the company and the Plaintiff dated 20th January, 1972, were you present at the meeting of the Board of Directors on 17th February, 1972 when approval was given to the . . . Were you present at that meeting? Yes I was Chairman of that meeting. If you look at the minutes for the meeting of the Defendant Company Thursday 17th February, 1972, I think those are recorded in four pages of minutes? Yes, that is correct. And are they confirmed by your signature, and dated on a later date 20th April, 1972? No they were confirmed on 16th March, 1972. Is there reference in those minutes to the appointment of the Plaintiff as

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
D. K. Rowe  
Re-examination

In the Supreme  
Court of New  
Zealand.  
Plaintiff's  
evidence  
No. 3  
O.F. Haylock  
Examination

the Managing Director? Yes, there is a reference in this to the appointment of Managing Director. On the 9th December, 1971, at the meeting of the Board on that occasion were there two appointments made, that of Managing Director and General Manager under management appointments? Yes. Were those minutes of that meeting confirmed on the 17th February, 1972? Yes. Then on the 17th February, 1972, . . . . .

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
O.F. Haylock  
Examination

10 COURT: They were confirmed subject to an amendment? Yes. Am I right that the Managing Director's appointment should have been stated as being for 5 years? The previous appointment was for 5 years and our intention was to renew this also for 5 years.

10 COUNSEL: Do you confirm at that meeting of 17th February, 1972, the Plaintiff Mr. Rowe was in fact not present? An apology was received from Mr. Rowe who was overseas on business. There has been produced service agreement dated the 20th January, 1972, could you tell the Court what was the procedure at the meetings concerning documents and in particular this service agreement? for the fixing of the company's seal? The approval of the fixing of the seal of the company was normally one of the last matters taken at the meeting. I would make my practice to read out any matters which weren't share transfers and I would read out the headings of all matters, contracts for houses, for such things as that  
20 which were not usually dealt with. The contract we are dealing with I would mention, I would have given the opportunity to the Board . . . . a note that the seal had been affixed to it.

COURT: I want to cast your mind back to this particular meeting in February, 1972 and the minute under seal book page 4, Was the agreement between the company and Mr. Rowe before the meeting in connection with that minute on that occasion? The contract would not have been produced at the meeting. Are you able to say whether or not it was one of the contracts that was covered by that minute? As far as I am positive, it would have been covered at that meeting. The listing of documents under that entry of seal book would that have been the  
30 actual seal register that was placed before the Board on that occasion? That is correct. The seal book or register was always brought in by Secretary Mr. Thompson who would hand it to me and I would go through the list.

COURT: What is referred to in minute as the seal book is the same thing as seal register? There is a book I presume it was a register. I couldn't tell you the actual term.

40 COUNSEL: In the event of a question from anyone on the Board as you have indicated you have the opportunity to Board what would then happen? If it was something which had been discussed by me and Mr. Rowe or Mr. Thompson we give an explanation to Board. If they wish to see the document Thompson would go to his office and bring the document through for the Board to look at. Now, this service agreement that has been referred to as being recorded in the seal register as at 28th January, 1972, was a service agreement drawn up on the 20th January, 1972. Would you tell the Court who authorised the drawing up of that agreement? It was authorised by me following the end of meeting of December when we changed the titles of Mr. Rowe and Mr. Gibb. I reminded Mr. Rowe at the end of the meeting that his service agreement was as General Manager and the agreement would have to be re-written. As I remember this was right at the end of the meeting and wasn't minuted. It was instructed to up date present agreement. An instruction to whom? I think it would have been to Mr. Rowe. I think it may

have been to Mr. Thompson also.

COURT: Going a step further did you personally have anything to do with giving of instructions to your firm's Solicitors to produce the agreement? No.

COUNSEL: I think these service agreements . . . . What was the reason for these service agreements being brought into existence initially back in 1969? In 1968 and in 1969 there had been rumours of take-overs particularly in timber industry in Putaruru and in surrounding area. Our senior staff became a little unsettled, because of this and it was felt that if a take-over or merger came into operation that some of them might lose their jobs or be put into jobs they didn't really like.

- 10 Early in 1969 Mr. Rowe and Mr. Cameron in Japan where they discussed this point and on their return Mr. Grayburn P.W. who is the deputy Chairman of company discussed this with Mr. Rowe and he sent me a letter asking for my opinion on this. We circulated the members of the Board and as a result of their opinions that some form of service agreement should be offered to senior members of company we brought forward to meeting I think it was in May or June 1969 suggestion that the service contracts should be offered to senior members of the staff. As a result of that decision, were there in fact some 6 service agreements drawn up for the senior staff and there were seven names listed? in the minutes of 28th May, 1969? 6 agreements were drawn up. The person who didn't
- 20 get an agreement offered was the Bandmill Manager. The reason being . . . . . stopped. Those 1969 agreements would then have still been in force at the time of the N.Z. Forest Products' take-over apart from the two agreements altered as a result of the promotions on the 9th December, 1971? That is correct. When were you first aware of a take-over proposal from N.Z. Forest Products? Late on the evening of the 28th January, 1972. How was that information related to you? Mr. Grayburn 'phoned me. I was in Levin at the show and he rang me at motel about 7.30 p.m. What steps were taken by you concerning the take-over proposal? I rang Mr. Rowe later that evening and we set up a meeting in Wellington the following week between Mr. Grayburn, Mr. Rowe and myself. Were there
- 30 then a number of meetings that you attended and senior staff of N.Z. Forest Products? There were several meetings which were attended by Sir Reginald Smythe, Mr. Currie, and members of the Taupo Totara Timber Co. being myself Chairman, Mr. Grayburn Deputy Chairman, Mr. Cameron, J.K. Can you recall the date of any of these meetings which may relate to the contract now before the Court? The first meeting was . . . . with N.Z. Forest Products representatives at which service contracts was mentioned was in Auckland. I think the date was 7th or 8th April, 1972. You still have your own handwritten notes? I still have notes which I took from that meeting because I had to report back to Board on what happened at that meeting. Did you report to the Board on the 20th April,
- 40 1972 as recorded in minutes of the Board for that purpose? Yes, I did report. That is under the heading of N.Z. Forest Products? Yes. What information had been given to N.Z. Forest Products concerning the management contract between Mr. Rowe and? . . . . At the meeting at Smythe House which was held between Sir Reginald Smythe and Mr. A. Budd, Secretary of N.Z. Forest Products, Mr. Grayburn, Thompson and myself we mentioned that service contracts were in existence and we gave details, brief, of these contracts. In particular I mentioned that they provided 5 years salary tax paid and this was for employees over 40 and for employees under 40 years old. Was there discussion regarding the inclusion of

these service contracts in documentation? The discussion which followed was mainly as to whether we had to include these under the 2nd Schedule of the 1963 Amendment to Companies Act. It was felt that there were several reasons why we needn't in our opinion put these contracts into the take-over offer. The first reason was they didn't necessarily come into operation if the take-over offer was successful. Second was with the number that, about 3 pages each, 6 . . . it would make a very bulky document and thirdly, that as far as Forest Products were concerned Sir Reginald Smythe said it wouldn't make any difference to the offer.

- 10 They were going ahead with the offer anyway. We agreed to leave them out. Were you advised of the exercise of options in respect of 3 of the service agreements? The first one was Mr. Lonnergan, was the Auckland Manager, and he made a resignation in January, I think it was 1973. Parker, Accountant, resigned in February, 1973 as I remember and the Bush Manager, Mr. Pilcher, resigned much later. I think it was April, 1973. Can you recall the date when Mr. Pilcher's resignation was handed in? It was July. I can't remember the exact date. Were you also written to by the Plaintiff with a letter dated 28th May, 1973 handing in his resignation? Yes, I was written to by Mr. Rowe. And you replied to that letter? Yes, I replied straight away. There are two documents that you could perhaps look at and they can be introduced through you, the first one is the statement
- 20 by the company dated 26th April, 1972 to the shareholders? Yes, I have that. EXHIBIT 3. That would have been issued in – with your statement required by the 2nd Schedule and would have accompanied the statement to the shareholders? Yes, I think that would be right. The second document, describe what that is? It is the notice of take-over from Forest Products which would have gone out as part of the offer. EXHIBIT 4. Could you now turn to the minutes of the company 14th June, 1972, where on page 1 there is reference to N.Z. Forest Products Ltd. and it is recorded that it was noted . . . in this company could you tell us where that information came from? to the Board? Some of the information would have come from circular letter sent out by Forest Products to all shareholders
- 30 in Taupo Totara Timber. It is probable that our Secretary contacted the Secretary of Forest Products to check on the most up to date total shares. I know he did this several times and we probably asked him to find out what the up to date position was. Can you recall what was the position as reported to you by Secretary as at 14th June? I presume that it would have been as recorded in minutes 90% of acceptances received. Then on the following meeting of the 20th July, 1972, did you in fact . . . There is reference at page 3 of those minutes, concerning a proposed circular? to shareholders? Yes, I see that. Witness shown the draft and the typed circular Exhibit B. Do you recognise the draft and the typed circular, the draft being in your own handwriting? Yes I recognise my
- 40 handwriting.

(COURT: This actual typed document did form part of the company's records. That is from the company's records). Again on that same date 20th July, after the item circulated shareholders there is an item "Conversion of notes",? Yes. Exhibit C shown to the witness, that Exhibit was sent out on 25th July as a result of the resolution of 20th July, tell us where the item of conversion notes originally from? Under the trust deed under which these convertible notes were issued we had to convert them to shares in the event of take-over being successful. We were carrying out provisions of the trust deed. Was the company also supplied with a

questionnaire from N.Z. Forest Products on the 7th July, 1972? We were given a short list of questions by N.Z. Forest Products. As a result of that list of questions, did you arrange for the necessary answers to be compiled? The answers were compiled by the management staff as a result of the subcommittee 4 directors Mr. Grayburn, Mr. Cameron, Mr. Rowe and myself beginning . . . . We were dealing with take-over offer. When questionnaire came to N.Z. Forest Products we arranged for answers to be worked out by the staff. Was there a question regarding service contracts? Yes there was. What question was that?

COURT: Is this the questions or answers?

10 EXHIBIT 5: Question 3: (c): "Service Contracts".

COURT: Is that a question that asks your company to give to N.Z. Forest Products details of any service contracts? Yes. Was the answer supplied to that in the compiled answers? The answer was that there were service contracts in operation and copies of the contracts were submitted with this folder. P. 29 of Exhibit 5? I think my one is the only one with page numbers on it. Mark the page? Yes. It states that contracts currently in force with 6 of the officer's Copies of the contracts are submitted. The contracts aren't in that folder Exhibit 5.

XXD. CLARK:

20 The Taupo Totara Timber was a public company was it not? Yes. Was the agreement with Mr. Rowe ever put to a meeting of shareholders? No. There was a formal approach was there not to the question to your company by N.Z. Forest Products about the 26th March, 1972 indicating as is required the take-over offer would be forthcoming? We did receive an offer. I can't remember the date. I want you to be careful, was it some time before you told us of the meeting with Sir Reginald Smythe and others in April, 1972? Yes, we were told this.

COUNSEL: . . . . The page shown to you bearing date 27th March, 1972 addressed from the Chairman of Directors Sir Reginald Smythe of Taupo Totara Timber represents the first formal advice by N.Z. Forest Products Ltd. of its intention to submit a take-over offer? Yes this was the first formal written advice.

30 As far as you can recall, was there any formal approach to your Directors, some time in March, before the end of March, 1972? COURT INTERPOSED. You have told us in your evidence that it was thought desirable in 1969 or thereabouts to make provision for service contracts to senior employees? Yes. The document the Court is concerned with here today, you have seen? Yes. Does it make provision also for tax free moneys to be paid in the event of the employees or in this instance Managing Director resigning? The answer is Yes, provided the poor fellow comes within contract. Are you in a position to tell us what in monetary terms the figure may be approximately that resignation provision would cost the company of which you are Chairman? 5 times \$13,500. That is what I would have to  
40 pay and the tax on top of that. With tax on top of that double the amount would be expended by your company? Approximately yes. So that this type of arrangement which you personally approved as Chairman of Directors of company put on your company the possible obligation to disperse in the region of \$130,000 without getting any service whatsoever from the person who would be a former employee on his resignation? I think we had extremely good service before this document was entered into in 1969 and we had even better service before 1971

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
O.F. Haylock  
Examination

In the Supreme  
Court of New  
Zealand  
Plaintiff's  
evidence  
No. 3  
O.F. Haylock  
Cross  
examination

when we promoted Mr. Rowe and these documents were more for recognition of good loyal service amongst all our employees who were in an awkward position in a small country town. We didn't consider the offer we made to them was out of the way. Is it a principal reason of this agreement to show the company's recognition of the appreciated value of services? No it wasn't the principal reason. Do you accept that the cost to the company of an election by Managing Director to resign would be in the vicinity of \$130,000? Yes this would be what we worked out.

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
O.F. Haylock  
Cross  
examination

10 COURT: If he received that in one given year would that be treated as income for one year, do you know? We understood that it was going to be this. The company would then receive \$130,000 deduction from its taxable profits and get \$65,000 less. To be doing this meant that the company got \$130,000 as a deductible expense in connection with their own tax return and since you . . . . the company would be on highest rate you would in effect be getting \$65,000 back? Yes. It would also mean that for 5 years of non service Mr. Rowe was being paid the equivalent of a taxable amount in region of \$25,000 is that correct? Arithmetically maybe yes but we didn't look at it in that way. Arithmetically it may be equivalent of a tax liable salary in region of \$25,000? That was half my answer. The rest was we didn't look at it that way. Can you assist the Court by telling us  
20 whether the figure of \$25,000 tax liable, is fairly close within a thousand or two, of the benefit that this contract provides to Mr. Rowe? No the contract provides much better benefit than this. Was Mr. Rowe's salary in region of \$13,500? Yes. When the take-over took place? Yes. Are you in a position to tell us what gross taxable salary Mr. Rowe would need to receive to leave in his hands \$13,500 tax free? COURT INTERPOSED.

No. I can't answer the question. Assuming as a hypothesis . . . . The provision of the service agreements giving employees possible rights to tax free payments, was inserted because of the directors' apprehension of a take-over is that correct? No this is not correct. The reason for the tax paid payment was high-lighted by  
30 the previous Managing Director Mr. Woollett, who left Putaruru to go to Auckland and found the cost of buying a house in Auckland was greater than the value of his house in Putaruru. We felt that to require someone to live in Putaruru they weren't able to build up capital assets of their own and therefore we as a sub-committee, Mr. Woollett and myself, felt that the company should provide for these senior employees. We also took into account the fact that they were in their late forties and early fifties and it would be difficult to get another comfortable job, certainly in Putaruru. They would have to move and they would need capital and this was the reason.

40 COURT: To what extent if at all were these quite generous provisions made for the sake of attempting to hold these senior employees with the company and to influence their staying with the company even faced with the fear of a take-over? This was a very strong motive on our part. And this applied to Accountant Parker who wouldn't come to us, unless he had a service contract. We couldn't get an Accountant and this is why we gave a contract even though he was a junior man. Are you a director of other companies? Yes I am. Is it not the effect of particular type of service agreement here that the take-over contingency operates to the detriment of company rather than to the shareholders prior to any take-over? No, I don't think this is the case unless any take-over offer was reduced by the

amount of any such agreement. Is the phrase Golden handshake known to your associates? I have heard the statement before, the term. Is it quite a common phrase in relation to compensation for loss of profits? Yes it is quite common. A service agreement as such, would you agree with me, frequently makes provision for return of service, with compensation only in respect of any portion of the term not served with the servant?

In the Supreme  
Court of New  
Zealand  
Plaintiff's evi-  
dence  
No. 3  
O.F. Haylock  
Cross  
examination

10 COURT: Have you had any experience personally of the sort of agreement that Mr. Clark is now talking about? No. Had you any experience prior to the service agreements in this case of tax paid compensation regardless of the employer's wishers as to employees continuing the service? Have you any experience of a golden handshake . . . . Have you any experience of a service agreement provided for compensation . . . . compensation at the sole direction of the employee regardless as to the employer's wishers? In the company M.S.T. Speirs Ltd. of which I am also Chairman we did give some senior employees a similar service contract.

20 COURT: I think the crux of Mr. Clark's question is that the compensation in this case was to be paid if the employee wished to determine his own employment as well as being paid in the other circumstances of the company determining the employee, did both of those propositions apply in the Speirs contract? Yes, it did.

RE-XD: DILLON: No questions.

Mr. Dillon calls:

JOHN NORMAN THOMPSON (Sworn):

I am the Secretary of the Defendant company and reside at Putaruru. I think the bound volume of the Memorandum of Association dated 13th March, 1950 and Articles dated 14th August have been produced and you confirm those are the Memorandum and Articles? Effective as at date of Mr. Rowe's termination. Including amendments to 12th December, 1972? These are articles of association effective to early August, 1975. They have been replaced within the last month.

In the Supreme  
Court of New  
Zealand  
Plaintiff's  
evidence  
No. 3  
J.N. Thompson  
Examination

30 COURT: According to a list of amendments made here up to 12th December, 1972 the maximum number of directors was fixed at 10? Yes. Has that been increased? It was increased to 12 in December, 1972. You also have as Secretary of the company the task of maintaining the seal register? Yes. Which is a bound volume is it of . . . . and record of the affixing of the company's seal to documents? Strictly speaking the folder which is behind Mr. Clark and is a record of when the company seals are affixed to the company documents.

40 COURT: Is the seal register of which you speak the same thing as something that is sometimes called the seal book? Yes. The particular service contract dated 20th January, 1971, . . . . 1972, is recorded in the seal register on what date? I am sorry I couldn't say without reference to the seal register. If you look at date of 28th January, 1972. Yes. Why is the seal register dated 28th January, 1972 when the document itself is dated 20th January, 1972? I don't know at this stage. Could you explain to the Court how the dating in seal register is arrived at, the day that the seal register is actually fixed? sorry, that the company's seal is

actually affixed? Perhaps the problem that I sometimes face here is that we get two different directors to execute a document and sometimes we have one sign it on one day and another on another day.

COURT: How can you say it is affixed . . . . .

COUNSEL: The date on the seal register is that when all signatures are affixed and the company seal? No there would not be complete consistency in that. You couldn't read that into the seal register date. As Secretary are you also responsible for recording the transfer of shares? Yes.

COURT: In what? In the share register.

10 COUNSEL: Are you also responsible for certificate of shares? Yes. Is that recorded in what? The issue of new share certificates is recorded in the share register and in the seal register. In connection with the take-over offer of N.Z. Forest Products when did you as Secretary receive or record, when did you receive transfers from N.Z. Forest Products pursuant to the take-over? They started being delivered to our office. It would be June and July, 1972. There were a large number of these and they didn't all come at the same time. Were those transfers checked by you? They were checked by the share registrar who was responsible to me. Have you with you the share register in respect of N.Z. Forest Products? Yes. Could you advise the Court the date when the shares were recorded on the

20 share register?

COURT: Is that a page from your share register? At this time the share register had approximately 7,000 shareholders and the share register consisted of a series of cards like this.

COUNSEL: Could you tell the Court when were the share transfers to N.Z. Forest Products Ltd. recorded in the share register as a result of the take-over? The first series of transfers are recorded on 23rd August, 1972. It was 5,657,150. As a result of the recording in the share register, was there any notation made in the seal register of share certificates? Yes there was a share certificate issued to N.Z.

30 Forest Products Ltd. Date of that certificate issued? The date of the certificate which includes the first batches of shares and also some further share transfer forms which arrived later is 27th September, 1972. Were the shares entered in register on 28th . . . . 23rd August, 1972 some of those included in that share certificate? Yes, we didn't issue a share certificate on 23rd August.

XXD CLARK: No questions.

EVIDENCE FOR THE PLAINTIFF.

MR. CLARK DOES NOT WISH TO CALL EVIDENCE.

**No. 4: REASONS FOR JUDGMENT OF MOLLER, J. IN SUPREME COURT**

In the Supreme  
Court of New  
Zealand  
No. 4  
Reasons for  
Judgment of  
Moller, J. in  
Supreme Court  
21 October 1975

The pleadings in this action reached the stage where, pursuant to leave granted by consent on the first day of the hearing, the plaintiff filed a "Further Amended Statement of Claim". Consequently the defendant had then to file a new statement of defence.

The plaintiff was previously managing director of the defendant company (to which I shall refer as "Totara"), and, on 20th January, 1972, he and Totara entered into an agreement which fixed the terms of his employment. Clause 7 reads as follows:-

10 "NOTWITHSTANDING the foregoing provisions of this agreement, in the  
event of any person or other company or companies or any person or organ-  
isation or group of persons on their behalf acquiring either by means of a  
take-over offer or otherwise not less than 50% of the issued capital of the  
company, the employee shall be entitled at any time within a period of  
twelve months from and after the date of acquisition of capital as aforesaid,  
to resign his office upon giving to the company not less than three months  
notice in writing of his desire to do so. Should the employee resign his office  
pursuant to the right conferred on him by, and in the circumstances as  
mentioned in this paragraph 7 hereof, or should he receive from the com-  
20 pany at any time during the said period of twelve months, notice of termi-  
nation of his employment for any cause whatsoever then and in either such  
case the employee shall be entitled to receive from the company (in addition  
to any superannuation benefits or other rights to which he is entitled) on  
the date on which he ceases to be employed by the company and the com-  
pany shall pay to the employee on that date, a sum of money equivalent to  
five times the gross annual salary being paid by the company to the employ-  
ee immediately prior to the date of the acquisition of such share capital of  
the company as aforesaid AND IT IS EXPRESSLY DECLARED that all  
income and other taxes on the sum of money to be paid to the employee  
30 pursuant to this paragraph 7 shall be payable by the company TO THE  
END AND INTENT that the said sum of money will not be taxable in the  
hands of the employee at any time after the date of receipt thereof by him."

The plaintiff alleged: that "ON or about the 23rd August, 1972 N.Z. Forest  
Products Limited acquired either by means of a take-over offer or otherwise not  
less than 50% of the issued capital of the Defendant"; that from that date the  
provisions of clause 7 became operative; that on or about 28th May, 1973 he  
gave, by letter to the chairman of directors of Totara, "not less than three. . . . .  
months written notice of his intention to resign his office as Managing Director  
. . . . .to take effect as at the 31st day of August, 1973"; and that his gross  
40 annual salary immediately prior to 23rd August, 1972 was "not less than  
\$13,500". He therefore claimed from Totara the sum of \$67,500 together with  
interest from 1st September, 1973 "down to the date of judgment at eight per  
cent".

The same sum was claimed on an alternative cause of action by virtue of  
which the plaintiff alleged: that on 25th July, 1973 he received from Totara

notice of termination of his employment; that, indeed, he received a second notice of termination of his employment dated 6th August, 1973; and that both these notices were received by him "during the period of twelve months from the acquisition by N.Z. Forest Products Limited either by means of a take-over or otherwise of not less than 50% of the issued capital of the Defendant in terms of Clause 7 of the . . . . . agreement."

In reply Totara made a number of admissions and denials of the kind that one would expect in such circumstances. In particular it admitted that "on or before the 23rd August, 1972" N.Z. Forest Products Limited (to which I shall refer as "Forest Products") had acquired the percentage of issued capital mentioned in the agreement; that the plaintiff's gross salary prior to the acquisition was the amount appearing in the statement of claim; and that it sent to the plaintiff "a letter dated the 25th day of July, 1973 and a Notice dated the 6th day of August, 1973". However, it added that the acquisition of the prescribed percentage by Forest Products "took place prior to the 20th day of July, 1972 and was effective and/or accepted by both the Plaintiff and the Defendant as being effected not later than the said 20th day of July, 1972". In addition Totara denied that the agreement was "valid and enforceable, and pleaded that even if it was valid and enforceable, the plaintiff "did not give notice in writing of his desire to resign within the requisite time, and further did not in fact resign within twelve months as and from either the said 20th day of July, 1972 or as and from the said 23rd day of August, 1972."

Two other alternative defences were set out in the final statement of defence. The second, based upon estoppel, was abandoned, and the first, which dealt with the alleged invalidity and unenforceability of the agreement consisted of three allegations of which the third was also abandoned.

Clearly the primary dispute between the parties turns upon the interpretation of clause 7. For the plaintiff Mr. Dillon submitted that the sending of a letter notifying Totara of the plaintiff's desire to resign at a future date meant that the resignation was complete at the date on which that letter was received by Totara. Mr. Clark, on the other hand, contended that such a letter was not in itself a resignation, and that the resignation would be complete only on the future date mentioned in it when the office of managing director was to be finally relinquished.

A decision upon these conflicting arguments is, of course, a matter of vital importance, because there can be no doubt that, on the view of the facts most favourable to the plaintiff, the latest date by which Forest Products acquired "not less than 50% of the issued capital of the company" was 23rd August, 1972. In saying this I am not making a positive finding that this was the date, but it was on that day that the transfers of 5,657,150 shares to Forest Products (this being well over 50% of the total) were recorded in Totara's share register, no other transfers to Forest Products having been previously registered. Mr. Clark advanced arguments in respect of other earlier dates, any one of which, he suggested, might be the crucial one. But, after all, the articles of association of Totara provide in article 26 that "the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof". If the date of acquisition was 23rd August, 1972 then the plaintiff's act of resignation had to be complete and effective by 23rd August, 1973. In fact, however, the plaintiff's letter was dated 28th May of that

In the Supreme  
Court of New  
Zealand  
No. 4  
Reasons for  
Judgment of  
Moller, J. in  
Supreme Court  
21 October 1975

year and expressly mentioned 31st August as the date upon which the resignation was to take effect. And so we have the position that, if the letter is to be treated merely as a notice of the plaintiff's desire to resign, not only would the notice itself be short of the three months' requirement but also the stipulated date of effectiveness would be beyond the period of 12 months from Forest Products' acquisition of the capital. On the other hand of course, if the letter itself, which was clearly received by Totara by 1st June, 1973, is held to be the actual resignation itself, then the plaintiff has complied with all the provisions of clause 7 as to time.

In the Supreme  
Court of New  
Zealand  
No. 4  
Reasons for  
Judgment of  
Moller, J. in  
Supreme Court  
21 October 1975

10 Although Mr. Dillon referred me to cases dealing with such matters as the exercise of options and the relationship of lessor to lessee, he had to concede that these decisions were of only very limited assistance to him and that his researches had not unearthed a case dealing specifically with resignation from office in which the argument he submitted to me had been adopted. He also sought, without citing authority, to have me interpret the word "upon" as meaning "by" so that the relevant portion of the clause would give the plaintiff the right to resign his office "by giving to the company not less than three months' notice in writing of his desire to do so".

20 I think that what I have to do is to look at this particular agreement, considering carefully the wording of clause 7 itself but also keeping that clause in proper perspective by surveying the document as a whole. I have done this, and I have reached the view that Mr. Dillon's contentions should not be accepted. I think that, in this case, the draftsman has been careful to distinguish between the final act of resignation, the factual handing over of the plaintiff's office, and the prior notice to Totara of his desire to do this at some time in the future.

I therefore hold that the plaintiff's first cause of action fails.

30 The second cause of action was based upon the allegation that, by virtue of a later part of clause 7, Totara had, within the prescribed time, given to the plaintiff (and the plaintiff had received) "notice of termination of his employment".

This suggestion appears to be based on three documents.

The first, which is merely introductory to what followed, is a letter from the plaintiff, dated 5th June, 1973, to "Mr. J. T. Currie, Resident Director, N.Z. Forest Products Ltd., Kinleith," with which he sent to Mr Currie a copy of his notice of 28th May to Totara. The second is the letter dated 25th July referred to in the statement of defence. This is on Totara's letter-head and is signed by Mr. Currie, on this occasion as "Chairman" of Totara. This reads as follows:-

"Dear Mr. Rowe,

40 Your letter of 28th May, 1973 addressed to the former Chairman of Directors of the Company, Dr. Haylock, and acknowledged by him on 1st June, 1973, giving notice of your resignation from your position as Managing Director of the Company and as a Director of its subsidiary Companies, was placed before the Board at its meeting on 16th July, 1973.

I have to advise you that the Board has, with regret, accepted your resignation to take effect as at 31st August, 1973 as requested by you in your letter giving notice of resignation.

The Board has noted that you have submitted your resignation for personal reasons and wishes you well in any future activity in which you may engage.

I must, however, advise you that the Board has noted that the terms of your notice of resignation preclude you from entitlement to receive the lump sum payment on resignation which is provided for in clause 7 of your service contract with the Company dated 20th January, 1972 in the event of resignation taking place in accordance with the conditions contained in the clause. This interpretation may well conflict with your expectation in the matter so that I must inform you that Queens Counsel's opinion has been secured confirming this view."

10

Mr. Dillon argued that this letter amounted to "notice of termination" of the plaintiff's employment with Totara. I cannot accept this. In my opinion it is no more than an acceptance, "with regret", of a resignation "to take effect as at 31st August, 1973", to which is added a warning to the plaintiff that he may not qualify for the benefits mentioned in clause 7.

The third document is dated 6th August, 1973 and is the "Notice" referred to in the statement of defence. It reads:-

“

## NOTICE

20

Mr. D. K. Rowe, Managing Director of The Taupo Totara Timber Company Limited has for personal reasons submitted his resignation from the Company and its subsidiaries, effective from 31st August, 1973.

Mr. Rowe's resignation has been accepted with regret.

As from 1st September, 1973 the management of the Company and its subsidiaries will be the responsibility of Mr. D. G. Gibb, the General Manager of the Company, who will be located at the Company's Head Office in Putaruru."

30

This was apparently sent to the plaintiff by Mr. Currie. The plaintiff, in turn, passed it on, on 9th August, to the secretary of Totara for the secretary's own information and also with a request that he bring it to the attention of his senior staff. Mr. Dillon submitted that this document, no matter what might be said about any others sent to the plaintiff, was itself a notice of termination of employment sent to, and received by, him before 23rd August. I reject this contention also.

Consequently the second cause of action cannot succeed.

The decisions that I have come to make it unnecessary for me to consider the secondary defences raised by Mr. Clark and based upon the invalidity or unenforceability of the agreement. I only add, in this connexion, that Mr. Clark left me with the impression that this defence was very much a subsidiary matter.

40

There will therefore be judgment for the defendant. Totara is, of course, entitled to an award of costs and disbursements, but I reserve my decision in respect of these. If counsel cannot agree, then they can make submissions to me later. I record that I would, in any case, give a certificate in respect of the extra day.

“L. F. Moller”

In the Supreme  
Court of New  
Zealand  
No. 4  
Reasons for  
Judgment of  
Moller, J. in  
Supreme Court  
21 October 1975

**No. 5: FORMAL JUDGMENT OF SUPREME COURT .**

**THIS ACTION** coming on for trial on the 25th and 26th days of August, 1975, before His Honour, Mr. Justice Moller, after hearing Mr. J. G. Dillon and Mr. J. G. Ross of Counsel for the Plaintiff and Mr. B. H. Clark of Counsel for the Defendant and the evidence then adduced **IT IS ADJUDGED** that there be judgment for the Defendant with costs of \$1,950.00 and disbursements of \$41.00, a total of \$1,991.00.

In the Supreme  
Court of New  
Zealand  
No. 5  
Formal Judgment  
of Supreme Court  
16 March, 1976

**DATED** this 16th day of March, 1976.

**BY THE COURT**

10

(L.S.)

“P. D. Sheerin”

**DEPUTY REGISTRAR.**

**No. 6: NOTICE OF MOTION OF APPEAL TO COURT OF APPEAL**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

No. C.A. 6/76

**BETWEEN: DARCY KEVIN ROWE, of Putaruru  
Retired Managing Director.**

**Appellant**

**AND: THE TAUPO TOTARA TIMBER  
COMPANY LIMITED a duly incor-  
porated Company having its register-  
ed office at Princes Street, Putaruru  
and carrying on business as Timber  
Merchants.**

**Respondent**

In the Court of  
Appeal of New  
Zealand  
No. 6  
Notice of  
Motion of Appeal  
to Court of  
Appeal  
16 January 1976

10

TAKE NOTICE that this Honourable Court will be moved by Counsel for the abovenamed Appellant on        day the        day of        1976 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard ON APPEAL from the whole of the Judgment of the Supreme Court of New Zealand delivered by His Honour Mr. Justice Moller on the 21st day of October, 1975 in the matter of an action Number A. 124/73 in the Rotorua Registry of the Supreme Court of New Zealand wherein the abovenamed Appellant is the Plaintiff and the abovenamed Respondent is the Defendant UPON THE GROUNDS that the said Judgment is erroneous in fact and in law.

20

DATED at Hamilton this 16th day of January, 1976.

“J. G. Dillon”  
SOLICITOR FOR APPELLANT

To:        The Registrar of the Court of Appeal of New Zealand.  
And To:   The Registrar of the Supreme Court at Rotorua.  
And To:   The Respondent.

30

This Notice of Motion is filed by Joseph Gilbert Dillon, Solicitor for the Appellant, whose address for service is at the offices of Messrs. Tripe, Matthews & Feist, Solicitors, General Buildings, Waring Taylor Street, Wellington.

## No. 7: APPELLANT'S SYNOPSIS

MAY IT PLEASE YOUR HONOURS

In the Court of  
Appeal of New  
Zealand  
No. 7  
Appellant's  
Synopsis

## 1. INTRODUCTION

During 1972 the Respondent Company (Defendant Company in the Court below) was taken over by New Zealand Forest Products Limited. At that time the Appellant (Plaintiff in the Court below) was employed by the Respondent Company as its Managing Director and the terms of such employment were recorded in a service agreement dated 20th January, 1972 (Exhibit 1A p. 35).

## 2. ALTERNATIVE CAUSES OF ACTION (2)

- 10 This claim arises out of the service agreement between the Appellant and the Respondent Company and, in particular, clause 7 thereof which provides in certain circumstances for payment of five times the existing salary in the event of a take-over. The Respondent Company was taken over on the 23rd August, 1972 (the Respondent says by 20th July, 1972) and notice was given by the Appellant on the 28th May, 1973. In terms of clause 7 notice was to be given within 12 months of the date of the take-over and it is claimed by the Appellant that the notice of 28th May, 1973 was such a notice and, therefore, entitled the Appellant to payment of five times his previous salary of \$13,500.00 free of tax.
- 20 Alternatively, the Plaintiff claims that again within the period of 12 months from the date of take-over he received notice of termination of his employment and is on this ground similarly entitled to the amount claimed in the Writ. Essentially the matter is one of determination of date of take-over and interpretation of the service agreement dated 20th January, 1972, and the following submissions are made:-

- The Appellant was "entitled at any time within a period of 12 months" from 23rd August, 1972 "to resign his office upon giving to the Company not less than three months' notice in writing of his desire to do so". It is submitted that the phraseology is open to only one unambiguous meaning and that is that at any time up to the 23rd August, 1973 a resignation could be tendered and would
- 30 be effective in terms of the service contract, even if given on the 22nd August, 1973, but to take effect on the 23rd November, 1973.

The alternative claim is based on the Appellant receiving prior to 23rd August, 1973 "notice of termination of his employment for any cause whatsoever" and in this regard it is submitted that the attempted resignation by the Appellant and the acceptance of such attempted resignation by the Respondent Company constitutes "valid notice of termination of his employment for any cause whatsoever" received by the Appellant prior to the 23rd August, 1973. Notice could be received by the Appellant on the 22nd August, 1973 advising that he was to finish on the 23rd February, 1974 and the provisions of Clause 7 would still apply.

- 40 Note format of agreement cf. clause 3 (6 months notice) and consider wording of clauses 3, 5 and 7 (pp. 35, 36 and 37). [Now pp. 96 and 97].

In the event that the Court considers there is ambiguity in respect of the phraseology of clause 7 then the Appellant relies upon the dictum “verba fortius accipiuntur contra proferentem”, the agreement having been drawn up by the Respondent’s Solicitors on instructions from the Respondent.

Halsbury 4th Ed., Vol. 12, p. 606, paragraph 1472.

In the event that the above submissions do not find favour and the Court still considers that there is an ambiguity, then it is permissible for the Court to consider the background including the Minutes of the Respondent’s Board as to the true intent of the Agreement.

10 Halsbury 4th Ed., Vol. 12, p. 622, paragraph 1490.

**No. 8: MEMORANDUM ON BEHALF OF RESPONDENT  
AS TO ITS GROUNDS FOR OPPOSING APPEAL**

If it please you Mr. President and Your Honours:

**I FACTS**

There would appear to be little or no dispute as to the facts of this case as set forth in the careful Judgment of the learned Trial Judge at first instance. On behalf of the Respondent, however, it is thought desirable to bring to your Honours' particular attention certain factual matters or findings.

10 1. "on the view of the facts most favourable to the Plaintiff, the latest date by which Forest Products acquired not less than 50% of the issued capital of the Company' was 23rd August, 1972".

This, of course, was what was pleaded by the Plaintiff in his final Amended Statement of Claim.

2. The Plaintiff gave notice of his intention to resign, to take effect as at 31st August, 1973, on or about the 28th May, 1973.

3. The Plaintiff's resignation was absolutely voluntary.

4. The Plaintiff ceased office immediately prior to the 31st August, 1973.

5. The terms of the Agreement between the Appellant and Respondent were never disclosed to shareholders.

20 **II TERMS OF AGREEMENT**

1. Clause 7 of the Agreement of 20th January, 1972 was in the following terms:-

30 "NOTWITHSTANDING for foregoing provisions of this agreement, in the event of any person or other company or companies or any person or organisation or group of persons on their behalf acquiring either by means of a take-over offer or otherwise not less than 50% of the issued capital of the company, the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the company not less than three months notice in writing of his desire to do so. Should the employee resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in this paragraph 7 hereof, or should he receive from the company at any time during the said period of twelve months, notice of termination of his employment for any cause whatsoever then and in either such case the employee shall be entitled to receive from the company (in addition to any superannuation benefits or other rights to which he is entitled) on the date on which he ceases to be employed by the company and the company shall pay to the employee on that date, a sum of money equivalent to five times the gross annual salary being paid by the company to the employee immediately prior to the date of the acquisition of such share capital of the company as aforesaid AND IT IS EXPRESSLY DECLARED that all income and other taxes on the sum of money to be paid to the employee pursuant to this paragraph 7 shall be payable by the company TO THE END AND INTENT that the said sum of money will not be taxable in the hands of the employee at any time after the date of receipt thereof by him."

40

In the Court of  
Appeal of New  
Zealand  
No. 8  
Memorandum on  
Behalf of Res-  
pondent as to its  
grounds for  
opposing appeal  
1st June 1976

p. 22  
li. 36-39

p. 2  
li. 3-6

p. 21  
li. 37-39

p. 11  
li. 13-14

p. 7  
li. 35-38

p. 9  
li. 29-32

p. 21  
li. 10-31

2. In its opposition to this Appeal the Respondent submits that the learned Trial Judge's interpretation of the Agreement was entirely correct when he concluded:-

p. 23  
ll. 22-25

"I think that, in this case, the draftsman has been careful to distinguish between the final act of resignation, the factual handing over of the plaintiff's office, and the prior notice to Totara of his desire to do this at some time in the future."

In the Court of  
Appeal of New  
Zealand  
No. 8  
Memorandum on  
Behalf of Res-  
pondent as to its  
grounds for  
opposing appeal  
1st June 1976

### III REQUIREMENTS NEEDED TO COMPLY WITH PROVISIONS OF AGREEMENT

10 1. In the Respondent's submission, the following were the requirements agreed by the parties before the Appellant had any possible right to claim a benefit under Clause 7 of the Agreement:-

- (a) Acquisition by take-over of more than 50% of the issued capital of the Respondent.
- (b) Resignation by the Appellant within twelve months of such acquisition.
- (c) Not less than three months notice by the Appellant of his desire to resign within the stipulated twelve month period.
- (d) Notice of termination of the Appellant's employment within the prescribed period.

20 In the Respondent's submission, neither requirements (b), (c) or (d) were satisfied, more particularly insofar as:-

- (i) The Respondent's resignation was more than twelve months after the 23rd August, 1972.
- (ii) In any case, the Respondent's Notice was not given in sufficient time.
- (iii) The Respondent did not terminate the Appellant's employment, either within the prescribed time or at any time.

2. The Appellant's claim was for a benefit to himself and the time limits between the parties had to be strictly observed.

**Samuel Properties (Developments) Ltd v Hayek [1972] II All E.R. 881.**

### 30 IV VALIDITY OF AGREEMENT

The Respondent has, as noted quite correctly by the Trial Judge, already abandoned all secondary grounds of its defence other than those pertaining to the validity and/or enforceability of the Agreement in question.

The learned Trial Judge did not find it necessary to rule on the Respondent's secondary grounds of defence. They were and remain two-fold in nature and pertain:-

- (a) to the provisions of Sections 191 to 194 of the Companies Act 1955; and
- (b) whether the Agreement was ultra vires either the Respondent Company itself or alternatively its Directors.

40

### V SECTIONS 191 to 194 of the COMPANIES ACT 1955

In the Respondent's submission, any payment to any Director by way of compensation for loss of office or as consideration for or in connection with his retirement from office is unlawful unless disclosed to members of the Company and the proposal approved by the Company in General Meeting. It

is submitted that both under English law and New Zealand law the statutory prohibition has application to all Directors, whether or not employees receiving a wage or salary, or engaged under a formal Service Contract.

(Duomatic Ltd. [1969] I All E.R. 161.

It is further submitted that the exceptions provided for by Section 194 subsection 3 are not available to save the Appellant's contract from its statutory invalidity.

If the decision at first instance in *Lincoln Mills (Aust.) Ltd. v Gough* [1964] V.R. 193, is inconsistent with the submission made herein, it is submitted that the *Lincoln Mills* decision is bad in law and should not be followed. It is submitted, however, that the *Lincoln Mills* decision is not inconsistent, bearing in mind the difference between the Victorian Statute and our own, but more particularly because the payment under consideration in the *Lincoln Mills Case* was in respect of an uncompleted period of service, and not in the nature of a mere gratuity or "golden handshake" receivable at the option of the Director in question.

10

#### VI ULTRA VIRES ARGUMENT

1. All Directors stand in a fiduciary relationship and are precluded from obtaining any benefit from the Company unless there is a dispensation or clear authorisation to the contrary.

20

2. If the Memorandum of Association contains no express power to pay or provide for pensions or gratuities, then there is no implied power for a trading company to do so.

3. Article 96 of the Respondent's Articles of Association (if it be said to be otherwise applicable), being unsupported by any power given by the Memorandum of Association, is accordingly ultra vires.

4. Article 177 (if itself valid) does not by its phraseology justify the Appellant's claim.

(*Matthews v Newport Block & Tile Co. Pty. Ltd.* [1949] 80 C.L.R. 269.

30

5. The term "remuneration" in itself implies some quid pro quo and does not extend to give Directors power to give one of their number a present at the Company's expense.

(*In re Lee Behrens & Co. Ltd.* [1932] 2 Ch. 47.

DATED at Wellington this 1st day of June, 1976.

Counsel for Respondent

In the Court of  
Appeal of New  
Zealand  
No. 8  
Memorandum on  
Behalf of Res-  
pondent as to its  
grounds for  
opposing appeal  
1st June 1976

## No. 9. REASONS FOR JUDGMENT OF RICHMOND, P. IN COURT OF APPEAL

This appeal relates to a contract of employment which was entered into on 20th January, 1972 between the appellant (Mr. Rowe) and the respondent (the Company). Mr. Rowe had previously been the Company's General Manager, but on 9th December, 1971 he was appointed Managing Director. The purpose of the contract was to record the terms of his employment. Clauses 1 and 2 provided that he would be employed as Managing Director for a term of five years from 9th December, 1971 and that during the continuance of the contract he would devote his whole time and attention to the business of the company and use his best endeavours to promote the interests and welfare of the company. Clause 3 gave to Mr. Rowe the following right of resignation:-

3. THE employee may resign his office upon giving to the company not less than six months notice in writing of his desire to do so.

Clause 4 related to Mr. Rowe's duties and powers and clause 5 then conferred on the Company a power at any time to terminate Mr. Rowe's employment, while at the same time preserving any remedy he might have in damages. Clause 6 dealt with the question of remuneration and expenses and the like and then followed the clause which has given rise to the present litigation:-

7. NOTWITHSTANDING the foregoing provisions of this agreement, in the event of any person or other company or companies or any person or organisation or group of persons on their behalf acquiring either by means of a take-over offer or otherwise not less than 50% of the issued capital of the company, the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the company not less than three months notice in writing of his desire to do so. Should the employee resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in this paragraph 7 hereof, or should he receive from the company at any time during the said period of twelve months, notice of termination of his employment for any cause whatsoever then and in either such case the employee shall be entitled to receive from the company (in addition to any superannuation benefits or other rights to which he is entitled) on the date on which he ceases to be employed by the company and the company shall pay to the employee on that date, a sum of money equivalent to five times the gross annual salary being paid by the company to the employee immediately prior to the date of the acquisition of such share capital of the company as aforesaid **AND IT IS EXPRESSLY DECLARED** that all income and other taxes on the sum of money to be paid to the employee pursuant to this paragraph 7 shall be payable by the company **TO THE END AND INTENT** that the said sum of money will not be taxable in the hands of the employee at any time after the date of receipt thereof by him.

Clause 8, being the last clause in the contract, made provision for the event of Mr. Rowe's death and has no relevance to the present appeal.

From the evidence given at the trial it appears that in the year 1969 the company was experiencing difficulty in obtaining senior staff. At least one serious cause of this difficulty was the fear that the company might be taken over with the consequence that members of the senior staff could become

In the Court of  
Appeal of New  
Zealand  
No. 9  
Reasons for  
Judgment of  
Richmond, P.  
in Court of  
Appeal  
5 July, 1976

redundant or might not find it congenial to continue working for the company under different control. The company therefore decided to incorporate in the contracts of senior staff members a provision similar to that found in clause 7 of the present contract.

As it happened it was not very long after the contract of 20th January, 1972 had been entered into that an approach was made by New Zealand Forest Products Limited (Forest Products) with the result that by 23rd August, 1972 at the latest Forest Products had acquired "not less than 50% of the issued capital of the company" within the meaning of clause 7 of the contract. It seems that this point was to some degree in dispute before Moller J. in the Supreme Court but on the hearing of the present appeal both counsel were agreed that the position as just stated should be accepted in this Court.

Mr. Rowe evidently decided that for personal reasons he wished to resign his office as Managing Director. To that end he wrote a letter dated 28th May, 1973 to the Chairman of Directors of the Company. The material parts of this letter are as follows:-

I wish to tender my resignation as Managing Director of this company and as a Director of Subsidiary Companies under its control to take effect as at the 31st August, 1973, in terms of my service agreement duly executed under the Seal of the Company, a copy of which is held by N.Z. Forest Products Ltd.

I tender my resignation for strictly personal reasons and with regret. . . . .

Would you please acknowledge receipt of my resignation in order that I can advise Mr. Currie for further action.

The Chairman on 1st June, 1973 acknowledged receipt of Mr. Rowe's letter and then on 25th July, 1973 write a further letter to Mr. Rowe advising him that his letter of 28th May had been placed before the Board of Directors at a meeting on 16th July, 1973. The letter then continued:-

I have to advise you that the Board has, with regret, accepted your resignation to take effect as at 31st August, 1973 as requested by you in your letter giving notice of resignation.

The Board has noted that you have submitted your resignation for personal reasons and wishes you well in any future activity in which you may engage.

I must, however, advise you that the Board has noted that the terms of your notice of resignation preclude you from entitlement to receive the lump sum payment on resignation which is provided for in Clause 7 of your service contract with the Company dated 20th January, 1972 in the event of resignation taking place in accordance with the conditions contained in the clause. This interpretation may well conflict with your expectation in the matter so that I must inform you that Queens Counsel's opinion has been secured confirming this view.

Mr. Rowe in fact ceased his activities as Managing Director of the Company on 31st August, 1973 (being the date mentioned in his letter of 28th May). His solicitors wrote to the Company on 8th August, 1973 maintaining that his letter of 28th May was an effective notice of resignation within the provisions of clause 7 of the contract or, in the alternative, if that were not so, then the company's letter to Mr. Rowe of 25th July, 1973 amounted to a notice by the

company terminating his employment, again within the meaning of clause 7 of the contract. Thus Mr. Rowe took the position that on one or other of the two grounds just stated he was entitled to the special financial benefits provided for in clause 7.

I need not refer in any detail to the evidence which was given at the trial before Moller J. Nor need I refer to a number of points which were discussed by the Judge in a reserved judgment which he delivered on 21st October, 1975. The substantial issues on the present appeal are the following:-

- 10 1. Was Mr Rowe's letter of 28th May, 1973 an effective notice as provided by clause 7? Moller J. held that it was not.
2. Was the company's letter of 25th July, 1973 a notice of termination of Mr. Rowe's employment as referred to in clause 7? Again the Judge held that it was not.
3. Is clause 7 of the contract unlawful having regard to the provisions of ss. 191 to 194 inclusive of the Companies Act 1955?
4. Was clause 7 of the contract ultra vires the powers of the company under its Memorandum of Association or alternatively, ultra vires the powers of the Board of Directors of the Company?

The Judge found it unnecessary to deal with 3 and 4.

- 20 I turn now to deal with the first of the above issues. The take-over having been completed for the purposes of clause 7 on 23rd August, 1972, the contract conferred upon Mr. Rowe the following right:-

... the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the company not less than three months notice in writing of his desire to do so. Should the employee resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in this paragraph 7 hereof, . . .

- 30 (Then followed the provision as to his entitlement to the sum of money described in the clause on the "date on which he ceases to be employed by the company")

- It was contended for the Company, both in the Supreme Court and again in this Court, that in the foregoing provisions the expression "to resign his office" meant the actual relinquishment or giving up by Mr. Rowe of his office of Managing Director – an act on his part which the learned Judge described as "the final act of resignation, the factual handing over of the plaintiff's office". If this interpretation be adopted, then it follows that as Mr. Rowe did not in fact cease his employment as Managing Director until 31st August, 1972 he did not "resign his office" within the stipulated period namely "at any time within a period of 40 12 months from and after the date of acquisition of capital as aforesaid". That period of 12 months ran out on 23rd August, 1973.

The alternative construction of clause 7, as contended for on behalf of Mr. Rowe, is that all that was required on his part was that at any time within the period of 12 months he should give to the Company not less than 3 months' notice of his desire to resign his office. On this view of the matter the expression "to resign his office" would mean no more than that Mr. Rowe should take a formal step by way of giving a notice intended to and having the effect of surrendering his office as Managing Director, albeit at some future date not earlier

than 3 months after the notice was given.

As earlier indicated, Moller J. preferred the first of the foregoing interpretations. After referring to the respective submissions of counsel he gave his reasons quite shortly. He said:-

10 I think that what I have to do is to look at this particular agreement, considering carefully the wording of clause 7 itself but also keeping that clause in proper perspective by surveying the document as a whole. I have done this, and I have reached the view that Mr. Dillon's contentions should not be accepted. I think that, in this case, the draftsman has been careful to distinguish between the final act of resignation, the factual handing over of the plaintiff's office, and the prior notice to Totara of his desire to do this at some time in the future.

In the phrase "resign his office" the verb "resign" is transitive. In that sense its first dictionary meaning as given in the Shorter Oxford English Dictionary is "to relinquish, surrender, give up, or hand over (something) especially an office, position, right, claim, etc.". I note that in the present case the Judge, as already mentioned, spoke of "the final act of resignation, the factual handing over of the plaintiff's office". With respect, I do not think that the meaning of "handing over" is really appropriate in the present case. The right conferred by clause 7 cannot have been envisaged as a right to "hand over" the office of Managing Director but simply as a right to relinquish, surrender, or give up that office. In that sense the right to resign the office is not really synonymous with a right to cease work on a certain day. In ordinary understanding the resignation of an office involves taking some step to communicate to the person under whom the office is held the fact that the office holder is indeed giving up that office.

20 With these preliminary thoughts in mind I turn more particularly to the wording of clause 7. The right there given is "to resign his office upon giving to the Company not less than three months notice in writing of his desire to do so". As I understand the reasoning which found favour with Moller J., he was much influenced by the fact that the concluding words "to do so" must, in the context, mean "to resign his office". When the language is taken literally therefore it can be said that Mr. Rowe could not at the same time both resign his office and give notice of his desire to resign his office at a future date. I confess that I also have very considerable difficulty with the language used by the draftsman of clause 7 in this particular respect. But if the construction just mentioned is adopted then it follows that the word "upon" must be given the meaning of "after" – as indeed it can be where the context so requires – see **The Queen v Arkwright** (1848) 12 Q.B. 960, 970; 116 E.R. 1130, 1134. The material words of course would then read – " . . . the employee shall be entitled . . . to resign his office after giving to the company not less than three months' notice in writing of his desire to resign his office". So constructed the clause would involve two separate steps to be taken by Mr. Rowe. Firstly he would have to give a notice of his desire to resign his office. Then, after that notice had expired he would be entitled to resign his office but would not be obliged to do so. It would be a matter for him as to whether he took the second necessary step of actually notifying the company that he was relinquishing his office. This I think simply cannot have been the intention of the parties as the obvious purpose of requiring a notice of not less than three months was to give the

In the Court of  
Appeal of New  
Zealand  
No. 9  
Reasons for  
Judgment of  
Richmond, P.  
in Court of  
Appeal  
5 July, 1976

company a chance to make other arrangements. It must have been intended in those circumstances that the notice of Mr. Rowe's desire to relinquish office should be the one and only step required to be taken by him to achieve that result and that his notice once given should be irrevocable except with the consent of the company. Furthermore, the interpretation which found favour with the Judge derogates from certain other and most important words which are found in clause 7. The right to "resign his office" thereby conferred upon Mr. Rowe was expressed to be one which he was entitled to exercise "at any time within a period of 12 months from and after the date of acquisition of capital as aforesaid". The interpretation contended for by the company means that the right to resign, in the sense of actually and presently surrendering office, would only be exercisable during the latter nine months of the 12 month period. I do not think that the parties can ever have had in mind that Mr. Rowe had an effective right to give notice at some time prior to the conclusion of the take-over. On a common sense view of the clause its entire machinery must have been designed to become operative only after the take-over was complete.

10  
20  
30  
40  
Which ever way one looks at the language of clause 7 there are some difficulties. But I do not think that the meaning of the language is so clear and unambiguous that the Court should be driven to adopt an interpretation of it which leads both to a shortening of the stated period of 12 months and to the most inconvenient and unusual situation of the employee having an election whether to resign or not at the expiration of his period of notice. Whatever the grammatical difficulties may be therefore I think that the clause should be construed as conferring a right to resign office by taking the one and only step of giving not less than three months notice to the company. It is of course a common usage of language for a person to speak of having resigned an office at the point of time when he gives notice of his desire to give up that office. I realise that there are some difficulties at least of a theoretical kind, in adopting this construction of the clause. It would mean that Mr. Rowe on the last day of the 12-month period could have given a notice of his desire to relinquish his office 12 months later – the requirement as to notice is only that it should be "not less than" three months. But with all respect to the draftsman of this clause it does not impress me as having been carefully thought out to cover all contingencies that might arise. For example, I ask myself what the position would be had the take-over become complete at a point in time when the five-year term of Mr. Rowe's contract had only another two months to run. I have not found the point an easy one but on the whole I have come to the conclusion that best effect can be given to what I believe to have been the intention of the parties by construing the language of clause 7 in the manner which was urged upon us by Mr. Dillon.

Because of the view at which I have arrived on the first issue it is not strictly necessary to express any opinion as to the alternative submission which Mr. Dillon made as to the effect of the company's letter to Mr. Rowe of 25th July, 1973. It is I think arguable that Mr. Rowe's letter of 28th May was intended by him, and must have been understood by the company as so intended, as an exercise of his right of resignation under clause 7. Had that letter not been an effective notice under clause 7 (as in my view it was) then it would have been no more than an offer to resign, for it was clearly not an effective notice under clause 3.

Thus it could be argued that the company's letter of 25th July, because it disclaimed any right on the part of Mr. Rowe to receive the financial benefits stipulated in clause 7, was no more than a counter offer. But even so I would not, for myself, be prepared to hold that it amounted to a notice of termination of Mr. Rowe's employment by the company within the meaning of clause 7. The type of notice there contemplated is a unilateral act by the company giving notice of termination. Whatever effect it may have had, the company's letter of 25th July was not intended as a unilateral act but merely as an acceptance of Mr. Rowe's letter of resignation.

In the Court of  
Appeal of New  
Zealand  
No. 9  
Reasons for  
Judgment of  
Richmond, P.  
in Court of  
Appeal  
5 July, 1976

10 I turn now to the third of the four issues which I set out earlier in this judgment. Mr. Clark submitted that the money claimed by Mr. Rowe from the company in terms of clause 7 of his contract of employment is in any event irrecoverable by virtue of s. 191 of the Companies Act 1955. He also referred us to ss. 192, 193 and 194 (3). I shall not however find it necessary to refer again to those particular sections as it seems to me that this particular submission made by Mr. Clark really stands or falls by reference to s. 191, which is as follows:-

20 **191 Approval of company requisite for payment by it to director for loss of office, etc.** — It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company in general meeting.

30 This section is in the same terms as s. 191 of the Companies Act 1948 (U.K.) and in substantially the same terms as s. 129 of the Companies Act 1961 (Victoria). There appear to be only two reported decisions bearing on this section. In England there is the case of **Re Duomatic, Ltd.** [1969] 1 All E.R. 161. In that case a payment of £4,000 was held by Buckley J. to be caught by the section. On the facts however there seems to have been no doubt that this amount had been  
40 paid to a director as compensation for his loss of office as such (see p. 165E). The **Duomatic** case is therefore of no present assistance as it is submitted on behalf of Mr. Rowe that clause 7 of the contract does not provide for a payment to him for loss of office or in connection with his retirement from office as a **director** but solely as compensation for loss of office in connection with his retirement from office as Managing Director. Mr. Dillon relied strongly on the carefully reasoned judgment of Hudson J. in **Lincoln Mills (Aust.) Ltd. v Gough** [1964] V.R. 193. At p. 197 that learned Judge referred to a number of well known authorities which make it clear that the offices of director and managing director, held under articles of association such as those of the **Lincoln Mills Co.** (which were similar to those of the present respondent) are separate and distinct. At p. 199 he summarised the arguments for the defendant in that case, which were similar to those addressed to us by Mr. Dillon. The Judge then continued:-

I have come to the conclusion that the arguments of the defendant must prevail. The question whether the section applies in any particular case must, in my view, be determined by inquiry as to the true nature of the payment that has been made. Assuming it has been made to a person who has held and

has ceased to hold office as a director by reason of removal or retirement it cannot be postulated in every such case that the payment falls into the category of those rendered unlawful by s. 129 (1) (a). The nature and circumstances of the payment must be looked at with a view to determining its true character. If as a result of investigation it becomes apparent that it is a compensation for loss of the office of director or a consideration for retirement therefrom it will be unlawful unless the sanctions of a general meeting has been obtained. If, on the other hand, the payment appears to have been made as a result of other considerations, then, even though it may be coincident with the loss of or retirement from office as a director, the payment will not fall within those prohibited by the section.

10

My view as to the payment in the present case is that it was not made with the intent or object of compensating the defendant for loss of his office as a director or as consideration for his retirement therefrom. It was a payment which the plaintiff company made and was liable to make to the defendant in the events that had happened on the termination of his office as managing director. If it is properly described as a compensation for loss of office or a consideration for retirement from office then it was for loss of or retirement from the office of managing director and not that of director.

20

In my judgment, therefore, the payment was not rendered unlawful by the section.

I find myself in respectful agreement with the way in which the matter was put by Hudson J. I am quite satisfied that the payment claimed by Mr. Rowe is one related solely to his distinct and separate office of Managing Director. It is true that the Victorian section uses the expressions "compensation for loss of office as a director" and "as consideration for or in connection with his retirement from such office". The New Zealand section speaks merely of "compensation for loss of office" and "consideration for or in connection with his retirement from office". However in my opinion our section should be interpreted as concerned with payments made to directors as such in relation to loss or retirement from office as a director.

30

There remains for consideration what Mr. Clark described as his ultra vires argument. Under this head his first submission was that it was ultra vires the company, and accordingly the directors, to enter into a contract with its managing director (or for that matter any other employee) containing provisions such as are found in clause 7 of Mr. Rowe's contract. The memorandum of association of the company contains no express power to pay or provide for pensions or gratuities to employees. In these circumstances Mr. Clark contended that there is no implied power in the case of a trading company, to do so. He cited no authority for that proposition but of course accepted the general principle that a company has by implication such powers as are necessarily and properly required for carrying into effect the purposes of its incorporation or as may be fairly regarded as incidental to or consequential upon those things which are expressly authorised by the memorandum of association. There have been cases where in the particular circumstances the payment of a gratuity has been held to be ultra vires the company. **Hutton v West Cork Railway Co.** (1883) 23 Ch.D. 654 is an illustration. **Re Lee Behrens and Co. Ltd.**, [1932] 2 Ch 46 is another well-known case. These and other authorities are referred to in **Parke v The Daily News Ltd.** [1962] 2

40

All E.R. 929. I do not think it necessary to refer in detail to the principles established by these cases. I merely point out that on the facts of the present case Mr. Rowe's contract was clearly entered into in substitution for his earlier contract as general manager, shortly after his appointment as Managing Director. The earlier contract had been entered into in June, 1969 and contained a provision exactly similar to clause 7 of his contract as Managing Director. The earlier contract was one of several entered into by the company with senior members of the staff in accordance with a policy adopted by the company at that time. It is quite clear from the evidence given by Mr. Haylock, who was the Chairman of Directors, that this policy was dictated by a feeling of restlessness amongst the senior staff due to rumours of take-overs particularly in the timber industry in Putaruru and the surrounding area. It seems that the company was motivated in part by a desire to recognise the good and loyal service of its employees who Mr. Haylock described as being "in an awkward position in a small country town". But Mr. Haylock made it clear in answer to a question by Moller J. that a very strong motive on the part of the company was to attempt to hold senior employees with the company and to influence their staying with the company even when faced with the fear of a take-over. I should also mention that the evidence is all one way that the first approach from New Zealand Forest Products came after Mr. Rowe's contract had been signed. In my opinion the arrangement was a bona fide one and was reasonably incidental to the carrying on of the company's business. I am further of the opinion that it was entered into by the Board of Directors for what they believed and were entitled to believe were the best interests of the company. Insofar as charity may have sat at the Board of Directors it was of the permissible kind referred to by Bowen L.J. in **Hutton v West Cork Railway Co.** (supra) at p. 673. It follows that the contract was one which was intra vires the company to make.

However, Mr. Clark went on to argue that in any event the contract was ultra vires the Board of Directors. I might add here that the contract was not submitted to and approved by the shareholders. The articles of association contain the usual provisions for the appointment of a managing director and for fixing his remuneration. They are as follows:-

116 **THE** Directors may from time to time appoint one or more of their body to the office of Managing Director for such period, not exceeding five years, and on such terms as they think fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A Director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation or retirement of Directors, but his appointment shall be automatically determined if he ceases from any cause to be a Director.

117 **A** Managing Director shall receive such remuneration whether by way of salary, commission, or participation in profits (other than a commission on, or percentage of, turnover or dividends) or partly in one way and partly in another as the Directors may determine.

Article 96 also makes provision for the payment of gratuities, pensions or allowances on retirement:-

**96 THE** Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

In the Court of  
Appeal of New  
Zealand  
No. 9  
Reasons for  
Judgment of  
Richmond, P.  
in Court of  
Appeal  
5th July, 1976

Reading these articles as a whole I have no doubt that the directors, in accordance with the powers delegated to them by the articles, were entitled to bind the company by the contract entered into with Mr. Rowe.

10 For the reasons which I have given I would allow the appeal. There is a claim for interest at 8 percent down to the date of judgment. No submissions were made to us as regards that claim, which, on the other hand, was certainly not abandoned. Further, the statement of claim seeks judgment for \$67,500.00, but does not expressly ask for any form of relief in relation to the provisions of clause 7 as to payment of tax. It may be that such a claim was thought to be either premature or unnecessary. However this Court is not in a satisfactory position to determine the exact nature of the judgment which should be entered in Mr. Rowe's favour and I would remit the case to the Supreme Court for that purpose.

20 The Court being unanimous the appeal is allowed and the case is remitted to the Supreme Court in order that judgment may be entered for the appellant for such amount, and including any other relief, as shall be determined by that Court. In this Court the appellant is entitled to his costs, which are fixed at \$500.00, together with proper disbursements. He is also entitled to costs in the Supreme Court, to be fixed by that Court.

Solicitors for Appellant: McCaw, Smith and Arcus, **Hamilton.**

Solicitors for Respondent: Davys, Burton, Henderson and Moore, **Rotorua.**

## No. 10. REASONS FOR JUDGMENT OF COOKE J. IN COURT OF APPEAL

The crucial words in the service agreement are ‘ . . . the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the company not less than three months notice in writing of his desire to do so . . . ’ The crucial words in the judgment under appeal are ‘ . . . the draftsman has been careful to distinguish between the final act of resignation, the factual handing over of the plaintiff’s office, and the prior notice to Totara of his desire to do this at some time in the future’. In a context such as this, ‘notice’ signifies both the writing itself and the time that must be allowed to elapse. Accordingly the interpretation reached by the learned Judge would appear to be as follows, if somewhat more fully stated: the employee may resign within the twelve months provided that at some stage before so resigning he has given no less than three months notice of his desire to resign and provided that such notice has expired.

The use in clause 7 (as also in clause 3) of the different terms ‘resign’ and ‘desire to do so’ does give some verbal support to that interpretation. But as a matter of mere words the phrase ‘at any time within a period of twelve months’ points no less strongly in the other direction. For clause 7 as a whole does not appear to have been intended to apply unless and until a take-over or the like had occurred, and, if ‘resign’ is treated as meaning the actual cessation of duty, the employee will not be able to resign **at any time** within the twelve months but at best at any time within the last nine months thereof.

So the issue can hardly be resolved by purely verbal points. One must search for the result probably intended to be achieved. I think that three factors carry weight. First, the broad purpose of the clause is of some help. Evidently it was to give either the employee or the company, in the event of a change of control, twelve months in which to determine the relationship, with compensation. Naturally the company would need notice, so that arrangements to replace the managing director could be made. Accordingly three months was stipulated. But there is no obvious reason why the company should have wished to insist not only on the giving but also on the expiry of any such notice within the twelve months.

Secondly, some help may also be had from the general law as to notice. Normally a stipulation enabling an employee (or an employer) to determine the engagement by a certain notice means that once the prescribed notice is given it cannot be withdrawn (except by consent) and the contract ends with the period of notice: see the judgment of the National Industrial Relations Court, delivered by Sir Hugh Griffiths, in **Harris & Russell Limited v Slingsby** [1973] 3 All E.R. 31. No further act of resignation by the employee is normally required to terminate the contract. Consistently with the general law, in ordinary usage an employee is often said to resign when he hands in his notice. One would expect clauses 3 and 7 in the present contract to be concerned with notices having the normal results in respect of the duration of the contract. It is true that the agreement gives the company rights of immediate termination which could be exercised if the employee changed his mind after giving notice himself. But that feature does not seem to me enough to warrant imputing to the parties the unusual intention that notice by the employee is to be a mere condition precedent

In the Court of  
Appeal of New  
Zealand  
No. 10  
Reasons for  
Judgment of  
Cooke J. in  
Court of Appeal  
5 July, 1976

to a resignation.

10 Thirdly, 'to resign' and 'upon giving' are closely linked in the clause. Grammatically and naturally they suggest that the two things are to be done at the same time, rather than that the first may not be done until at least three months after the second. No doubt the weight to be attached to that consideration is not great, for in legal documents 'on' and 'upon' are tractable expressions: see the judgment of Tompkins J. in **Kuratau Land Company Limited v Kahu te Kuru** [1966] N.Z.L.R. 544 and the authorities there collected. What is perhaps more important, however, is that in service agreements, although notice clauses usually refer to determining the employment 'by' notice (as in 13 New Zealand Encyclopaedia of Forms and Precedents, 53, 62, 98), that terminology is not invariable. For instance in Key and Elphinstone's Conveyancing Precedents, 14th ed. (1940) vol. 1, 26, there is a precedent providing for termination of an engagement 'on' giving six months notice, it being expressly provided also that the engagement shall determine upon the expiration of the six months. The precedent at p. 39 of the same work likewise has 'on'. These forms support the view that in a clause of the present kind 'upon' or 'on' may mean 'by'.

20 Considering those various factors together, I think that they outweigh the basically verbal argument relied on for the respondent. I agree with the President that nothing is to be gained by speculating about how the clause would work in situations which the draftsman is unlikely to have had in mind. In essence what was intended, I think was that in the event of a take-over the managing director was to have twelve months to elect to give notice and receive compensation. Having done so, he is entitled in terms of the clause to a sum calculated as there prescribed.

30 It was contended for the respondent that by reason of s. 191 of the Companies Act 1955 a payment to the appellant under the clause would be unlawful unless particulars with respect to the proposed payment were disclosed to members of the company and the proposal were approved by the company in general meeting. There appears to be no reason why that could not still be done if necessary, but I do not think it is necessary. In **Lincoln Mills (Aust.) Limited v Gough** [1964] V.R. 193 a service agreement gave a managing director the right in the event of a change of control to terminate the agreement by giving not less than three months written notice, in which event he was to be paid a lump sum equal to £500 for each month remaining of the term of something over four years for which the agreement would otherwise have lasted. Hudson J. held that the defendant held two offices in the company, namely that of director and that of managing director; and that the payment was compensation for his uncompleted term as managing director and was not unlawful under s. 129 of the  
40 Companies Act 1961 of Victoria. Seeing no distinction material for the purposes of this case between the Victorian section and the New Zealand section, nor between the articles or service agreements concerned, I would respectfully follow Hudson J.'s judgment and the reasoning and authorities on which it is based.

Lastly it was argued that the payment would be ultra vires the company or the directors. Mr. Clark conceded that this was not the strongest part of his argument, but constructed submissions on the basis that directors, being in a fiduciary position, are precluded from obtaining any benefit from the company unless there is a dispensation of clear authorisation to the contrary. Here the

respondent's memorandum of association is silent as to service agreements. Indeed it says nothing about employing either directors or other persons as servants of the company. Clearly, however, power to engage employees and to enter into service agreements is necessarily incidental. I do not think there can be any doubt that power to appoint a managing director on agreed terms is fairly to be implied in the memorandum of a trading company of this kind, nor that the power must extend to agreeing to terms as to his rights in the event of termination of his employment. It may be that, without express authority in the articles, **the directors** cannot exercise the company's implied power of appointing a managing director and settling the terms: **Boschoek Proprietary Co. Ltd. v Fuke** [1906] 1 Ch. 148, 159; 7 Halsbury's Laws of England, 4th ed. para. 502. But here articles in common form give the directors wide powers. In my opinion articles 96, 116 and 117 are valid and authorise this service agreement, including clause 7. Of course, even when they have power to appoint a managing director and decide the terms of his contract, the directors cannot simply make a present to him: cf. **In re Lee, Behrens & Company Limited** [1932] 2 Ch. 46; **Parke v Daily News Limited** [1962] Ch. 927. In the present case, however, similar service agreements were entered into with several other members of the staff and had been adopted by the company as a matter of policy for several years. It was open to the directors to conclude that these agreements, with their favourable terms in the event of a take-over, were in the interests of the company as tending to hold senior staff who might otherwise see their future as too uncertain in such an event. The managing director was not singled out for special treatment because he was a director. There has been no challenge to the good faith of the directors. And counsel for the respondent acknowledged in this Court that there was no formal defect in any of the acts of the directors relating to the appellant's service agreement.

Accordingly I concur in the allowance of the appeal and, particularly as the tax implications were not discussed in argument before us, I also concur in the order remitting the case to the Supreme Court for determination of the appropriate judgment to be entered in favour of the plaintiff.

Solicitors for the Appellant: McCaw, Smith & Arcus, Hamilton.

Solicitors for the Respondent: Davys, Burton, Henderson & Moore, Rotorua.

In the Court of  
Appeal of New  
Zealand  
No. 10  
Reasons for  
Judgment of  
Cooke J. in  
Court of Appeal  
5 July, 1976

## No. 11: REASONS FOR JUDGMENT OF WOODHOUSE J. IN COURT OF APPEAL

The service agreement which contains the important provision in favour of Mr. Rowe in the event of a take-over, is dated 20th January, 1972. Only eight days later take-over proposals were received from N.Z. Forest Products Limited. That proximity in time may have seemed significant to the new Board of Taupo Totara when, eighteen months later, it was obliged to consider whether he was entitled to receive the benefits described in clause 7 of the agreement. It may not be so. Nevertheless, I think it right to mention two matters.

In the Court of  
Appeal of New  
Zealand  
No. 11  
Reasons for  
Judgment of  
Woodhouse J. in  
Court of Appeal  
5 July, 1976

10 The first point is that the benefits defined in clause 7 can in no way be regarded as a curiously inspired anticipation of the proposals for take-over made by N.Z. Forest Products. On the contrary, the evidence shows that as far back as 1968 Taupo Totara Company had been concerned about the difficulties of keeping and engaging senior staff and for this reason the Board had been considering the sort of inducement or assurance that would afford protection against the risk of redundancy or uncongenial employment in the event of new management. In the result, in May 1969, the Board agreed upon a service agreement for each of six members of the senior staff and also that the agreements should contain a provision in the same form as clause 7 of the agreement under consideration in this case. Mr. Rowe was then General Manager of the Company and he was given  
20 such an agreement on 26th January, 1969. When he was appointed Managing Director it was thought desirable that the earlier agreement should be replaced. Hence the document now under review.

The second point concerning the service contracts is that their existence and the nature of the benefits they provided were certainly not kept from the knowledge of N.Z. Forest Products. Very properly, during the negotiations for take-over, they were disclosed to that Company and Taupo Totara was then told that the service contracts would not make any difference to the offer under contemplation by N.Z. Forest Products.

30 The immediate question is whether in terms of clause 7 the notice of resignation was in time. Moller J. thought not. He referred to submissions advanced on behalf of Mr. Rowe that the resignation was complete when the letter was received by Taupo Totara; and that the right to resign "upon giving" not less than three months' notice of desire to do so required to be interpreted as a right to resign "by giving" such a notice. Then he said:-

" . . . I have reached the view that Mr. Dillon's contentions should not be accepted. I think that, in this case, the draftsman has been careful to distinguish between the final act of resignation, the factual handing over of the plaintiff's office, and the prior notice to Totara of his desire to do this at some time in the future."

40 With all respect I am unable to share that conclusion or to feel that the tribute to the draftsman has been earned. To me the language he has used reflects an unfortunate failure to keep separate in his mind the concept of resignation at the moment of relinquishing office from the probably more usual application of the same word to refer to the document or other form by which an irrevocable decision to resign has been conveyed in advance of the decision becoming finally effective. For obvious reasons of comity and convenience it is usual to tender a resignation that antedates departure from office and I think it was this sort of

document, prompted by good practical considerations, that was in the mind of the draftsman when he referred to the need for three months' notice in writing. Unfortunately an imprecise choice of language has resulted in some inevitable confusion but, for what it is worth, when Mr. Rowe gave the notice, which clearly he thought was provided in terms of clause 7, he began with the words "I wish to tender my resignation" and the reply he received a few days' later from the the Chairman of Directors remarks: "It was with regret that I received your letter of resignation from your position as Managing Director". In my opinion there could be no sensible purpose in granting a right to resign "at any time within a

10 period of twelve months from [take-over]" and in the next few words go on to whittle down the period to nine months or less by intending that the resignation should be complete not when the document had been tendered but only at the final moment of employment.

There is of course a second consideration. If one were to construe the notice as something preliminary to a contemplated act of resignation then it would seem to follow that Mr. Rowe had been given two separate and distinct options. The first to indicate to Taupo Totara, if he wished, a mere inclination to resign: the second to decide at the last to go through with the resignation or to pull back. Such an impracticable and inconvenient situation was not intended by the clause

20 and it is not a construction required by the language. I think that in the context the words "upon giving" notice are to be read as "by giving" notice so that Taupo Totara would have notice of his written decision to resign at least three months before the resignation became effective in the sense that his office was finally given up. Read in that sense the resignation was tendered to the Company inside the relevant period of twelve months and so was in time.

The final issues relate first to s. 191 of the Companies Act 1955; and second to what conveniently may be described as the ultra vires arguments. Concerning both these matters I am in agreement with the conclusions reached by Richmond P. and Cooke J. and the reasons upon which those conclusions are founded.

30 I would allow the appeal and I agree with the order proposed by the President.

Solicitors for the Appellant: McCaw, Smith & Arcus, Hamilton.

Solicitors for the Respondent: Earl, Kent, Massey, Palmer & Hamer, Auckland.

In the Court of  
Appeal of New  
Zealand  
No. 11  
Reasons for  
Judgment of  
Woodhouse J. in  
Court of Appeal  
5 July, 1976

**No. 12: FORMAL JUDGMENT OF COURT OF APPEAL**

Monday the 5th day of July, 1976.

Before: the Right Honourable Mr. Justice Richmond.  
the Right Honourable Mr. Justice Woodhouse.  
the Honourable Mr. Justice Cooke.

In the Court of  
Appeal of New  
Zealand  
No. 12  
Formal Judg-  
ment of Court  
of Appeal  
5 July, 1976

THE Notice of Motion of Appeal dated 21st day of January, 1976 coming on for hearing on the 1st day of June, 1976 and UPON HEARING Mr. J. G. Dillon for the appellant and Mr. B. H. Clark for the respondent THIS COURT HEREBY  
10 ORDERS AND DECLARES that the appeal is allowed and THIS COURT FURTHER ORDERS that the case be remitted to the Supreme Court in order that judgment be entered for the appellant for such amount, and including any other relief, as shall be determined by that Court and doth FURTHER ORDER that the respondent pay to the appellant the sum of \$500.00 for costs together with proper disbursements and doth FURTHER ORDER that the respondent pay to the appellant the costs in the Supreme Court, to be fixed by that Court.

BY THE COURT

REGISTRAR

**No. 13: ORDER OF COURT OF APPEAL GRANTING FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL**

Monday the 1st day of November, 1976.

Before: the Right Honourable The Chief Justice.  
the Right Honourable Mr. Justice Richmond.  
the Honourable Mr. Justice Cooke.

UPON READING the Notice of Motion for grant of final leave to appeal to Her Majesty in Council filed herein, and the affidavit filed in support thereof AND UPON HEARING Mr. Cameron of Counsel for the Respondent, and Mr. 10 McMenamin of Counsel for the Appellant, THIS COURT HEREBY ORDERS that the above named Respondent be and is hereby granted final leave to appeal to Her Majesty in Council from the Judgment of this Honourable Court given and made on the 5th day of July, 1976.

BY THE COURT

L.S.

D. JENKIN

REGISTRAR

In the Court of  
Appeal of New  
Zealand  
No. 13  
Order of Court  
of Appeal  
granting final  
leave to  
Appeal to Her  
Majesty in  
Council  
1 November, 1976

**2: MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION  
OF THE TAUPO TOTARA TIMBER COMPANY LIMITED**

**1968 ARTICLES OF ASSOCIATION**

**INDEX**

	ARTICLE NO.	EXHIBITS 2
<b>ACCOUNTS.</b>		<b>Memorandum of</b>
Annual Accounts to be mailed	138	<b>Association and</b>
Annual Accounts to be mailed to all classes of shareholders	54	<b>Articles of</b>
Annual Accounts to be prepared	137	<b>Association of</b>
Open to inspection under authority of Board	136	<b>The Taupo</b>
10     Registered Office, accounts to be kept at	135	<b>Totara Timber</b>
To be kept by Directors	134	<b>Company Limited</b>
		<b>30 March 1915</b>
		<b>&amp;</b>
		<b>14 August 1968</b>
<b>AUDITORS:</b>		
Appointment of	141	
To receive notice of meetings	147	
<b>BORROWING POWERS:</b>		
Vested in Directors	88	
<b>CALLS ON SHARES:</b>		
All payments on shares deemed to be	22	
Directors may differentiate when making	23	
20     Directors may make	18	
Forfeiture of Shares if unpaid	37	
Interest on, if unpaid	21	
Joint members' liability	20	
Made at time of resolution	19	
Notice, of before forfeiture	36	
Paid in advance	24	
Proof of having made	25	
To be paid before right to vote given	73	
<b>CAPITAL:</b>		
30     Authorised Capital, 1968	3	
Increase of	49	
Reduction of	53	
Repayment of	6	
<b>CAPITALISATION OF PROFITS:</b>		
By Company resolution	139	
Regulations for	140	
<b>COMPANIES ACT 1955:</b>		
Table A not to apply	1	
<b>CONVERSION OF SHARES INTO STOCK:</b>		
40     Company may resolve	45	
"Share" to include "stock"	48	

	ARTICLE NO.	EXHIBITS 2
CONVERSION OF SHARES INTO STOCK: (Cont.)		
Stockholders' rights	47	Memorandum of
Transfer of stock	46	Association and
		Articles of
		Association of
		The Taupo
CORPORATION:		Totara Timber
May appoint representative	81	Company Limited
Proxies may be appointed under seal	75	30 March 1915
		&
		14 August 1968
DEFINITIONS:		
Definitions and interpretation	2	
DIRECTORS:		
10		
See Also Meetings of Directors		
See Also Managing Director		
Alternate, may be appointed	87	
Appointment of, by Board	104	
Attorneys appointed by	90	
Borrowing powers of	88	
Chairman of,	110	
Cheque – signing authorities determined by	94	
Committees of, – Appointment of	111	
Chairman of	112	
Voting at	113	
20		
Defect in appointment of	114	
Disqualification of	97	
Dividends, interim paid by	124	
Dividends, final, recommended by	123	
Election of	101	
Election of, to replace Director removed,	106	
Indemnity of	150	
Interest in contract with Company	93	
May act notwithstanding less than minimum number	109	
30		
May be Directors of Associate Companies	86	
Minutes to be kept by	95	
Nomination of, by a shareholder	102	
Number of	82	
Number of, may be changed	103	
Powers of	89	
Re-election of	101	
Removal of	105	
Remuneration of	83	
Remuneration of, additional	84	
40		
Reserves set aside by	126	
Resolution signed by all,	115	
Retiring Allowance	96	
Retiring; eligible for re-election	100	
Retiring requirements	99	
Rotation of,	98	
To continue in office after adoption of Articles	85	

	ARTICLE NO.	EXHIBITS 2
<b>DIVIDEND:</b>		
Calls unpaid may be deducted from	128	Memorandum of
Company may declare	123	Association and
Directors may recommend	123	Articles of
Interim, may be paid	124	Association of
Interest not to be paid on	131	The Taupo
Not to be paid except out of profits	125	Totara Timber
On transfers of shares not registered	133	Company Limited
Payable by cheque	130	30 March 1915
10   Payable by distribution of assets, shares etc.	129	&
Payable to registered shareholders	132	14 August 1968
Payment of	127	
Unclaimed	132	
<b>FORFEITURE OF SHARES:</b>		
Applies to calls made under terms of share issue	43	
If call not paid	37	
Forfeited share property of Company	39	
Minute book entry to be evidence of	41	
20   Notice of call to be given prior to	36	
Person ceases to be member after	40	
Resolution of Directors for	38	
Residue after sale of	44	
Sale of shares subject to	42	
<b>GENERAL MEETINGS:</b>		
See also Notices of Meetings		
See also Poll		
See also Proxies		
See also votes of members		
30   Adjournment of	65	
Annual General Meetings to be held	54	
Business to be transacted at	60	
Chairman of	63	
Chairman – election at	64	
Chairman’s casting vote at	68	
Directors may convene	56	
Extraordinary	55	
Notice of	58	
Omission to give notice of	59	
40   Poll at – conduct	67	
Poll at – time to be taken	69	
Quorum at	61	
Quorum not present at	62	
Requisitioned by Shareholders	57	
Voting at	66	

	ARTICLE NO.	EXHIBITS 2
<b>INCREASE OF CAPITAL:</b>		
Power to	49	<b>Memorandum of Association and Articles of Association of The Taupo Totara Timber Company Limited 30 March 1915 &amp; 14 August 1968</b>
<b>INDEMNITY:</b>		
Directors' and servants' indemnity	150	
<b>JOINT SHAREHOLDERS:</b>		
Delivery of share certificate to	11	
Dividends paid to	130	
Liability for calls of	20	
Notices mailed to	144	
10      Transmission on death of	32	
Votes of	71	
<b>LIEN ON SHARES:</b>		
Company may sell shares subject to	15	
Company to have	14	
Directors may authorise transfer of Shares subject to	16	
Proceeds of sale of shares subject to	17	
<b>MANAGING DIRECTOR:</b>		
Appointment of	116	
Powers of	118	
20      Remuneration of	117	
Rotation of	116	
<b>MEETINGS OF MEMBERS:</b>		
See General Meetings		
<b>MEETINGS OF DIRECTORS:</b>		
Chairman to have casting vote at	107	
Chairman of	110	
Minutes to be kept of	95	
Quorum at	108	
Rules concerning	107	
30 <b>NOTICES OF GENERAL MEETING:</b>		
For meeting convened by shareholders' requisition	57	
Length of notice	58	
Omission to give notice	59	
Signatures on, may be printed	146	
To be sent to members	142	
To joint shareholders	144	
To overseas shareholders	143	
To personal representatives of shareholders	145	
Whom to receive	147	

	ARTICLE NO.	EXHIBITS 2
<b>POLL:</b>		
Chairman's casting vote on,	68	Memorandum of
Conduct of	67	Association and
When to be taken	69	Articles of
Who may demand,	66	Association of
Votes by person or proxy	74	The Taupo
		Totara Timber
		Company Limited
		30 March 1915
		&
		14 August 1968
<b>PREFERENCE SHARES:</b>		
New issue of, or variation of terms of	6	
Redeemable, may be issued	5	
<b>10 PROXIES:</b>		
Form of	77	
Form of, where vote to be directed	78	
Holder may demand poll	79	
Need not be a member	75	
To be deposited at Registered Office	76	
To be in writing	75	
Valid notwithstanding death of principal	80	
Voting rights of	70	
When to be deposited	76	
<b>20 REDUCTION OF CAPITAL:</b>		
Special resolution required for	53	
<b>REGISTRAR OF MEMBERS:</b>		
Branch	92	
May be closed	31	
<b>RESERVES:</b>		
Set aside out of profits	126	
<b>SEAL:</b>		
Abroad	91	
Share Certificates to be under	11	
<b>30</b> To affixed under authority of Board	122	
<b>SECRETARY:</b>		
Appointment of	119	
Not to act simultaneously as a Director	121	
Who is eligible	120	
<b>SHARE CERTIFICATE:</b>		
Member entitled to receive	11	
Replacement of	12	
To accompany share transfer	29	

	ARTICLE NO.	EXHIBITS 2 Memorandum of Association and Articles of Association of The Taupo Totara Timber Company Limited 30 March 1915 & 14 August 1968
<b>SHAREHOLDERS' MEETING:</b>		
See General Meeting		
<b>SHARES:</b>		
See also Calls on shares		
See also Conversion into Stock		
See also Forfeiture of Shares		
See also Preference shares		
See also Transfer of Shares		
See also transmission of Shares		
10   Amount payable on subscription	8	
Consolidation and division of	52	
Loans not to be made for purchase of	13	
May be issued as consideration for purchase of assets	7	
New Shares' terms of issue	51	
To be offered first to existing members	7	
Special rights of shares issued	4	
Variation of terms of issue of	6	
<b>STOCK:</b>		
See conversion of Shares into Stock		
20 <b>TABLE A OF COMPANIES ACT 1955:</b>		
Not to apply	1	
<b>TRANSFER OF SHARES:</b>		
Directors' discretion to refuse to register	28	
Executed by transferor and transferee	26	
Form of	27	
Registration of, may be suspended	31	
Share certificate to accompany	29	
To be returned if not registered	30	
To be in respect of one class of share only	29	
30 <b>TRANSMISSION OF SHARES:</b>		
Dividend retained until registration of	34	
Evidence necessary to enable	33	
On death of member	32	
Personal Representative's rights	35	
<b>TRUSTS:</b>		
Not to be recognised	10	
<b>UNDERWRITING COMMISSION:</b>		
May be paid	9	

	ARTICLE NO.	EXHIBITS 2
<b>UNISSUED SHARES:</b>		
May be cancelled	52	<b>Memorandum of Association and Articles of Association of The Taupo Totara Timber Company Limited 30 March 1915 &amp; 14 August 1968</b>
To be offered to existing shareholders	7	
<b>VOTES OF MEMBERS:</b>		
Joint Shareholders	71	
Mentally defective members	72	
Number of, on show of hands or poll	70	
On shares with unpaid calls	73	
Poll – May be by person or proxy	74	
10     Proxy –		
Form of	77	
Form of, where vote to be directed	78	
Holder may demand poll	79	
To be in writing	75	
To be deposited at Registered Office	76	
Valid notwithstanding death of principal	80	
To be on voices or show of hands	66	
<b>WINDING UP:</b>		
20     Division of assets in	148	
Commission payable on	149	

**MEMORANDUM OF ASSOCIATION  
OF  
THE TAUPO TOTARA TIMBER COMPANY LIMITED**

**NAME**

1. THE name of the Company is 'The Taupo Totara Timber Company Limited'.

**OFFICE**

2. THE registered office of the Company will be situate in the Town of Putaruru, or such other place as may be determined by the Directors from time to time.

**EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968**

10

**NATURE OF BUSINESS**

3. THE objects for which the Company is established are:
- i To acquire and take over as a going concern the undertaking and all or any of the assets and liabilities of The Taupo Totara Timber Company Limited, and The Wellington Industrial Development Company, Limited, incorporated in 1901 and 1900 respectively, and with a view thereto to enter into the agreement referred to in Clause 3 of the Company's Articles of Association and to carry the same into effect with or without modification.
  - ii To carry on in the Dominion of New Zealand and elsewhere the business of Timber Merchants and Saw Millers in all their respective branches.

20

**TO PURCHASE, ETC.**

- iii To purchase or otherwise acquire and deal in real and personal property of all kinds, and in particular (but without in any way limiting the generality of the foregoing) any lands, buildings, hereditaments, business concerns and undertakings, machinery, rolling stock, plant, stock-in-trade, patent rights and trade marks, and any interest in real or personal property, and to carry on any business or undertaking so acquired, and to establish and carry on any business which may seem calculated to enhance the value of any of the property or rights of the Company, or to facilitate the disposition thereof.

30

**TO ENTER INTO JOINT VENTURES**

- iv To enter into any arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concession, or otherwise, with any person or company carrying on or engaged in, or about to carry on or engage in, any business or transaction which this Company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as to directly or indirectly benefit this Company.

**TO TAKE SHARES IN OTHER COMPANIES**

- v To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company.

40

**TO AMALGAMATE WITH OTHER COMPANIES**

vi To amalgamate with any other company having objects altogether or in part similar to those of this Company.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

**TO PROMOTE OTHER COMPANIES**

vii To promote any other company for the purpose of acquiring all or any of the property and liabilities of this Company, or for any other purpose which may seem directly or indirectly calculated to benefit this Company.

**TO OBTAIN CONCESSIONS, ETC.**

10 viii To enter into any arrangements with any persons, companies, governments, municipal, local, or other authorities that may seem conducive to the Company's objects or any of them; and to obtain from any such persons, companies, governments, or authorities, any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions.

**TO MANAGE, SELL, ETC.**

20 ix To manage, improve, develop, sell, exchange, lease, mortgage, pledge, charge, surrender, dispose of, turn to account, or otherwise deal with all or any part of the undertaking, business and property of the Company, including the uncalled capital and land held as mortgagee, for such consideration and on such terms as the Company may think fit, and in particular for shares and debentures, or securities of any other company having objects altogether or in part similar to those of this company provided only that the undertaking, business or property of the Company as a whole shall not be sold without the consent of the shareholders being first obtained by resolution, supported by two-thirds of those present, either in person or by proxy, at any Extraordinary General Meeting convened for the purpose as prescribed in the regulations of the Company.

**TO ERECT OR CONSTRUCT WORKS**

30 x To erect or construct, improve, or maintain, work, manage, carry out, or control any machinery, roads, ways, tramways, railways, branches or sidings, dams, booms, reservoirs, waterworks, harbour works, or harbour improvements, wharves, staiths, and jetties, manufactories, warehouses, electric works, shops, stores, houses, cottages, buildings of any kind, and any other works and conveniences which may seem calculated directly or indirectly to advance the Company's interest, and to contribute to, subsidise, or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying-out, or control thereof.

**TO DEVELOP AND TURN TO ACCOUNT LAND**

40 xi To develop and turn to account any land acquired by or in which the Company is or may be interested, and to lay out and prepare the same for building purposes; or for the purpose of otherwise dealing with and turning the same to account for the advantage of the Company and to build thereon for letting or other purposes.

**TO ACQUIRE AND EMPLOY VESSELS**

xii To purchase, build, freight, charter, hire, or otherwise acquire steam and other ships or vessels with all equipments and furniture.

xiii To employ the said vessels in the conveyance of passengers, goods, articles, and things of any kind to and from such places as may seem expedient, and to acquire or establish any postal or other agencies in any part of the world.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

**TO DEAL IN GOODS**

10 xiv To deal in any kind of goods by purchase and sale or otherwise, including power to import or export the same, and also to make advances upon goods belonging to other persons, and to undertake the sale of the same.

**TO BORROW MONEY**

xv To raise and borrow and secure the payment of money from time to time in such manner as the directors shall think fit and in particular by the creation and issue of debentures or debenture stock perpetual or otherwise charged upon all or any of the Company's property (both present and future), including its uncalled capital or by way of overdraft from a bank or by bond, bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable or transferable instruments or by mortgage or charge of or upon all or any such property.

20

**TO INVEST MONEYS**

xvi To invest, lend, or otherwise deal with the moneys of the Company not immediately required upon such securities, or in the purchase of such property, and in such manner as may from time to time be determined.

**TO LEND MONEY AND BECOME SURETY**

xvii To lend money to contractors with, or other persons having dealings with, the Company, and to become guarantor or surety for any persons dealing with the Company.

**TO EXERCISE POWERS OF MORTGAGE**

xviii To exercise all the powers of a mortgagee.

30

**TO MAKE NEGOTIABLE INSTRUMENTS**

xix To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, and other negotiable or transferable instruments.

**MISCELLANEOUS POWERS**

xx To provide for the payment of any of the matters contemplated by this memorandum, or any part thereof, by contracting for the issue of shares in the Company, wholly or partly paid up, and with or without preferred or deferred rights of any kind, and by issuing the same.

40

xxi To distribute any of the property of the Company, in specie among the members.

xxii To do all such other things as the Company may think incidental or conducive to any of the above objects.

xxiii To do all or any of the above things in any part of the world, and as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents, or otherwise and either alone or in conjunction with others.

xxiv And it is hereby declared that the word 'person' in this clause shall be deemed to include a Company, and that the word 'company' shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in New Zealand or elsewhere, and the  
 10 intention is that the objects specified in each sub-clause shall, except where otherwise explained in such sub-clause, be in no wise restricted by reference to or inference from the terms of any other paragraph or the name of the Company.

EXHIBITS 2  
 Memorandum of  
 Association and  
 Articles of  
 Association of  
 The Taupo  
 Totara Timber  
 Company Limited  
 30 March 1915  
 &  
 14 August 1968

#### LIMITED LIABILITY

4. THE liability of the Shareholders is limited.

#### CAPITAL

(Note: Refer to copies of resolutions affecting Capital)

6. UPON any increase of capital the Company is to be at liberty to issue any new shares with any preferential, deferred, qualified, or special rights, privileges or conditions attached thereto but so that the rights attached to any class of  
 20 shares having preferential, deferred or special rights, privileges, or conditions attached thereto (including the initial capital) may be modified, commuted, affected, abrogated, or dealt with by agreement between the Company and any person purporting to contract on behalf that class provided such agreement is ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of the class, or is confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and all the provisions of the Company's Articles of Association as to general meetings shall mutatis mutandis apply to every such meeting but so that the quorum thereof shall be members holding or representing by proxy one-fifth of the nominal  
 30 amount of the issued shares of the class.

We the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, and we hereby respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

Dated this 30th day of March, 1915.

#### SCHEDULE

Names	Addresses	No. Of Shares	Witness to All Signatures
Frederick George Dalziell	Wellington	1	A. M. Thomson, Solicitor, Wellington
40 Charles Henry Howard	Wellington	1	
Jeremiah Dalziell	Wellington	1	
William E. Collins	Wellington	1	
James E. Fulton	Wellington	1	
W. R. Hursthouse	Wellington	1	
R. N. Simpson	Wellington	1	

The full names of the above subscribers are as follows:-

FREDERICK GEORGE DALZIELL  
 CHARLES HENRY HOWARD  
 JEREMIAH DALZIELL  
 WILLIAM EDWARD COLLINS  
 JAMES EDWARD FULTON  
 WILLIAM RICHMOND HURSTHOUSE  
 RICHARD MIDDLETON SIMPSON

EXHIBITS 2  
 Memorandum of  
 Association and  
 Articles of  
 Association of  
 The Taupo  
 Totara Timber  
 Company Limited  
 30 March 1915  
 &  
 14 August 1968

RESOLUTIONS AFFECTING CAPITAL

10 1. AT the Annual General Meeting held on 15th July, 1925, it was resolved:  
 'That the provisions of paragraph 5 of the Company's Memorandum of Associ-  
 ation be amended so that for the future the capital of the Company shall be  
 330,000-0-0, divided into 150,000 preference shares of 1-0-0 each and 180,000  
 ordinary shares of 1-0-0 each, and such preference shares shall confer upon the  
 holder thereof the right to a fixed cumulative preferential dividend computed  
 from the 30th day of April, 1925 at the rate of Seven pounds (7-0-0) per centum  
 per annum on the capital for the time being paid up on such shares and, in the  
 event of the Company being wound up, to have the surplus assets of the Company  
 applied in the first place in repaying to them the amount paid up on such shares  
 20 and any arrears of dividend up to the date upon which such capital shall be fully  
 repaid, whether declared or not, but the holders of such shares shall not be  
 entitled in respect thereof to any further participation in such surplus assets'.

2. AT an Extraordinary General Meeting held on the 27th day of March, 1935,  
 it was resolved: 'That pursuant to the powers conferred by section 62 of the  
 Companies Act, 1933, the Company hereby cancels 4,893 unissued Ordinary  
 shares in the capital of the Company, being shares which at the date of the  
 passing of this resolution have not been taken nor agreed to be taken by any  
 person, and shall diminish the amount of its share capital  
 by the amount of the shares so cancelled'.

30 3. AT an Extraordinary General Meeting held on the 27th Day of March,  
 1935, it was resolved:

'That the capital of the Company which now stands at 325,107-0-0 being –  
 180,000 Ordinary shares of 1-0-0 each . . . . . 180,000-0-0  
 Less 4,893 Ordinary shares unissued and now cancelled . . . . . 4,893-0-0  
 175,107-0-0  
 150,000 Preference shares of 1-0-0 each . . . . . 150,000-0-0  
 325,107-0-0

be reduced to 237,553-10-0 by writing off the sum of ten shillings per share on  
 the above 175,107 Ordinary shares, and so that henceforth the capital of the  
 40 Company shall be 237,553-10-0 divided into –

175,107 Ordinary shares of 10/- each . . . . . 87,553-10-0  
 150,000 Preference shares of 1-0-0 each . . . . . 150,000- 0-0  
 237,553-10-0

And that sum of 10/- per share written off the aforesaid 175,107 Ordinary shares  
 in the capital of the Company amounting to 87,553-10-0 be applied as follows:-



shares for the three years ending, respectively, 30th April, 1932, 30th April, 1933, and 30th April, 1934, such dividend being calculated for the period in question at the rate of 5-5-0 per centum per annum’.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

**‘B’ – RESOLUTION PASSED AT MEETING OF ORDINARY  
SHAREHOLDERS**

10 ‘That this meeting of holders of Ordinary shares in the capital of The Taupo Totara Timber Company Limited, duly convened and regularly held, records its approval of a proposal to reduce the capital of the Company by writing down the Ordinary shares from 1-0-0 to Ten shillings and to the payment out of the reserve to be thereby created of the sum of 18,657-0-0 in full satisfaction and discharge of the arrears of dividend on the Preference shares for the three years ending, respectively, 30th April, 1932, 30th April, 1933, and 30th April, 1934, such dividend being calculated for the period in question at the rate of 5-5-0 per centum per annum.’

By the Court,  
G. S. CLARK  
Registrar

20 4. AT an Extraordinary General Meeting held on 1st day of May, 1940, it was resolved: ‘That pursuant to the powers conferred upon the Company by Article 52 of the Company’s Regulations and Section 62 (1) (e) of the Companies’ Act, 1933, the Company hereby cancels 13,187 unissued Preference Shares of the nominal value of 1-0-0 each in the capital of the Company, being shares which, at the date of the passing of this resolution, have not been taken or agreed to be taken by any person and, diminishes the amount of its share capital by the amount of the shares so cancelled.’

30 5. THE following order was made by the Supreme Court of New Zealand on 31st day of May, 1940: ‘It is ordered that the reduction of Capital resolved upon and effected by the special resolution passed at the Extraordinary General Meeting of the Company, held on 1st day of May, 1940, which special resolution is in the words and figures following, viz:

(a) By extinguishing the liability of 4/- per share at present remaining uncalled on 91,780 Preference Shares of the Nominal Value of 1-0-0 each, in the Capital of the Company, such extinguishment of liability amounting to a reduction of Capital of

18,356- 0-0

(b) By paying off paid-up Share Capital which is in excess of the wants of the Company as follows:

40 (1) By returning to the holders of the aforesaid 91,780 Preference Shares out of the surplus assets of the Company, the sum of 1/- per share amounting to

4,589-0-0

(2) By returning to the holders of

45,033 fully paid Preference Shares of the nominal value of 1-0-0 each, out of the surplus assets of the Company, the sum of 5/- per share, amounting to

11,258-5-0

Making a total reduction of Capital of AND so that the Capital of the Company shall thereafter stand at:

136,813 Preference Shares of 15/- each fully paid

15,847- 5-0  
34,203- 5-0

10 175,107 Ordinary Shares of 10/- each fully paid

102,609-15-0

87,553-10-0  
190,163- 5-0

be and the same is hereby confirmed.

By the Court,  
A. E. REYNOLDS  
Registrar

EXHIBITS 2  
Memorandum of Association and Articles of Association of The Taupo Totara Timber Company Limited 30 March 1915 & 14 August 1968

6. AT an Extraordinary General Meeting held on 27th day of May, 1942, it was resolved as a special resolution of the Company to reduce its Share Capital in manner following, that is to say:

20 By paying off paid up share capital which is in excess of the wants of the Company and for that purpose returning to the holders of 136,813 fully paid Preference Shares of the nominal value of 15/- each out of the surplus assets of the Company the sum of 5/- per share the total of such payments amounting to . . . . .

34,203- 5-0

and making a reduction of capital of the said sum of . . . . .

34,203- 5-0

AND so the capital of the Company shall thereafter stand at:

136,813 Preference Shares of 10/- full paid. . . . .

68,406-10-0

175,107 Ordinary Shares of 10/- fully paid. . . . .

87,553-10-0

30 155,960- 0-0

The following order was made by the Appeal Court of New Zealand on 27th day of August, 1943: It is ordered that the reduction of Capital proposed to be effected by the special resolution of the company passed on the 27th day of May, 1942, be and the same is hereby confirmed and this Court doth approve of the minute set forth as follows:

That the Capital of The Taupo Totara Timber Company Limited henceforth is 155,960-0-0, divided into

136,813 Preference Shares of 10/- each. . . . .

68,406-10-0

175,107 Ordinary Shares of 10/- each. . . . .

87,553-10-0

40 At the time of the registration of this minute the full sum of 10/- per share has been and is deemed to be paid up on the whole of the aforesaid 136,813 Preference Shares, and the full sum of 10/- per share has been and is deemed to be paid up on the whole of the aforesaid 175,107 Ordinary Shares.

By the Court,  
G. S. CLARK,  
Registrar

**EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968**

7. AT a meeting of Preference Shareholders held on 27th day of August, 1947 and also at an Extraordinary General Meeting held on the same date it was resolved as a special resolution of the Company to reduce its Share Capital in manner following, that is to say:

By paying off paid up Share Capital which is in excess of the wants of the Company and for that purpose returning to the holders of 136,813 fully paid Preference Shares of the nominal value of 10/- each out of the Surplus Assets of the Company the sum of 10/- per Share the total of such payments

10 amounting to . . . . . 68,406-10-0  
and making a reduction of capital of the said sum of . . . . . 68,406-10-0

AND so that the said Preference Shares shall be cancelled and the capital of the Company shall thereafter stand at

175,107 Ordinary Shares of 10/- each fully paid . . . . . 87,553-10-0

It was further resolved THAT in case the capital of the Company be reduced by repayment of the amount paid on the said 136,813 Preference Shares and cancelling those shares, there be paid to every holder of the said Preference Shares (in addition to the said repayment of capital) the sum of 2/6 per share on every Preference Share held by him at the date of the special resolution to reduce the capital as aforesaid becoming effective.

20 The following Order was made by the Supreme Court of New Zealand on 12th day of November, 1947. It is ordered that the reduction of Capital proposed to be effected by the Special Resolution of the Company passed on the 27th day of August, 1947 be and the same is hereby confirmed AND THIS COURT DOTH APPROVE of the minute set forth as follows:

‘That the capital of The Taupo Totara Timber Company Limited henceforth is 87,553-10-0 divided into

175,107 Ordinary Shares of 10/- each . . . . . 87,553-10-0

30 At the time of the registration of this minute the full sum of 10/- per share has been and is deemed to be paid up on the whole of the aforesaid 175,107 Ordinary Shares.’

By the Court,  
H. R. REID,  
Registrar

8. AT an Extraordinary General Meeting held on the 21st March, 1950, it was resolved as a Special Resolution of the Company that the Capital of the Company be increased to 90,000-0-0 by the creation of additional Capital of the amount of 2,446-10-0 divided into 4,893 shares of 10/- each, such shares to be issued as ordinary shares ranking as to dividend and as to distribution of Capital on winding up Pari Pasu with the ordinary shares in the existing Capital of the Company.

40 9. AT an Extraordinary General Meeting held on the 29th September, 1952, it was resolved as a Special Resolution of the Company that the Capital of the Company be increased to the amount of 100,000 by the creation of 10,000-0-0 additional Capital in the form of 20,000 Ordinary Shares of 10/- each, issued to existing Shareholders at 30/- per share.

10. AT the Annual General Meeting of Shareholders on the 25th August, 1955, it was resolved that the Capital of the Company be increased to 115,000-0-0 by the creation of 30,000 Ordinary Shares of 10/- offered to existing Shareholders at 2-0-0 per share.

11. AT an Extraordinary General Meeting held on the 19th day of December, 1955, it was resolved by Special Resolution that the Capital of the Company be increased to 172,500-0-0 by the issue of 115,000 Bonus Shares of 10/- on the basis of one share for every two held as at the 19th December, 1955.

10 12. AT the Annual General Meeting held on the 16th August, 1957, it was resolved by ordinary resolution that the Capital of the Company be increased to 227,500-0-0 by the issue of 35,000 shares of 10/- each at 30/- per Share to existing Shareholders and an issue of 75,000 Bonus Shares of 10/- each. The Bonus Shares to be issued pro rata to existing Shareholders at the time of issue by the Capitalisation of 37,500-0-0 held in Share Premium Account.

13. AT an Extraordinary General Meeting held on the 12th February, 1960 it was resolved as a Special Resolution that the nominal Capital of the Company be increased from 227,500-0-0 to 455,000-0-0 by the issue of:

20 (a) 227,500 Bonus Shares of 10/- each credited to Shareholders fully paid on a basis of one for every two shares held and registered in the books of the Company at 5.00 p.m. on Thursday the 11th February, 1960, such shares to be created from the Capitalisation of Reserves and the writing up of Assets and to rank parri-passu with existing shares

and

(b) 227,500 Bonus Shares of 10/- each credited to Shareholders as fully paid on a basis of one for every two shares held and registered in the books of the Company at 5.00 p.m. on Thursday the 11th February, 1960, such shares to be created from Capitalisation of undistributed profits as at the 31st March, 1957, and to be known as 'B' Ordinary Shares. Apart from repayment restrictions as imposed in Section 22 of the Land and Income Tax Amendment Act 1959, these  
30 shares to rank parri-passu with existing shares.

14. AT Extraordinary General Meeting held on the 8th June, 1961, it was resolved that the existing Capital of the Company, viz., 455,000-0-0, consisting of 910,000 shares of 10/- each be subdivided into 1,820,000 unnumbered shares of 5/- each.

and

'That the Authorised Capital of the Company be increased from 455,000-0-0 to 625,000-0-0 by the creation of 680,000 Shares of 5/- each. Such Shares, in the meantime, to remain unissued.

40 15. AT a General Meeting of 6th August, 1965, it was resolved that the Authorised Capital of The Taupo Totara Timber Company Limited be increased from 625,000-0-0 to 1,000,000-0-0 by the creation of 1,500,000 additional Ordinary Shares of five shillings (5/-) each ranking in all respects parri passu with existing Ordinary Shares in the Company, and that such shares remain in the meantime unissued.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

**THE TAUPO TOTARA TIMBER COMPANY LIMITED**

**Amendments to 12th December, 1972**

1. At the Annual General Meeting held on 27th July, 1971 the following was passed as a special resolution:

“THAT the Articles of Association of the Company be altered as follows:

By omitting in Article 82(a) the following word, viz ‘nine’ and substituting therefore the word ‘ten’.”

2. On 27th November, 1972 the Company was re-registered as a private Company under Part viii of the Companies Act 1955.

10 3. The following were passed as special resolutions by entry in the Minute Book on 12th December, 1972:

THAT in order to increase the maximum number of Directors the Articles of Association of the Company be altered by omitting in Article 82(a) the word ‘ten’ and substituting therefore the word ‘twelve.’

THAT the Articles of Association of the Company be altered by deleting Article 61 and substituting therefore the following:

20 “61” No business shall be transacted at any General Meeting unless a quorum of members is present at the time that the meeting proceeds to business; save as is herein otherwise provided two members present in person shall be a quorum.”

16 AT a General meeting held on 31st July, 1969, it was resolved that the authorised capital of the Company be increased to the amount of \$5,000,000 by the creation of additional capital of the amount of \$3,000,000 divided into 6,000,000 ordinary shares of \$0.50 each, such shares ranking in all respects pari passu with existing ordinary shares, and that such shares remain in the meantime unissued.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

**THE COMPANIES ACT 1955**  
**ARTICLES OF ASSOCIATION**  
**OF**

**THE TAUPO TOTARA TIMBER COMPANY LIMITED**

**PRELIMINARY**

1. THESE Articles of Association exclude the regulations contained in Table A in the Third Schedule to the Companies Act, 1955.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

**INTERPRETATION**

2. IN these regulations, unless the context otherwise requires:

- 10 "The Act" means the Companies Act 1955:  
"The Company" means THE TAUPO TOTARA TIMBER COMPANY LIMITED:  
"Articles" wherever mentioned shall refer to these Articles of Association:  
"Capital" means the share capital for the time being of the Company:  
"Debenture" includes debenture stock bond, convertible notes and any other security of the Company, whether constituting a charge on the assets of the Company or not:  
"Month" means calendar month:  
"The Seal" means the common seal of the Company:  
"The Office" means the registered office of the Company:  
20 "Secretary" means any person appointed to perform the duties of the Secretary of the Company:  
"The Register" means the register of members to be kept in compliance with section 118 of the Act:  
Expressions referring to writing shall be construed as including references to words printed, typewritten, painted, engraved, lithographed or otherwise traced or copied:  
Words or expressions contained in these Articles bear the same meaning as in the Act or any statutory modification or re-enactment thereof:  
Words importing the singular number only include the plural and vice versa and  
30 words importing the masculine gender only include the feminine:  
Words importing persons include firms, companies and corporations and "firm" includes partnership.

**SHARE CAPITAL AND VARIATION OF RIGHTS**

3. THE authorised capital of the Company at the date of adoption of these Articles is \$2,000,000 divided into: 4,000,000 ordinary shares of \$0.50 each.

4. SUBJECT to the provisions, if any, in that behalf in the Memorandum of Association, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the Company may be issued with such preferred, deferred, or other special rights or such  
40 restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the Company may from time to time by ordinary resolution determine.

5. SUBJECT to the provisions of section 66 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the Company are liable, to be redeemed on such terms and in such manner as the Company before the issue of the shares may by special resolution determine.

6(1) WHILE the issued share capital is divided into different classes or shares all or any of the rights and privileges attached to any class of shares may (subject always to the provisions of section 81 of the Act) be modified, abrogated or altered and (subject to the Act) the capital thereof may be repaid otherwise than on liquidation or in accordance with the terms of issue thereof only (subject to the exception contained in paragraph (2) of this Article and after compliance with paragraph (3) of this Article) with the sanction of an extraordinary resolution passed by the vote in person or by proxy of the holders of the issued shares of the class at a special meeting of such holders called for the purpose and the provisions in these Articles contained as to general meetings shall mutatis mutandis apply to every such meeting.

(2) Any proposition for the creation of additional capital ranking in priority to or pari passu with an existing class of preference shares shall (except where such proposition, including the proposed terms and conditions of issue being identical with those now contained in such proposition, was fully referred to in the prospectus or other invitation preceding the issue or allotment of such existing class of preference shares) be deemed to be an alteration of the rights of that class to which the provisions of this present Article shall apply.

(3) Before calling any special meeting of the holders of any class of preference shares to vote upon a resolution to modify, abrogate or alter all or any of the rights and privileges attached to any class of preference shares or to sanction a repayment of the capital thereof, the Directors shall either cause a Committee of Shareholders of the class of preference shares proposed to be affected to be set up to investigate the modification, abrogation or alterations of rights or repayment of capital proposed and to report thereon in writing to the Directors, or request the President for the time being of the New Zealand Society of Accountants to nominate an independent Public Accountant who shall be engaged to investigate the said modification, abrogation or alteration of rights or repayment of capital proposed and to report thereon in writing. No special general meeting of the holders of the class of preference shares proposed to be affected shall be called to vote upon a resolution to effect the proposals until the report in writing of the Committee of Shareholders or the Public Accountant, as the case may be has been made, and a copy of such report in writing shall accompany the notice sent to each shareholder of the class of preference shares proposed to be affected summoning a special general meeting of the class called to vote upon the said proposals.

7(1) SUBJECT to paragraph (5) of this Article and subject to any direction to the contrary that may be given by the Company in general meeting, all unissued shares (whether forming part of the present capital or hereafter created) shall before issue, be offered to members (other than preference shareholders not

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

specifically entitled thereto under the terms of issue of their preference shares) in proportion as nearly as may be to their existing shareholdings:

- (2) Shares shall be so offered by notice to each member specifying the number of shares offered to him and a time and manner for acceptance of those shares either by such member, or subject to the provisions of Article 28 hereof, by his nominee:
- (3) At the expiration of that time any shares that have not been accepted shall be deemed to have been declined and may be disposed of by the Directors to such person and in such manner and upon such terms as they think fit.
- 10 (4) If the Directors shall so dispose of any such shares at a price in excess of that at which they were offered to and declined by a member they may if they so think fit but not otherwise pay the whole or any part of the excess to such member:
- (5) Notwithstanding anything in this or any other Article contained the Directors may allot or otherwise dispose of all or any unissued shares as consideration for shares in the capital of any company or as consideration for the whole or part of the assets of any company or as consideration for any property real or personal. The Directors may allot and dispose of as they think fit any shares which (by reason of the ratio which the shares to be
- 20 offered bear to shares held by persons entitled to an offer of new shares) cannot be conveniently offered under this Article:
- (6) The Directors may offer issue allot or otherwise dispose of shares on such terms and conditions and at such times as they think fit at a premium or at par or (subject to section 65 of the Act) at a discount.

8. THE amount payable on application on each share offered to the public for subscription shall not be less than ten per centum of the nominal amount of the share.

9. THE Company may exercise the powers of paying commissions conferred by section 61 of the Act, provided that the rate per cent or the amount of the
- 30 commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of ten per centum of the price at which the shares in respect whereof the same is paid are issued or an amount equal to ten per centum of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares, or partly in one way and partly in the other.

10. EXCEPT as required by law, no person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any
- 40 fractional part of a share or (except only as by these Articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

11. EVERY person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for parcels of reasonable denominations. Every certificate shall be under the common seal of the Company and shall specify the shares to which it relates and the amount paid up thereon and shall in all other respects comply with subsections (4) and (5) of section 90 of the Act.

Delivery of a share certificate to one of several joint holders shall be sufficient delivery to all such holders.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

10 12. IF a share certificate is defaced it shall be replaced for a fee of not more than 25 cents. If it is lost, or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company of investigating evidence as the Directors think fit.

13. THE Company shall not give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security, or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the Company, but nothing in this Article shall prohibit transactions mentioned in the proviso to section 62 (1) of the Act.

#### LIEN

20 14. THE Company shall have a first and paramount lien upon any of the shares registered in the name of each member whether solely or jointly with others for all amounts due to the Company for unpaid calls, instalments and premiums on such shares and interest thereon, and the costs of collection thereof and also for all amounts paid in respect of such shares by the Company by virtue of any legislative enactment or regulation and no equitable interest in any share shall be created except upon the footing and condition that Article 10 hereof is to have full effect and such lien shall extend to all dividends and bonuses declared in respect of such shares.

30 The registration of a transfer of shares on which the Company has any lien shall unless a notice to the contrary shall first be given to the transferee operate as a waiver of such lien.

15. THE Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

40 16. TO give effect to any such sale the Directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference

to the sale and the remedy of the former holder of such shares and of any person claiming under or through him shall be against the Company exclusively and in damages only.

17. THE proceeds of the sale shall be received by the Company and applied firstly in payment of the costs and expenses of sale and of any attempted sale or sales and secondly in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

10 **CALLS ON SHARES**

18. THE Directors may from time to time make calls upon the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, and each member shall (subject to receiving at least twenty-one days' notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the Directors may determine.

20 19. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be made payable by instalments.

20. THE joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

21. IF a sum called in respect of a share is not paid on or before the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding Seven dollars per centum per annum as the Directors may determine, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

30 22. ANY sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Articles be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these Articles as to payment of interest and expenses, lien, forfeiture, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

23. THE Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

24. THE Directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) Seven dollars per centum per annum as may be agreed upon between the Directors and the member paying the sum in advance. The Directors may at any time repay the amount so advanced upon giving to such member three months' notice in writing.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

- 10 25. ON the trial or hearing of any action for the recovery of any money due in respect of any call, it shall be sufficient to prove that the name of the member is entered in the register of members of the Company as the holder or one of the holders of the shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the Minute Book and that notice of such call was duly given to the member sued in pursuance of these Articles, and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever and proof of the matters aforesaid shall be conclusive evidence of the debt.

#### TRANSFER OF SHARES

- 20 26. THE instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

27. SUBJECT to such of the restrictions of these Articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the Directors may approve, and in particular in the following form:

- 30 I, \_\_\_\_\_ of \_\_\_\_\_  
in consideration of the sum of \$ \_\_\_\_\_ paid to me by \_\_\_\_\_  
(hereinafter referred to as the said transferee) hereby  
transfer to the said transferee the shares numbered \_\_\_\_\_  
in The Taupo Totara Timber Company Limited to hold unto the said trans-  
feree subject to the several conditions on which I hold the same; and I, the  
said transferee, hereby agree to take the said shares subject to the conditions  
aforesaid. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Witness to the signature of, etc.

- 40 28. THE Directors in their uncontrolled discretion may decline to register any transfer of any share or shares, whether the same be fully paid or not, without assigning any reason for such refusal. The Directors may also decline to register any transfer of shares on which the Company has a lien or in respect of which any call or instalment shall be unpaid after the date fixed for payment thereof. No transfer shall be made to a subsidiary of the Company or to a subsidiary of a subsidiary of the Company or to a nominee of any such subsidiary.

29. THE Directors may also decline to recognise any instrument of transfer unless:

(a) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;

and

(b) The instrument of transfer in respect of only one class of share.

The Company shall retain the instrument of transfer in all cases where the same shall be registered.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

10 30. IF the Directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal and return the transfer to the transferee.

31. THE registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.

Provided that registration shall not be suspended for more than thirty days in any year.

#### TRANSMISSION OF SHARES

20 32. IN case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30 33. ANY person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member (herein referred to as a person entitled by transmission) shall within three months of becoming so entitled produce to the Company such evidence as may be required by the Directors to prove his title and declare in writing his election either to be himself registered as a member of the Company or to have some other person named by him as the transferee of such share, but the Directors shall, in any such case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death, bankruptcy or insolvency, as the case may be. The Directors shall not be bound to recognise any person as the executor or administrator of a deceased member unless he shall have taken out probate or obtained letters of administration.

34. UNTIL any person becoming entitled to shares by transmission shall have complied with the terms of Article 33 hereof the Directors may retain any dividend or bonus declared upon such shares.

40 35. WHERE the registered holder of any share dies or becomes bankrupt or becomes subject to a protection order under the Aged and Infirm Persons' Protection Act 1912, or becomes an inmate of any prison or reformatory institution or becomes a lunatic or is an infant, his personal representative or the assignee,

manager, administrator or interim curator or committee of his estate or guardian as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Directors on that behalf, be entitled to the same dividends and other advantages, and the same rights, whether in relation to meetings of the Company, or to voting, or otherwise, as the registered holder would have been entitled to if he had not died or become bankrupt or otherwise under any disability as aforesaid. Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these Articles, be deemed to be joint holders of the shares.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

10

#### FORFEITURE OF SHARES

36. IF a member fails to pay any call or instalment of a call including any premium or part thereof on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued, and any expenses that may have been incurred by the Company by reason of such non-payment.

20

37. THE notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

38. IF the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

30

39. A forfeited share shall be deemed to be the property of the Company and may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

40. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all money which, at the date of forfeiture, was payable by him to the Company in respect of the shares, but his liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.

40

41. AN entry in the Minute Book of the Company that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive

evidence of the facts therein stated as against all persons claiming to be entitled to the share.

42. THE Company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

10 43. THE provision of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

44. IN the event of shares being forfeited and being sold re-allotted or otherwise disposed of within twelve months of the date of forfeiture, any residue after the satisfaction of unpaid calls, instalments, premiums, interest and expenses shall be paid to the previous member, his executors, administrators or assigns.

#### CONVERSION OF SHARES INTO STOCK

20 45. THE Company may by ordinary resolution convert any paid up shares into stock, and reconvert any stock into paid up shares of any denomination.

46. THE holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same Articles, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the Directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of shares from which the stock arose.

30 47. THE holders of stock shall, according to the amount of stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the Company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the Company and in the assets on winding up) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

48. SUCH of the Articles of the Company as are applicable to paid up shares shall apply to stock and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

#### ALTERATION OF CAPITAL

40 49. THE Company may from time to time by ordinary resolution increase the

share capital by such sum, to be divided into shares of such amount, as the resolution prescribes.

50. SUBJECT to any direction to the contrary that may be given by the Company in general meeting, all new shares shall be disposed of in compliance with Article 7 hereof.

51. THE new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the existing share capital.

52. THE Company may be ordinary resolution:

- 10 (a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares:
- (b) Subdivide its existing shares, or any of them into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of section 70 (1) (d) of the Act:
- (c) Cancel any shares which at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

53. THE Company may be special resolution reduce its share capital, any capital redemption reserve fund, or any share premium account in any manner and with and subject to any incident authorised, and consent required, by law.

20

#### GENERAL MEETINGS

54(1) THE Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the Company (including the annual meeting immediately preceding the adoption of these Articles) and that of the next.

(2) The annual general meeting shall be held at such time and place as the Directors appoint.

- 30 (3) Shareholders of all classes shall be entitled to attend all general meetings and to receive copies of all notices, reports and accounts issued to shareholders.

55. ALL general meetings other than annual general meetings shall be called extraordinary general meetings.

- 40 56. THE Directors may, whenever they think fit convene an extraordinary general meeting. Extraordinary general meetings shall also be convened on such requisition, or in default, may be convened by such requisitionists, as provided by section 136 of the Act. If at any time there are not within New Zealand sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

57. IN the case of an extraordinary general meeting called in pursuance of a requisition under section 136 of the Act, the notice convening the meeting shall state the objects which are mentioned in the requisition and unless such meeting is called by the Directors no business other than that expressed in the requisition and of which notice has been given shall be transacted.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

#### NOTICE OF GENERAL MEETINGS

58. A meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the Company other than a meeting for the passing of a special resolution shall be called by  
10 fourteen days' notice in writing, at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day, and the hour of meeting and in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting to such persons as are, under the Articles of the Company, entitled to receive such notices from the Company.

59 THE accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

20

#### PROCEEDINGS AT GENERAL MEETINGS

60. ALL business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the normal business regarding declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the Directors and auditors, the election of Directors in the place of those retiring, the fixing of the remuneration of the Directors and the fixing of the remuneration of the auditors.

30

61. TEN members personally present and entitled to vote shall be a quorum for a general meeting for normal business of an ordinary meeting as such business is defined in Article 60 and for all other purposes a quorum for a general meeting shall be members personally present not being less than ten in number and holding or representing by proxy as by these Articles provided at least 100,000 of the shares carrying the right to vote at that meeting. No business shall be transacted at any general meeting unless the quorum requisite be present at the commencement of the business.

40

62. IF within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

63. THE Chairman, if any, of the Board of Directors shall preside as Chairman

at every general meeting of the Company, or if there is no such Chairman present, then the Deputy Chairman or if either of these is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting.

64. IF at any meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be Chairman of the meeting.

10 65. THE Chairman may, with the consent of any meeting at which a quorum is present, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

20 66(1) AT any general meeting a resolution put to the vote of the meeting shall be decided on the voices unless a show of hands is demanded by any one member present in person or by proxy or by the Chairman and unless a poll is (before or on the declaration of the result of the voices or of the show of hands) demanded:

- (a) By the Chairman; or
- (b) By at least three members present in person or by proxy; or
- (c) By any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting.

30 (2) Unless a poll is so demanded a declaration by the Chairman that a resolution has either on the voices or on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

40 67. EXCEPT as provided in Article 69, if a poll is duly demanded it shall be taken in such manner as the Chairman directs. Two scrutineers shall be appointed, one of whom shall be nominated by the Chairman and the other by the mover of the resolution in respect of which such poll is demanded, and such scrutineers shall report to the Chairman in writing the result of such poll. The report of the scrutineers shall be conclusive and the Chairman shall declare the result of the poll accordingly, and such declaration shall be deemed to be the resolution of the meeting at which the poll was demanded.

68. IN the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which

the poll is demanded shall be entitled to a second or casting vote.

69. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the Chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

#### VOTES OF MEMBERS

10 70. ON a show of hands every member present in person and entitled to vote shall have one vote. On a poll every member shall have one vote for each share carrying voting rights of which he is the holder.

71. IN the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

20 72(1) A member who is a mentally defective person within the meaning of the Mental Health Act 1911 may vote by his committee or other person having authority to administer his estate; subject to the provisions of a protection order made under the Aged and Infirm Persons' Protection Act 1912, a member may vote in respect of any shares that are subject to such protection order by the manager appointed in that protection order; a member in respect of whose estate an administrator or interim curator has been appointed under any statute may vote by such administrator or interim curator; any such committee, manager, administrator, interim curator; or other person as aforesaid may vote either on a show of hands or on a poll, and on a poll may vote by proxy.

30 (2) The provisions of this sub-clause apply in respect of members who are not living in New Zealand, and to whom the provisions of the last preceding sub-clause are accordingly not applicable. Every such member who is of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis or other person in the nature of a committee or curator bonis, appointed by that Court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

(3) Where two or more persons are entitled under the provisions of section 85 (2) of the Act to the rights of a deceased or bankrupt member, the right of one of them to vote shall be determined by the order in which their names appear in the probate, letters of administration, Order of Court, or other document evidencing rights.

40 73. NO member shall be entitled to vote either personally or by proxy at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

74. ON a poll votes may be given either personally or by proxy.

75. THE instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a corporation either under seal or under the hand of an officer or attorney duly authorised. The Company shall not issue a form of proxy in which at the time of issue the proxy is designated by name or office, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if the member desires to appoint them or any of them. Nothing in this Article shall be construed as prohibiting any Director or person individually, and at his own expense, soliciting members for their proxies. A proxy need not be a member of the Company.

76. THE instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposed to vote, or, in the case of a poll, not less than forty-eight hours before the time appointed for taking of the poll, and in default the instrument of proxy shall not be treated as valid.

77. AN instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit or in such other form as the Directors may from time to time prescribe or accept:

THE TAUPO TOTARA TIMBER COMPANY LIMITED

I/We \_\_\_\_\_ of \_\_\_\_\_  
 being a member/members of the abovenamed Company, hereby appoint  
 \_\_\_\_\_ of \_\_\_\_\_ of failing him

as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

78. WHERE it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or form as near thereto as circumstances admit:

THE TAUPO TOTARA TIMBER COMPANY LIMITED

I/We \_\_\_\_\_ of \_\_\_\_\_ being a member/  
 members of the abovenamed Company, hereby appoint  
 \_\_\_\_\_ of \_\_\_\_\_ or failing him  
 as my/our proxy to

vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the \_\_\_\_\_ day of  
 19 \_\_\_\_\_ and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\* This form is to be used in favour of/against the resolution.

\* Unless otherwise instructed, the proxy will vote as he thinks fit.

\* Strike out whichever is not desired.

79. THE instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

80. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation, or transfer as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

10 **CORPORATION ACTING BY REPRESENTATIVES AT MEETINGS**

81. ANY corporation which is a member of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that corporation could exercise if it were an individual member of the Company, and a corporation so represented at any meeting of the Company shall be deemed to be a member personally present within the meaning of that term as used in these Articles.

**DIRECTORS**

20 82(a) SUBJECT to the provisions of Article 103 hereof, the number of Directors shall not be more than nine or less than five.

(b) All Directors other than the permanent director or managing director or assistant managing director shall be elected by the members and shall retire in rotation in manner hereinafter appearing.

30 83. THE remuneration of the Directors shall from time to time be determined by the Company in general meeting, but the Directors shall not be paid as the whole or a part of their remuneration, whether special remuneration or otherwise, any sum by way of commission on or percentage of turnover or dividends, or (except in the case of an employee director) profits. Such remuneration shall not be increased, nor shall a greater sum be voted in any year than was voted in the previous year unless notice of intention to move accordingly specifying the amount of the proposed increase has been given to members in the notice convening the meeting. The Directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or in connection with the business of the Company. Any remuneration voted or paid to Directors shall be divided among them in such proportions and manner as the Directors may determine, and in default of such determination equally.

40 84. IF any of the Directors renders any special service in going or residing abroad or otherwise for any of the purposes of or in the interests of the Company or is called upon to perform extra services or to make any special exertions or undertakes any work additional to that usually required by Directors of a

Company similar to this, or if any Director by reason of his profession shall be obliged to exercise particular skill on behalf of or for any of the purposes of the Company or the business thereof, the Directors may remunerate any such Director for such services by a fixed sum or otherwise out of the funds of the Company as may be determined by the Directors and in addition to his share of the ordinary remuneration of the Directors.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

85. THE Directors of the Company holding office immediately prior to the time of the adoption of these Articles shall be and continue in office as Directors subject however to the provisions of the Act and these Articles.

- 10 86. A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a Director or officer of or from his interest in, any such other company unless the Company otherwise directs.

#### ALTERNATE DIRECTORS

- 20 87. ANY Director being absent from or about to leave New Zealand or otherwise being unable to attend any meeting or meetings may, with the consent of a majority of his co-directors who are then in New Zealand, appoint any person (not being an existing Director) to act in his place during his absence as an alternate or substitute Director, and every alternate Director shall, whilst so acting, exercise and discharge the duties of a Director and shall (except as regards any share qualification) be subject to the like terms and conditions as the other Directors and shall vacate his office ipso facto when the appointer (1) returns to New Zealand: or (2) removes the alternate Director from office: or (3) is able to attend meetings: or (4) ceases for any reason to hold the office of a Director. Any appointment or removal under this Article shall be effected by an instrument in writing under the hand of the person making the same and left at the registered office of the Company.

30

#### BORROWING POWERS

88. THE Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party.

#### POWERS AND DUTIES OF DIRECTORS

- 40 89. THE business of the Company shall be managed by the Directors, who may exercise all such powers of the Company as are not, by the Act or by these Articles, required to be exercised by the Company in general meeting, subject, nevertheless, to any of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid Articles or provisions, as may be prescribed by the Company in general meeting; but no regulation made

by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made, but the Directors shall not sell or otherwise dispose of the Company's principal undertaking without the authority of an ordinary resolution of members of all classes at a meeting called for that purpose.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

10 90. THE Directors may from time to time and at any time by power of attorney appoint any Company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in, or exercisable, by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

91. THE Company may exercise the powers conferred by section 45 of the Act with regard to having an official seal for use abroad, and those powers shall be vested in the Directors.

20 92. THE Company may exercise the powers conferred upon the Company by sections 127 and 128 of the Act with regard to the keeping of a branch register, and the Directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

93(1) A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors in accordance with section 199 of the Act.

30 (2) A Director shall not vote in respect of any contract or arrangement in which he is interested, and if he does so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to:

- (a) Any arrangement for giving any Director any security or indemnity in respect of moneys lent by him to or obligations undertaken by him for the benefit of the Company; or
- (b) Any arrangement for the giving by the Company of any security to a third party in respect of a debt or obligation of the Company for which the Director himself has assumed responsibility in the whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) Any contract by a Director to subscribe for or underwrite shares or debentures of the Company; or
- 40 (d) Any contract or arrangement with any other Company in which he is interested only as an officer of the Company or as a holder of shares or other securities and these prohibitions may at any time be suspended or relaxed by the Company in general meeting to any extent in respect of any particular contract, arrangement, or transaction.

(3) A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relation thereby established.

(4) A Director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms hereof.

(5) Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director:

Provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.

94. ALL cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Directors from time to time by resolution determine.

95. THE Directors shall cause Minutes to be made in books provided for the purpose:

- (a) Of all appointments of officers made by the Directors;
- (b) Of the names of the Directors present at each meeting of the Directors, and of any committee of the Directors;
- (c) Of all resolutions and proceedings at all meetings of the Company, and of the Directors, and of committees of Directors,

and any such minutes of any meeting of the Directors or of any committee of the Company purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be received as prima facie evidence of the matters stated in such minutes.

96. THE Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

**DISQUALIFICATION OF DIRECTORS**

97. THE office of Director shall be vacated if the Director:
- (a) Ceases to be a Director by virtue of section 185 of the Act; or
  - (b) Becomes a bankrupt or makes any arrangement or composition with his creditors generally; or
  - (c) Becomes prohibited from being a Director by reason of any order made under section 189 of the Act; or
  - (d) Becomes of unsound mind, or becomes a protected person under the Aged and Infirm Persons' Protection Act 1912; or
  - 10 (e) Resigns his office by notice in writing to the Company; or
  - (f) Has for more than six months been absent without permission of the Directors from meetings of the Directors held during that period.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

**ROTATION OF DIRECTORS**

98. AT the first annual general meeting of the Company held after the adoption of these Articles and at the annual general meeting in every subsequent year one-third of the Directors for the time being, other than any Managing Director, or if their number is not a multiple of three, then the number nearest one-third, shall retire from office. A retiring Director shall retain office until the dissolution or adjournment of the Meeting at which his successor is appointed.
- 20 99(a) THE Directors to retire in every year shall be those who have been the longest in office since their last election, but as between persons who become Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. A Managing Director and any Director appointed under Article 116 shall not be subject to retirement so long as he holds such office or be taken into account in determining the rotation or retirement of Directors:
- (b) In addition to the provisions of Article 98 any Director who attains the age of 70 years shall advise the Directors of that fact and thereafter he shall automatically retire in each of those years when he does not retire by rotation pursuant to Article 98, but he may offer himself for re-election for the ensuing year.
- 30

100. A retiring Director shall be eligible for re-election.

101. THE Company at the meeting at which a Director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring Director shall if offering himself for re-election be deemed to have been re-elected, unless at the meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that Director is put to the meeting and lost. At any general meeting of the Company at which it is proposed to elect a Director or Directors, a motion for the appointment of two or more persons as Directors of the Company by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any
- 40 vote being given against it.

102. NO person other than a Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of Director at any general meeting, unless he shall have been nominated as a candidate for such

office by notice of nomination in writing signed by a member of the Company and by the candidate himself, and delivered to the registered office of the Company at least 21 days before the date fixed for the meeting at which such election is to take place. Notice of each and every nomination for the office of Director shall, at least seven days prior to the meeting at which the election is to take place, be forwarded by the Company to all shareholders. Failure to do so shall not invalidate the nomination, but the meeting, as far as election of Directors is concerned, shall be adjourned until such notice shall have been given.

**EXHIBITS 2**  
**Memorandum of**  
**Association and**  
**Articles of**  
**Association of**  
**The Taupo**  
**Totara Timber**  
**Company Limited**  
**30 March 1915**  
**&**  
**14 August 1968**

10 103. THE Company may from time to time by ordinary resolution increase or reduce the number of Directors, and may also determine in what rotation the increased or reduced number is to go out of office, provided always that in no case shall the minimum number of Directors be reduced below five.

20 104. THE Directors shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these Articles. Any Director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at that meeting.

105. THE Company may by ordinary resolution, of which special notice has been given in accordance with section 146 of the Act, remove any Director before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Company and that Director. Any such removal shall be without prejudice to any claim that the Director may have for damages for breach of any contract of service between him and the Company.

30 106. THE Company may by ordinary resolution appoint another person in place of a Director removed from office under the last preceding Article, and, without prejudice to the powers of the Directors under Article 104, the Company in general meeting may appoint any person to be a Director either to fill a casual vacancy or as an additional Director. A person appointed in place of a Director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

#### PROCEEDINGS OF DIRECTORS

40 107. THE Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman shall have a second or casting vote but shall not have such second or casting vote if at any time the quorum of Directors is less than three and only such quorum is present. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. It shall not be necessary to give notice of a meeting of Directors to any Director for the time

being absent from New Zealand, but notice shall be given to any alternate or substitute Director appointed under the provisions of Article 87 hereof.

108. THE quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be three.

109. THE continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum number fixed by or pursuant to the Articles of the Company the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

110. THE Directors may elect a Chairman and a Deputy Chairman of their meetings and determine the period for which each of them is to hold office; but if no such Chairman or Deputy Chairman is elected, or if at any meeting the Chairman and Deputy Chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairman of the meeting.

111. THE Directors may delegate any of their powers to a committee consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors. Subject thereto, the Articles relating to the meetings and proceedings of Directors shall apply also to the meetings and proceedings of any committee consisting of two or more Directors and in such case the quorum for such meeting shall be two.

112. A committee may elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding the meeting, the members present may choose out of their number to be Chairman of the meeting.

113. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote, except when only two are present at the meeting.

114. ALL acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

115. A resolution in writing, signed by all the Directors (including alternate Directors) for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Any such resolution may consist of several

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

documents in like form, each signed by one or more Directors.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

#### MANAGING DIRECTOR

116. THE Directors may from time to time appoint one or more of their body to the office of Managing Director for such period, not exceeding five years, and on such terms as they think fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A Director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation or retirement of Directors, but his appointment shall be automatically determined if he ceases from any cause to be a Director.

10

117. A Managing Director shall receive such remuneration whether by way of salary, commission, or participation in profits (other than a commission on, or percentage of turnover or dividends) or partly in one way and partly in another as the Directors may determine.

118. THE Directors may entrust to and confer upon a Managing Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

20

#### SECRETARY

119. THE Secretary shall be appointed by the Directors for such term, at such remuneration, and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

120. NO person shall be appointed or hold office as Secretary who is:

- (a) The sole Director of the Company; or
- (b) A corporation the sole Director of which is the sole Director of the Company; or
- (c) The sole Director of a corporation which is the sole Director of the Company.

30

121. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by being done by or to the same person acting both as Director and as, or in place of, the Secretary.

#### THE SEAL

122. THE common seal of the Company shall not be affixed to any document except by the authority of the Board of Directors, or of a committee of Directors previously given, and in the presence of at least two Directors, who shall affix their signature to every document so sealed, and every such instrument shall be countersigned by the Secretary or some person appointed by the Directors.

40

The Directors shall have power from time to time to destroy the Company's seal and substitute a new seal in lieu thereof.

**DIVIDENDS AND RESERVES**

123. THE Company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

124. THE Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits and position of the Company.

125. NO dividends shall be paid otherwise than out of profits.

10 126. THE Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the Company, or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit. The Directors may also, without placing the same to reserve, carry forward any profits which they think prudent not to divide.

20 127. SUBJECT to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid accordingly to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purpose of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

30 128. THE Directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the Company on account of calls or otherwise in relation to the specific shares of the Company on which the dividend is payable.

40 129. ANY general meeting declaring a dividend or bonus may direct payment of the dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other Company or in any one or more of such ways, and the Directors shall give effect to any such resolution, and where any difficulty arises in regard to the distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates, and fix the value for distribution of the specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Directors.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

130. ANY dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, in the case of joint holders, to the registered address of that one of the joint holders, who is at first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct and the Company shall not be responsible for any loss arising from such mode of transmission. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

**EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968**

131. NO dividend shall bear interest against the Company.

132. DIVIDENDS and bonuses shall be payable to the persons who are the registered holders of the shares in respect of which they are declared at the time of the declaration of such dividends or bonuses. All dividends unclaimed for two years after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. All dividends unclaimed for a period of five years after having been declared shall be forfeited and shall revert to the Company, but the Directors shall have power at any time to annul such forfeiture in any particular case and pay any such forfeited dividends (but without any interest thereon) to a claimant who produces evidence satisfactory to the Directors of his entitlement to the amount due to him.

133. A Transfer of any shares shall not pass the right to any dividend declared thereon before the registration of the transfer.

#### ACCOUNTS

134. THE Directors shall cause proper books of accounts to be kept in which shall be kept full, true and complete accounts of the affairs and transactions of the Company.

135. THE books of account shall be kept at the registered office of the Company, or, subject to section 151 (2) of the Act, at such other place or places as the Directors think fit and shall always be open to the inspection of any Director.

136. THE Directors shall from time to time determine whether and to what extent and at what times and place and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or paper of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

137. THE Directors shall from time to time in accordance with the Act cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in the Act.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

138. A copy of the Directors report and of the profit and loss account and balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in general meeting, together with a copy of the auditors report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the Company.

10

#### CAPITALISATION OF PROFITS

139. THE Company in general meeting may upon the recommendation of the Directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that that sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash, but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by those members respectively or paying up in full or in part unissued shares or debentures of the Company to be allotted and distributed credited as fully or partly paid up to and amongst those members in the proportion aforesaid, or partly in the one way and partly in the other, and the Directors shall give effect to every such resolution:

20

Provided that a share premium account and a capital redemption reserve fund may for the purpose of this Article only be applied in the paying up of unissued shares to be issued to members of the Company as fully paid bonus shares.

140. WHENEVER such resolution as aforesaid has been passed the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon any such capitalisation, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under any such authority shall be effective and binding on all such members.

30

40

## AUDIT

141. AUDITORS shall be appointed and their duties regulated in accordance with sections 163 to 166 of the Act.

## NOTICES

10 142. A notice may be given by the Company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within New Zealand) to the address, if any, within or outside New Zealand supplied by him to the Company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected on the day after the date of its posting.

143. IF a member has no registered address within New Zealand, and has not supplied to the Company an address within or outside New Zealand for the giving of notices to him he shall not be entitled to receive notices, but if the Directors wish to give notice to him a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the Company shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

20 144. A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the shares.

30 145. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member or to the person or persons legally representing a member who is an infant or legally representing a member pursuant to any statute by sending it through the post in a prepaid letter addressed to them by name, or by the title or representatives of the deceased, or assignee of the bankrupt, or by any like description, at the address, if any, within New Zealand supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy or other disability had not occurred.

146. THE signature to any notice to be given by the Company may be written, typewritten, printed, or otherwise reproduced.

147(1) NOTICE of every general meeting shall be given in any manner hereinbefore authorised to:

- 40 (a) Every member except those members who (having no registered address within New Zealand) have not supplied to the Company an address within or outside New Zealand for the giving of notices to them.
- (b) Every person upon whom the ownership of a share devolved by reason of his being a legal personal representative or an assignee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notices of the meeting.

EXHIBITS 2  
Memorandum of  
Association and  
Articles of  
Association of  
The Taupo  
Totara Timber  
Company Limited  
30 March 1915  
&  
14 August 1968

- (c) The auditor for the time being of the Company
- (d) The Stock Exchange Association of New Zealand.
- (2) No other person shall be entitled to receive notices of general meetings.

EXHIBITS 2  
 Memorandum of  
 Association and  
 Articles of  
 Association of  
 The Taupo  
 Totara Timber  
 Company Limited  
 30 March 1915  
 &  
 14 August 1968

#### WINDING UP

10 148. IF the Company is wound up the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Act, divide amongst the members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

20 149. ANY commission or remuneration proposed to be paid on the sale or liquidation of the assets of the Company to any Director or Directors or the liquidator or liquidators thereof shall be subject to approval by shareholders. Prior notification of the amount of such proposed payments shall be given to all shareholders at least seven days before the meeting at which such payments are to be considered, and if no quorum is present at such meeting, the proposed payments shall be deemed to be approved.

#### INDEMNITY

150. EVERY Director, Managing Director, agent, auditor, secretary, and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 468 of the Act in which relief is granted to him by the Court.

## EXHIBIT 1E

RELEVANT MINUES OF DEFENDANT 23rd FEBRUARY, 1965 TO  
16th JULY, 1973 AND SEAL REGISTER 28th JANUARY, 1972

MINUTES of a MEETING of the BOARD of DIRECTORS of THE TAUPO  
TOTARA TIMBER COMPANY LIMITED held in the HEAD OFFICE of the  
COMPANY, PRINCES STREET, PUTARURU, at 9a.m. on  
TUESDAY, 23rd FEBRUARY, 1965

PRESENT. Messrs. H. M. Brown (Chairman), O. F. Haylock, V. T. Fail, G. L. Pulham, H. B. Woollett and the Secretary D. K. Rowe.

10

Dr. O. F. Haylock thanked members of the Board for their expressions of sympathy and for their attendance at the funeral of the late Major R. A. Wilson.

MINUTES OF A MEETING of the Board of Directors held on the 11th December, 1964 were read and confirmed.

DIRECTORATE: It was resolved:-

“That Mr. H. B. Woollett be appointed Managing Director of the company.”

H. M. Brown/O. F. Haylock

20

It was also resolved:-

“That Mr. D. K. Rowe be appointed to the Board of Directors”.

H. M. Brown/O. F. Haylock

Messrs. H. B. Woollett and D. K. Rowe thank the Board for their appointments and for the confidence that had been placed in them.

BANK OF NEW ZEALAND: The Secretary read a letter from the Bank of New Zealand conveying increased overdraft provisions. The Board considered the terms most satisfactory and instructed the Secretary to thank the Bank for their assistance.

30

PRODUCTION COSTS for December and January were discussed and points noted were the downward trend in sales at Newmarket and the improved conversion at the Tokoroa Mill.

BOARD MEETING 7/2/68

EXECUTIVE SALARIES:

It was resolved:-

“That the salary of Mr. D. K. Rowe be increased to \$8,000 per annum plus \$600 special expenses allowance.”

P. W. GRAYBURN/M. J. T. FRASER

The meeting closed at 4.05 p.m.

CONFIRMED

O. F. Haylock, CHAIRMAN

20.3.68 DATE

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

Minutes of a meeting of  
Directors of The Taupo  
Totara Timber Co. Ltd.

28 May, 1969

**LOCKWOOD HOMES LIMITED:**

The question was raised of making further supplies to Lockwood Homes Limited, and the General Manager was able to report that the existing supply arrangements were being studied but that an extension of the present supply arrangements would require very careful consideration.

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

**STAFF SERVICE CONTRACTS:**

10 The Chairman brought forward the need for the introduction of service contracts between the Company and senior members of the staff. It was therefore resolved:

'That the General Manager be offered a five year service contract with the Company.'

Mr. D. K. Rowe did not vote on this resolution.

20 It was agreed that service contracts for other senior staff members under 40 years of age should be at three months notice, and be for three years. For those over 40 there should be incorporated six months notice and be for a term of five years. In the event of a successful merger or take-over of the Company, there would be guaranteed employment or the option of retirement within the first twelve months after take-over, on five years salary without deduction of tax, in the case of employees over 40. For those under the age of 40 the period of guaranteed salary would be three years.

It was agreed that the question of protecting superannuation benefits in the event of a take-over should be referred to Noble Lowndes (N.Z.) Ltd.

It was therefore resolved:

'That service contracts be offered forthwith to senior employees.'

It was further resolved:

30 'That Messrs. H. B. Woollett and O. F. Haylock, be appointed to form a sub-committee to finalise and sign the service contracts.'

It was thereupon resolved:

'That the service contracts be offered to the General Manager, the Assistant General Manager, the Secretary, the Forest Manager, the Bandmill Manager, the Newmarket Manager and the Accountant.'

**DIRECTORS' FEES:**

It was resolved:

'That the Board recommend to the Annual General Meeting that Directors' Fees be increased to \$9,000 per annum.'

The meeting closed at 5.00 p.m.

28/5/69  
Confirmed 30/8/69

**STAFF SERVICE CONTRACTS:**

The Chairman brought forward the need for the introduction of staff service contracts between the Company and senior members of the staff. It was therefore resolved:

'That the General Manager be offered a five year service contract with the Company.'

Mr. D. K. Rowe did not vote on this resolution.

**EXHIBITS 1E**  
**Relevant Min-**  
**utes of Defen-**  
**dant 23rd**  
**February, 1965**  
**to 16th July,**  
**1973 and Seal**  
**Register of 28th**  
**January, 1972**

10 It was agreed that service contracts for other senior staff members under 40 years of age should be at three months notice, and be for three years. For those over 40 there should be incorporated six months notice and be for a term of five years. In the event of a successful merger or take-over of the company, there would be guaranteed employment or the equivalent of retirement within the first twelve months after take-over, on five years salary without deduction of tax, in the case of employees over 40. For those under the age of 40 the period of guaranteed salary would be three years.

20 It was agreed that the question of protecting superannuation benefits in the event of a take-over should be referred to Noble Lowndes (N.Z.) Ltd. It was therefore resolved:

'That service contracts be offered forthwith to senior employees.'

It was further resolved:

'That Messrs. H. B. Woollett and O. F. Haylock, be appointed to form a sub-committee to finalise and sign the service contracts.'

It was thereupon resolved:

'That the service contracts be offered to the General Manager, The Assistant General Manager, the Secretary, the Forest Manager, the Bandmill Manager, the Newmarket Manager and the Accountant.'

**30 DIRECTORS FEES:**

It was resolved:

'That the Board recommend to the Annual General Meeting that Directors' Fees be increased to \$9,000 per annum.'

The meeting closed at 5.00 p.m.

Confirmed

O. F. Haylock

30/8/69

**Board meeting 16/7/69**

**NEWMARKET PROPERTY:**

Mr. P. W. Grayburn reported that the Taupo Totara valuer and the New Zealand Breweries valuer had been unable to agree on a valuation of the Newmarket property. After discussion, it was resolved:

'That this Board allow to stand the offer to sell the Newmarket property at a minimum price of \$257,000 but that the sale be not pressed unduly.' -

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**STAFF CONTRACTS:**

- 10 Messrs. O. F. Haylock and H. B. Woollett reported that these were now being prepared and that some had been completed and executed by both parties.

**SALARIES:**

It was resolved:

'That the General Manager's salary be increased to \$8,500 per annum plus \$1,000 expense allowance. The increase to be effective from the 1st April, 1969.'

The Chairman and General Manager were requested to bring down salary recommendations for senior staff and it was agreed that these be placed on the agenda for annual review.

- 20 The meeting closed at 10.45 p.m.

**CONFIRMED**

O. F. Haylock, Chairman

30.7.69 Date

**Board meeting 27/5/70**

**ATHLETIC RUGBY FOOTBALL CLUB:**

It was resolved:

'That the Taupo Totara Timber Company Limited guarantee the Athletic Rugby Football Club's loan of \$6,000 from the Bank of New Zealand.'

It was agreed that this should be for a maximum period of five years, and that it should be reviewed in two years' time. It was also noted that other Guarantors had agreed to guarantee a further \$6,000.

**EXHIBITS 1E**  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**10 BUDGETS AND FORECAST:**

It was agreed that budgets covering trading and cash flow should be compiled and mailed to Directors at the earliest opportunity.

**NEW PRODUCTS SUB-COMMITTEE:**

It was resolved:

'That a New Products Sub-committee be appointed, to be made up of the Chairman, the General Manager and Messrs. J. K. Cameron and P. W. Grayburn.'

**STAFF SALARIES:**

It was resolved:

**20** 'That the salaries of the following members of the staff be increased as follows:

D. K. Rowe to be increased to \$10,000 per annum plus \$1,000 per annum expenses, D. G. Gibb to be increased to \$6,500 per annum plus \$500 expenses and J. N. Thompson to be increased to \$5,500 per annum plus \$500 expenses.'

The meeting closed at 1.15 p.m.

**CONFIRMED**

27.7.70 Date

O. F. Haylock, Chairman

**Board meeting 26/7/71****SALES & PRODUCTION REPORTS:**

Sales and Production Reports to the month of June were tabled and discussed.

**EXHIBITS 1E**  
**Relevant Min-**  
**utes of Defen-**  
**dant 23rd**  
**February, 1965**  
**to 16th July,**  
**1973 and Seal**  
**Register of 28th**  
**January, 1972**

**NOTE AND DEBENTURE ISSUE:**

It was noted that the Note Issue Prospectus had been prepared and printed and was ready to be mailed to shareholders, subject to confirmation at the Annual Meeting on 27th July. It was also noted that the Trust Deed had been executed, having been perused by the sub-committee and it was resolved:

10

‘That the action of the sub-committee in approving the Convertible Note Trust Deed be approved.’

It was also resolved:

‘That the Convertible Note Prospectus as prepared be approved.’

The Chairman read a suggested draft letter which was to be sent to the Trustee for the Debenture Holders with regard to the two groups of subsidiaries, viz: K. D. V. Industries Limited and Matakana Milling and Export Corporation Limited, which have not yet been brought into the Trust Deed. The draft as presented was approved and it was resolved:

20

‘That the draft letter to the Trustee be approved, with the addition of the words “without prior approval of the Trustee” in the last paragraph.’

**ANNUAL MEETING:**

The arrangements for the Annual Meeting which was to be held on the following day were reviewed and it was agreed that the ballot paper as presented should be used in the election of Directors. The Chairman read his address to the Meeting and it was resolved:

‘That the Chairman’s address as presented to this meeting be approved.’

**STAFF SALARIES REVIEW:**

30

It was resolved:

‘That the sub-committee’s recommendations as to Senior Staff salaries be approved.’

It was noted that these amendments would be subject to the approval of the Remuneration Authority.

**NEXT MEETING:**

It was agreed that there be held a special meeting to discuss the Matakana Island tender on Monday 16 August, 1971 at 11.00 a.m. at Putaruru. The date for the following meeting would be set at that meeting.

**BOARD MEETINGS:**

(2) That the Board of Directors of The Taupo Totara Timber Company Limited meet regularly at monthly intervals at 10.30 a.m. aiming to finish no later than 4.30 p.m.

**EXHIBITS 1E**  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**SUBSIDIARY BOARDS:**

(3) That it be Group policy that meetings of the subsidiary companies, K.D.V. Industries Limited and Matakana Milling & Export Corporation Limited, be held at three monthly intervals.

**SUBSIDIARY COMPANY MANAGEMENT:**

10

(4) That Management Committees under the Chairmanship of D. K. Rowe be set up. Meetings to be arranged as deemed necessary, but suggested at monthly intervals.

**MANAGEMENT APPOINTMENTS:**

The expansion of operations of the Group and the need for a greater degree of integration in the whole Group operations were recognised. It was therefore resolved:

'That the changes in emphasis and control be recognised by making the following appointments for the Group:

Managing Director : D. K. Rowe  
General Manager : D. G. Gibb

20

That J. N. Thompson continue as Secretary, but with special responsibility for Group Finance and Budgetary Control, and that an Assistant Secretary be appointed.

That financial policy, reporting and management be in the hands of D. K. Rowe, D. G. Gibb and J. N. Thompson.'

**DEBENTURE TRUST DEED:**

A report of a meeting of the sub-committee was noted. It was agreed that moneys being loaned to the Matakana Group by Harbour Transport Limited should be secured.

**N.Z. MARITIME HOLDINGS LTD:**

It was resolved:

30

'That application be made to the Crown for a loan of \$50,000 on the terms and conditions offered in the letter of 15 November, 1971, and that security be either a second mortgage over the N.Z. Maritime Holdings Ltd. shares, or a second debenture over the company's assets, and that the Company Seal be authorised to be affixed to all documents . . . . .

CERT. NO.	BUYER	NO. OF SHARES	PRICE	EXHIBITS 1E Relevant Min- utes of Defen- dant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972
	Gerhardus L. Roskam	100	\$1.35	
	Arthur D. Carlaw	1,400	\$1.35	
	Josephine R. Browne	200	\$1.35	
	Verdun Trillo	100	\$1.35	
	Verdun Trillo	100	\$1.35	
	Verdun Trillo	200	\$1.35	
	Timothy P. Nicholl	100	\$1.35	
10	Timothy P. Nicholl	100	\$1.35	
	David H. H. McLeod, )			
	Maurice Arthur Stevens & )	500	\$1.18	
	Raymond A. Procter )			
	David H. H. McLeod	500	\$1.18	
	Maurice A. Stevens	1,000	\$1.18	
	Mavis J. Cleverly	200	\$1.35	
	Graham S. Johnson	100	\$1.42	
	Michael J. McGrath & )			
	Frances J. McGrath )	200	\$1.36	
20	Anglo-New Zealand Nominees Ltd.	200	\$1.17	
	Kenneth E. Harris	100	\$1.00	
		(Notes)		
	Ivy Whitmore	100	\$1.36	
	Ivy M. Freeman	120	\$1.27	
	Reginald H. Bucknell	100	\$1.35	
	Barbara Barbour	100	\$1.35	
	Valmai A. McElwee	200	\$1.00	
		(Notes)		
	Valmai A. McElwee	100	\$1.00	
30		(Notes)		
	Richard C. M. Martin	400	\$1.32	
	Richard C. M. Martin	100	\$1.42	
	Leonard A. Clark	200	\$1.18	
	John T. Seeley	200	\$1.42	
	John T. Seeley	200	\$1.40	
	John T. Seeley	100	\$1.40	
	Ian K. Gray	100	\$1.05	
		(Notes)		
40	28/1/72	Affixing of Seal to – Purchases of shares in Pacific Forests Ltd: 480 from Estate B. Fitzpatrick, 72 from Estate H. E. Walker.		
	28/1/72	Affixing of Seal to – Transfer of Lot 35 of Rotorua Sub- division to Kingi (per Bay Construction Limited).		
	28/1/72	Affixing of Seal to – Revised service agreements with Managing Director and General Manager.		
	7/2/72	Affixing of Seal to – Memorandum of transfer of Lot 34 of O'Connell Stage II to Singh.		

7/2/72 Affixing of Seal to – Memorandum of Transfer of Lot 4 of Percival Stage I to Jefferson.

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

**MINUTES OF A MEETING OF DIRECTORS OF THE TAUPO TOTARA  
TIMBER COMPANY LIMITED HELD AT PUTARURU ON THURSDAY  
17th FEBRUARY, 1972 AT 10.30 a.m.**

**PRESENT:**

Dr. O. F. Haylock (Chairman), Messrs. H. B. Woollett, J. K. Cameron, G. L. Pulham, P. W. Grayburn, H. K. Bunn, V. T. Fail, C. A. H. Capamagian.

In attendance were Mr. D. G. Gibb, General Manager, and Mr. J. N. Thompson, Secretary.

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**APOLOGIES:**

- 10 Apologies for absence were received from Mr. M. J. T. Fraser and Mr. D. K. Rowe, who was overseas on business.

**MINUTES OF MEETING:**

It was resolved:

“That the minutes of the meeting held 9 December, 1971 as circulated be taken as read and confirmed as correct, subject to the amendment that the appointment of the Managing Director should have been recorded as being for a period of five years from 9 December, 1971.”

**MANAGING DIRECTORS' REPORT:**

- 20 The Managing Directors' Report was tabled dealing with Taheke-Paengaroa property, Tauri-Tutukau Crown Land and Canterbury Chip Project.  
It was resolved:

“That the Managing Director's Report be received.”

**GENERAL MANAGER'S REPORT:**

The General Manager's Report was tabled dealing with Maori Land, Matakana Afforestation, Tokoroa Mill, Matakana Island, Subdivisions, Sales, Sections at Cambridge, South Pacific Homes Limited and Wood Tank & Silo Company Limited.

It was resolved:

“That the General Manager's Report be accepted.”

**30 SUBDIVISIONS:**

It was resolved:

“That a report be prepared for the next meeting on the Peacock Sub-division at Massey.”

It was requested that this should set out costs to date, dates of development etc.

**LAND AT CAMBRIDGE:**

The General Manager recommended that eleven sections being developed by Messrs. J. and W. Nicoll be acquired for the purpose of house construction

by Gerrand Feature Homes Limited and South Pacific Homes Limited. After discussion it was resolved:

“That the purchase of eleven sections on the terms as recommended by the General Manager be approved, but that it be recommended that if possible the first payment due on 31st March, 1972 be reduced.”

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

#### WOOD TANK & SILO COMPANY LIMITED:

The General Manager outlined the current position with regard to negotiations with Farm Products (Taranua) Limited and it was agreed that a further report on Wood Tank and Silo Company Limited should be brought to the next meeting.

10

#### K.D.V. INDUSTRIES GROUP REPORT:

Mr. Capamagian tabled the K.D.V. Industries Group Report which dealt with sales, use of Winstones property, production and the Argyle Street Property.

It was resolved:

“That the K.D.V. Industries Group Report be received.”

#### MATAKANA GROUP REPORT:

Mr. H. K. Bunn presented the Matakana Group Report, which covered sales and production, Matakana Afforestation Limited, Log Prices, Government Valuations, Land Reserve on Matakana Island, Tauranga Electric Power Board, Share Portfolio sales.

20

It was resolved:

“That the Matakana Group Report be received.”

#### MATAKANA ISLAND:

It was noted that the land on Matakana Island had increased in Government Valuation substantially and after discussion it was resolved:

“That the Board gives its approval to the lodging of an objection to the Government Valuation.”

30

It was noted that the Tauranga County were taking steps to declare a portion of the Matakana Island property as a proposed reserve. Mr. Grayburn reported that he had been approached by Matakana Afforestation Limited and Matakana Monterey Limited who had asked for Taupo Totara to co-operate with them in making representations to the Minister with a view to deferring proclamation of the reserve and having the matter thoroughly investigated. After discussion the Chairman undertook to get in touch with the Tauranga County Clerk in order to ascertain the exact legal position, and also to telephone the Minister of Lands with a view to seeking deferment of the proclamation in order to allow further action to be taken.

It was resolved:

“That the Company Solicitors be asked to confer with Mr. F. Willoughby in order to report on the legal position with regard to the proposed reserve on Matakana Island, with a view to lodging an objection in order to protect the Company’s interests; and that a sub-committee consisting of the Chairman, Managing Director and J. Reilly be appointed in order to carry the matter further.”

EXHIBITS 1E  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**SHARE PORTFOLIO SALES:**

10 Mr. Bunn reported that sales totalling approximately \$100,000 had been completed and raised the problem of contacting Mr. Rowe in order to arrange the sale of shares, if Mr. Rowe should happen to be not available. It was therefore resolved:

“That if Mr. Rowe should not be available for discussion on proposed share portfolio sales, Mr. J. K. Cameron be approached instead.”

**TRADING ACCOUNTS NINE MONTHS TO 31/12/71:**

The accounts for the nine months were tabled and it was resolved:

“That the accounts for nine months to 31 December, 1971 be received.”

20 The accounts were discussed and it was agreed that current planting costs for Pacific Forests Limited should be capitalised to the Forestry Account rather than being written off against revenue as had been the previous custom.

It was agreed that a report should be brought to the next meeting on the Auckland Branch trading results.

**SALES & MILL PRODUCTION FOR DECEMBER AND JANUARY:**

These were tabled and it was resolved:

“That the reports be received.”

**FINANCIAL REPORT:**

A financial report was tabled and it was noted that a meeting of debenture holders would need to be called soon. It was therefore resolved:

30 “That a meeting of debenture holders be called in Auckland towards the end of March, 1972.”

**SEAL BOOK:**

The action of Messrs. D. K. Rowe, O. F. Haylock and G. L. Pulham in the signing of documents as listed was approved.

**NEXT MEETING:**

The next meeting was set for Thursday, 16 March, 1972 at 10.30 a.m. at Putaruru. It was noted that a meeting may have to be called to approve arrangements for the Canterbury Chip Project and it was agreed that if this was necessary it would be on Monday 28 February or Friday 3 March.

**HALF-YEARLY REPORT:**

A draft of the half-yearly report had been circulated to Directors and it was resolved:

“That the half-yearly report as circulated to Directors be approved for distribution to shareholders.”

The meeting closed at 4.35 p.m.

**CONFIRMED**

O. F. Haylock, Chairman

16.3.72 Date

**EXHIBITS 1E**  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE  
TAUPO TOTARA TIMBER COMPANY LIMITED HELD AT PUTARURU ON  
THURSDAY, 20 APRIL, 1972 AT 10.30 A.M.**

**PRESENT:** Dr. O. F. Haylock (Chairman), Messrs. H. B. Woollett, H. K. Cameron, G. L. Pulham, P. W. Grayburn, M. J. T. Fraser, V. T. Fail, C. A. H. Capamagian and D. K. Rowe. In attendance were Messrs. D. G. Gibb and J. N. Thompson.

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**APOLOGIES:** An apology was received from H. K. Bunn who was absent on leave of absence.

**10 MINUTES:** The minutes of the meetings held 3 March, 16 March and 27 March, 1972 were taken as read and confirmed as correct.

**N.Z. FOREST PRODUCTS  
LIMITED:**

The Chairman reported that a delay in the take-over offer had been caused by the application of the Limitation of Dividend regulations 1972. He advised that permission had been granted for this company to pay a 7% dividend and for N.Z. Forest Products Limited to pay their normal dividend of 11% in 1972.

**20** The obligation to disclose service contracts under the Companies Amendment Act was discussed and the following motion was moved:

“That the Secretary write to N.Z. Forest Products Limited to confirm previous verbal advice concerning the Managing Director’s service contract, that he supply a copy of the Managing Director’s service contract, and also that he confirm that five further contracts are in existence and giving the relevant names.”

The following amendment was moved and carried:

“That the words ‘that he supply a copy of the Managing Director’s service contract’ be deleted.”

**30** Messrs. P. W. Grayburn and J. K. Cameron requested that their votes against this amendment be recorded.

The following amended motion was then carried:

“That the Secretary write to N.Z. Forest Products Limited to confirm previous verbal advice concerning the Managing Director’s service contract and also that he confirm that five further contracts are in existence and giving relevant names.”

It was also resolved:

“That the previously mentioned letter to N.Z. Forest Products Limited include reference to the proposal that the 7% dividend to be paid by The Taupo Totara Timber Company Limited be from tax-paid reserves.”

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

It was further resolved:

“That the Chairman’s action in proposing that a final 7% dividend be paid from Capital (non-taxable) profits be approved.”

10

Drafts of the Chairman’s letter to shareholders and the statement as required by the second schedule of the Companies Act were perused and it was resolved:

“That the draft of the Chairman’s letter to shareholders and the statement as required by the second schedule of the Companies Act be approved.”

#### GENERAL MANAGER’S REPORT:

The General Manager’s Report was tabled, dealing with Export Logs, Chip Export to Taiwan, Domestic Market, Export Housing, Wood Tank & Silo Company Limited and Financial Accounts.

20

#### CANTERBURY CHIP EXPORT:

The Chairman reported that incorrect information published in the Press concerning the company’s involvement in the Canterbury Chip Project had been corrected by Addington Timber Company. It was confirmed that this Company now had no connection whatever with the project.

#### WOOD TANK & SILO COMPANY LIMITED:

It was noted that discussions were still under way with N.Z. Insurance Company Limited and it was resolved:

30

“That the General Manager be empowered to continue negotiations with N.Z. Insurance Company Limited.”

#### K.D.V. INDUSTRIES GROUP REPORT:

This was presented by Mr. C. A. H. Capamagian and it was resolved:

“That the K.D.V. Industries Group Report be received.”

#### MATAKANA ISLAND RESERVES:

The Chairman reported on meetings with the other Matakana Island landowners and reported that further meetings both with landowners and with the County Council was scheduled for the following week.

40

**TRADING ACCOUNTS AND CASH FLOW STATEMENT:**

The Trading Accounts and Cash Flow statement for the month of February were tabled and it was resolved:

“That the statements as tabled be received.”

**SALES AND PRODUCTION:**

Sales and Production statements for the month of March were tabled and discussed. It was resolved:

“That the Sales and Production statements be received.”

**SEAL REGISTER:**

10 The action of Messrs. O. F. Haylock, G. L. Pulham and D. K. Rowe in the signing of documents as listed was approved.

**NEXT MEETING:**

It was noted that the next meeting would be on Thursday, 18 May, 1972 at 10.30 a.m. at Putaruru. The June meeting was set down for 15 June.

**MATAKANA ISLAND FINANCE:**

20 The Managing Director brought forward the question of raising finance to meet the commitments on Matakana Island. It was agreed that this should receive urgent consideration at the next meeting.

**LOW COST HOUSING PROJECT:**

The Managing Director reported on the need for research for panel housing for export and recommended that we build a prototype panel type house at Wiri. It was therefore resolved:

“That if he is satisfied that the marketing aspect of the project is satisfactory, the Managing Director be authorised to proceed with construction of a prototype panel house for the export market.”

30 The meeting closed at 2.30 p.m.

**EXHIBITS 1E**  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE  
TAUPO TOTARA TIMBER COMPANY LIMITED HELD AT PUTARURU ON  
WEDNESDAY 14 JUNE, 1972 AT 10.30 A.M.**

**PRESENT:**

Dr. O. F. Haylock (Chairman), Messrs. H. B. Woollett, J. K. Cameron, G. L. Pulham, H. K. Bunn, M. J. T. Fraser, V. T. Fail, C. A. H. Capamagian and D. K. Rowe. In attendance were Messrs. D. G. Gibb and J. N. Thompson.

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**APOLOGIES:**

An apology was recieved from Mr. P. W. Grayburn.

**10 MINUTES:**

The minutes of the meeting held 18 May, 1972 were taken as read and confirmed as correct.

**MANAGEMENT REPORT:**

The General Manager's report was tabled dealing with Wood Tank & Silo Company Limited, N.Z. Forest Products Limited, Production, Log Exports and Sales.

**WOOD TANK & SILO COMPANY LIMITED:**

Following the General Manager's report, it was resolved:

**20**

“That Wood Tank & Silo Company Limited be put into liquidation and that The Taupo Totara Timber Company Limited offer to take over the 500 uncalled shares held by Mr. P. C. Wells.”

**N.Z. FOREST PRODUCTS LIMITED:**

It was noted that N.Z. Forest Products Limited had received acceptances in respect of 90% of the capital in this company. It was also noted that N.Z. Forest Products Limited proposed to offer debentures in that company to existing holders of Taupo Totara debentures.

**DIVIDEND:**

It was resolved:

**30**

“A second interim dividend be declared payable from capital profits reserve on 21 July, 1972. The Share Register is to close at 5 p.m. on 7 July and re-open at 9 a.m. on 24 July.”

It was agreed that a circular from the Directors addressed to all shareholders should be sent with the July dividend warrants.

It was agreed that the Annual General Meeting be held in September or October, 1972 and it was resolved:

“That it be a recommendation to the Annual General Meeting that no final dividend be paid.”

**CONVERTIBLE NOTE INTEREST:**

It was resolved:

“That an interim interest payment of one month’s interest to 31 March, 1972 be paid on 21 July, 1972. The note register is to close on 7 July, 1972.”

**EXHIBITS 1E**  
**Relevant Min-**  
**utes of Defen-**  
**dant 23rd**  
**February, 1965**  
**to 16th July,**  
**1973 and Seal**  
**Register of 28th**  
**January, 1972**

**K.D.V. INDUSTRIES GROUP REPORT:**

The K.D.V. Industries Group report was received, dealing with Sales, Timber Division, sale of Argyle Street property and K.D.V. Rainwear Limited.

**MATAKANA GROUP REPORT:**

- 10 The Matakana Group report was received, dealing with Sales, Production, Stocks, Matakana Island Forest, Tauranga Electric-Power Board, share portfolio, tractor accident, cranes and house maintenance.

**MATAKANA ISLAND RESERVES:**

The General Manager reported briefly on the current position. It was noted that the County Council had not been able to make any significant progress in resolving the question.

**POUARU LIMITED AND POUAKANI LANDS LIMITED:**

It was noted that there was no agreement covering the use of these properties for afforestation and it was resolved:

- 20 “That steps be taken forthwith to formally lease the land from Pouaru Limited and Pouakani Lands Limited respectively for a 99 year period.”

**MATAKANA MILLING & EXPORT CORPORATION LIMITED  
DIRECTORATE:**

It was resolved:

“That Mr. D. G. Gibb be appointed as an alternate Director to the Board of Matakana Milling & Export Corporation Limited, to deputise for either Mr. Rowe or Mr. Cameron should they be unable to attend a meeting.”

**1972 ANNUAL ACCOUNTS:**

- 30 The Annual Accounts for the year ended 31 March, 1972 and Balance Sheet at that date were tabled and discussed. It was resolved:

“That Management be congratulated on the trading results for the year ended 31 March, 1972.”

**ANNOUNCEMENT TO THE STOCK EXCHANGE:**

It was agreed that the Chairman should draft a statement to the Stock Exchange which would include the announcement concerning the second interim dividend and the interim note interest payment, the profit figure for the year and data concerning turnover.

**PACIFIC FORESTS LIMITED:**

It was resolved:

“That it be a recommendation to the Pacific Forests Limited Board that that company pay a 7% dividend from capital profits reserve.”

**SEAL REGISTER:**

The action of Dr. O. F. Haylock, Messrs. V. T. Fail, M. J. T. Fraser and D. K. Rowe in the signing of documents as listed was approved.

**NEXT MEETING:**

10 The next meeting was set for Thursday, 20 July, 1972 at 10.30 a.m. at Putaruru. It was also agreed that the August meeting would be set for Thursday, 17 August and would be preceded by the Pacific Forests Limited annual meeting.

**TIMBER INDUSTRY BOOK:**

The Chairman reported that a book on the N.Z. Timber Industry was being published and that members of the industry were being asked to contribute a subsidy of \$300 each towards the cost of printing. It was resolved:

“That this company contribute \$300 towards the costs of publishing the book on the Timber Industry in New Zealand.”

**SMOKE CONTROL REGULATIONS:**

20 The General Manager reported that these were to come into force on 1 August, 1972 and that arrangements were being made to procure a hogger to deal with slabwood waste from the Putaruru Mill.

**WIRI PROPERTY:**

The General Manager reported that Robert Ferrier Limited, which owned the property adjacent to our Wiri property, had asked if arrangements could be made for a railway siding to cut across a corner of our property. It was resolved:

30 “That the Managing Director be empowered to either lease or sell land to Robert Ferrier Limited for the purpose of constructing there a private siding.”

The meeting closed at 2.35 p.m.

**CONFIRMED**

O. F. Haylock, Chairman

20.7.72 Date

**EXHIBITS 1E**  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE  
TAUPO TOTARA TIMBER COMPANY LIMITED HELD AT PUTARURU AT  
10.30 A.M. ON THURSDAY, 20 JULY, 1972.**

**PRESENT:**

Dr. O. F. Haylock, (Chairman), Messrs. D. K. Rowe, H. B. Woollett, J. K. Cameron, G. L. Pulham, P. W. Grayburn, M. J. T. Fraser, H. K. Bunn, V. T. Fail and C. A. H. Capamagian. The Chairman welcomed Messrs. J. T. Currie and D. O. Walker to the meeting in their capacities as the Directors appointed by N.Z. Forest Products Limited. Also in attendance were Messrs. D. G. Gibb (General Manager) and J. N. Thompson (Secretary).

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

10

**MINUTES:**

The minutes of the meeting held on 14 June, 1972 were taken as read and confirmed as correct.

**MANAGEMENT REPORTS:**

Management Reports were tabled dealing with Production and Sales for June, Profit and Loss Account for the two months to May, Housing Companies, Cash Flow Report for the two months to May, Afforestation Programme Subdivision Programme, Refuse Disposal, K.D.V. Industries Group and Matakana Group.

20 **PROFIT AND LOSS ACCOUNT:**

The question of including overheads in the work in progress of the housing companies was discussed and it was agreed that the General Manager should look into this with the view to reporting to the next meeting.

**BANK OF NEW ZEALAND:**

Mr. Currie recommended that we make application to the Bank of New Zealand for an increase in the overdraft limit, and it was agreed that application should be made for an increase.

**FORESTRY PROGRAMME:**

30

Mr. Currie suggested that, in the meantime, the company should continue with the 1972 programme as set out in the Managing Director's report and that the Managing Director should discuss the question with Mr. Henry of N.Z. Forest Products Limited with the view to co-ordinating forestry and logging activities.

**SUBDIVISIONS:**

40

Following the presentation of the Managing Director's report on the subdivision position, the question of further acquisitions for the purpose of ensuring continuity of subdivision sections was discussed. It was agreed that the Management should co-ordinate its subdivision programme with that of the Hutt Timber Company and Bartholomew Timber Company in Hamilton and Auckland.

**CAPITAL EXPENDITURE:**

The Chairman commented on the decision of the Executive Committee of the Matakana Milling and Export Corporation Limited to purchase 4,500 shares in Kanapine Projects Limited from Mr. J. E. Prince, Mr. Bunn indicated the reasons as to why his committee had undertaken this action; the subject of the general policy on capital expenditure was discussed.

**EXHIBITS 1E**  
**Relevant Min-**  
**utes of Defen-**  
**dant 23rd**  
**February, 1965**  
**to 16th July,**  
**1973 and Seal**  
**Register of 28th**  
**January, 1972**

Mr. Currie advised that the normal policy with regard to capital expenditure laid down by N.Z. Forest Products Limited was as follows:

- 10 1. Capital expenditure of up to \$10,000 may be approved by the Board of The Taupo Totara Timber Company Limited.
2. Subsidiary Boards of The Taupo Totara Timber Company Limited will refer to the parent board all capital expenditure up to \$10,000.
3. All capital expenditure over \$10,000 will require to be the subject of a recommendation to N.Z. Forest Products Limited.

Mr. Currie also indicated that it was N.Z. Forest Products Limited policy to divide capital expenditure into the following three categories:

1. New projects. As a guide line in assessing these, he indicated that a return of 30% profit before tax on the capital involved was normally expected.
- 20' 2. Improvements to existing facilities which would be expected to return a profit similar to new projects.
3. Normal replacement items.

**HABOUR TRANSPORT LIMITED**  
**MUSSEL FARMING:**

It was noted that Mr. Reilly had suggested that Harbour Transport Limited should look into the question of entering the field of mussel farming. Mr. Bunn indicated that Harbour Transport had a derelict hull available, which would be used as the basis to establish a mussel farming operation in Tauranga Harbour. After discussion it was resolved:

- 30 "That Mr. Bunn arrange for Harbour Transport Limited to bring down a report on the mussel farming proposal to the next meeting."

**MATAKANA ISLAND RESERVES:**

The Chairman reported on a meeting in Wellington between the property owners of Matakana Island and the Minister of Lands. He reported that it appeared unlikely that the Ministerial requirement concerning reserves would be lifted. However, he further reported that he felt that a resort development in conjunction with Faulkners could be advantageous to the company. After

discussion it was resolved:

“That a precis be prepared covering the cost of drawing up a sketch plan of a resort development, and giving an initial summary of costs and proceeds of such a development. That this summary be inspected by a sub-committee prior to giving any commitment to Faulkners.”

EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972

It was further resolved:

“That the sub-committee to inspect the Matakana Island Reserves report consist of the Chairman, Mr. J. T. Currie, Mr. D. O. Walker, Mr. H. K. Bunn and Mr. D. K. Rowe.”

10 BAY OF PLENTY LAND:

The Managing Director reported on the current activities with regard to acquisition in the Bay of Plenty and indicated that this had been discussed with N.Z. Forest Products Limited. Mr. Currie suggested that it would be helpful to N.Z. Forest Products Limited if a summary could be prepared of The Taupo Totara policy which had led towards the acquisition of land in the Bay of Plenty.

ROBERT FERRIER LIMITED  
RAILWAY SIDING:

- 20 The Managing Director reported on this request for land at Wiri for the purpose of constructing a railway siding. He indicated that it would require an area of approximately one-third of an acre. It was resolved:

“That an area of property at Wiri be sold to Robert Ferrier Limited at a price to be arranged with the Managing Director.”

It was suggested that the price be of the order of \$7,500.

CIRCULARS TO SHAREHOLDERS:

The proposed circular to shareholders was circulated and it was resolved:

“That the proposed circular dated 21 July, 1972 be approved for circulated to shareholders.”

30 CONVERSION OF NOTES:

It was resolved:

“That consequent upon the acquisition by N.Z. Forest Products Limited of a substantial portion of 654,890 7½% Unsecured Convertible Notes issued by the Company in 1971, and at the request of the said N.Z. Forest Products Limited, it has been decided to fix a date earlier than the 31st day of August, 1976 as the date of conversion of the said notes in accordance with the terms of the Deed of Trust dated the 21st day of July, 1971 and it is accordingly resolved pursuant to sub-paragraph (a) of Clause 10 of the said Deed of Trust to fix the 2nd day of August, 1972 as the date of the conversion of the said convertible notes and that notice of this resolution be given to The New Zealand Insurance Company Limited as Trustee, and also to all

40

noteholders. It is further resolved that interest on all notes from 31st day of March, 1972 to the date of conversion will be paid by the company unless N.Z. Forest Products Limited is able, in the near future to arrange acquisition of all shares in the company to be allotted as aforesaid other than the shares to be allotted to itself.”

**EXHIBITS 1E**  
**Relevant Min-**  
**utes of Defen-**  
**dant 23rd**  
**February, 1965**  
**to 16th July,**  
**1973 and Seal**  
**Register of 28th**  
**January, 1972**

**NEXT MEETING:**

The next meeting was set for Thursday, 17 August, 1972 at 10.30 a.m. It was agreed that this would be at Penrose and that it would be preceded by the Annual Meeting of Pacific Forests Limited.

- 10 It was agreed that the following meeting would be on Thursday, 21 September at Putaruru and that the Annual General Meeting would be held in conjunction with this. It was also agreed that the Articles would be amended at this meeting to allow for the appointment of additional Directors etc.

**SEAL REGISTER:**

The action of Messrs. O. F. Haylock and D. K. Rowe in the signing of documents as listed was approved.

The meeting closed at 2.35 p.m.

**CONFIRMED**

20

O. F. Haylock, Chairman

17.8.72 Date

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE  
TAUPO TOTARA TIMBER COMPANY LIMITED HELD AT SMYTHE HOUSE,  
AUCKLAND, AT 10. A.M. ON THURSDAY, 17 AUGUST, 1972.**

**PRESENT:**

Dr. O. F. Haylock (Chairman), Messrs. D. K. Rowe, J. T. Currie, D. O. Walker, J. K. Cameron, V. T. Fail, C. A. H. Capamagian, P. W. Grayburn, H. K. Bunn, M. J. T. Fraser, G. L. Pulham and H. B. Woollett. In attendance were Messrs. D. G. Gibb and J. N. Thompson (Secretary).

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**MINUTES:**

- 10 The minutes of the meeting held 20 July, 1972 were taken as read and confirmed as correct.

**MANAGEMENT REPORT:**

The Management Report was tabled, and dealt with Valuation of Work in Progress in building subsidiaries, Group Sales, Production, Trading Results, Cash Flow Report, K.D.V. Industries Group, Matakana Group, Matakana Island Reserves, Forestry, Sale of land to Robert Ferrier Limited, Timber Stocks and Production and Staff and Shareholders Discounts. It was resolved:

“That the Management Report as tabled be received.”

20 **VALUATION OF WORK  
IN PROGRESS:**

It was noted that the Management Report recommended that present accounting practise be retained and that work in progress be valued at the cost of labour and materials only. This recommendation was accepted.

**MATAKANA SHARE  
PORTFOLIO:**

It was reported that the portfolio still includes 5,300 shares in N.Z. Forest Products Limited. It was agreed that these should be held until they could be sold at a reasonable price.

30 **STAFF & SHAREHOLDERS’  
DISCOUNTS:**

The Management’s recommendation concerning Staff and Shareholders’ Discounts was noted and it was resolved:

“That in principal, the recommendation concerning staff and shareholders’ discounts be accepted, and that management investigate its implementation.”

**SUBSIDIARY COMPANY  
BOARD:**

- 40 The Chairman reported that he had at the K.D.V. Board meeting held on 16 August, asked that the Board cease by 31 March, 1973.

It was therefore resolved:

“That the action of the Chairman in advising the K.D.V. Board that it is to cease its duties at 31 March, 1973 be ratified.”

EXHIBITS 1E  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

It was agreed that the same policy should also be applied to the Board on the Matakana Milling & Export Corporation, and all subsidiaries with the exception of Harbour Transport Limited, where there was a substantial minority interest. It was therefore resolved:

“That the Board of Matakana Milling & Export Corporation Limited and its subsidiaries, with the exception of Harbour Transport Limited, cease by 31 March, 1973.”

10

**N.Z. PINELANDS  
PTY. LIMITED:**

It was reported that under the terms of the contracts dated 3 December, 1971, the company was under an obligation to either settle the outstanding amount or to execute a mortgage in favour of the Trustees for the Bondholders of N.Z. Pinelands Pty. Limited. It was therefore resolved:

“That the company execute in favour of Messrs. William Walter Buck and Leslie Thomas Strahan, as Trustees for the Bondholders of N.Z. Pinelands Pty. Limited, a first memorandum of mortgage in terms of the contracts dated 3 December, 1971 to secure to the said Trustees the sum of \$712,956.24 being the balance of purchase money outstanding under the said contract at 30 September, 1972 and interest as therein provided, subject to the approval of N.Z. Forest Products Limited.”

20

**SEAL REGISTER:**

The action of Messrs. D. K. Rowe, O. F. Haylock and G. L. Pulham in the signing of documents as listed was approved.

**NEXT MEETING:**

The next meeting was set for Thursday, 21 September, 1972 at 10.30 a.m. at Putaruru. It was agreed that the Annual General Meeting should be deferred until 19 October, when it would be at Putaruru at 10.30 a.m.

30

**LEAVE OF ABSENCE:**

It was resolved:

“That Dr. O. F. Haylock be granted leave of absence from the next Board Meeting.”

The meeting closed at 12.05 p.m.

CONFIRMED

P. W. Grayburn, Chairman

21.9.72 Date

**MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE  
TAUPO TOTARA TIMBER COMPANY LIMITED HELD AT PUTARURU ON  
THURSDAY 21 SEPTEMBER, 1972 AT 10.30 A.M.**

**PRESENT:**

Mr. P. W. Grayburn (Acting Chairman), Messrs. D. K. Rowe, J. T. Currie, D. O. Walker, C. A. H. Capamagian, V. T. Fail, H. K. Bunn, M. J. T. Fraser, G. L. Pulham, J. K. Cameron and H. B. Woollett. In attendance were Messrs. D. G. Gibb (General Manager) and J. N. Thompson (Secretary).

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

**APOLOGIES:**

10 An apology was received from Dr. O. F. Haylock who is on leave of absence.

**MINUTES:**

Minutes of the meeting of Directors held 17 August, 1972 were taken as read and confirmed as correct.

**N.Z. PINELANDS PTY****LIMITED:**

20 The Managing Director reported that the conveyancing of the property and the granting of mortgage in favour of the Trustees for the Bondholders was being delayed by the Trustees. It was, however, noted that the Company's Solicitors advise that there is no legal disability to not completing the purchase on 30 September. It was agreed that this would be acceptable to the Board, subject to this being checked with the Secretary of N.Z. Forest Products Limited concerning Financial and Balance Sheet implications.

It was noted that it had been agreed with the Trustees for the Bondholders that negotiations be entered into for a review of the cutting agreement with Bunn Bros. Limited. It was agreed that the Managing Director confer with Mr. J. Groome and arrive at a proposal for either a royalty based on log measurement or a lump sum purchase of the remaining first crop.

**MANAGEMENT REPORT:**

30 The Management Report was tabled and dealt with Group Sales, Mill Production, Trading Results, K.D.V. Industries Group, Matakana Group, Transport and Cash Flow Report.

**HERMAN TIMBER COMPANY****LIMITED**

It was noted that Management had commenced an investigation into rationalising milling arrangements at Whangarei. It was resolved:

“That Management draw up a draft proposal for a milling venture jointly with Managh & Sons Limited.”

**MATAKANA ISLAND:**

40 The question of purchasing the freehold land owned by Matakana Afforestation Limited was discussed and it was agreed that the Deputy Chairman

should approach Mr. P. Buddle to ascertain what the other shareholders' views were with regard to the property owned by Matakana Afforestation Limited.

EXHIBITS 1E  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**HARBOUR TRANSPORT LIMITED:**

10 Mr. Bunn reported that Harbour Transport Limited was carrying out experiments on the subject of Mussel Farming but that the Marine Department would not issue licenses for this for at least 2 years. He reported that some experiments were being carried out and that it was anticipated that there would be no cost to the Company in these experiments.

**TRANSPORT REQUIREMENTS:**

It was noted that there is a need for an additional truck at Putaruru. Mr. Currie advised that the usual procedure with regard to fleet replacements was to prepare a schedule in February or March of each year of the total fleet, and showing the vehicles requiring replacement. Mr. Currie suggested to Management that they discuss this requirement with the Officers at Kinleith, but that if the vehicle was needed urgently it should be purchased.

**SUBDIVISIONS:**

20 It was noted that the majority of the sections available for sale had been sold. It was agreed that Management should draw up a long term assessment of the future needs of land and sections.

**SOUTH PACIFIC HOMES LIMITED:**

Mr. Walker reported that an enquiry had been received as to whether it was wished to carry on South Pacific Homes as a subsidiary of the Group. However, the Managing Director pointed out that this was an integral part of the retail operations of The Taupo Totara Group and that to remove the housing subsidiaries would have a very serious effect upon retail profits at several branches, and in particular at Cambridge.

30 **CASH POSITION:**

Mr. Grayburn reported that a subsidiary of New Zealand Insurance Company had short term monies available at 6% per annum. After discussion it was agreed –

“That this Company uplift the suggested sum of \$200,000 for a period of 60 days at an interest rate of 6% per annum.”

**RE-REGISTRATION AS A PRIVATE COMPANY:**

It was resolved:

40 “That as soon as the Company has registered transfers in favour of N.Z. Forest Products Limited of all shares of the Company not at present in

the name of N.Z. Forest Products Limited, thereby reducing the number of members of the Company to two, application be made under Section 365 of the Companies Act 1955 to re-register the Company as a Private Company under Part VIII of the Act.”

EXHIBITS 1E  
Relevant Minutes of Defendant 23rd February, 1965 to 16th July, 1973 and Seal Register of 28th January, 1972

**NEXT MEETING:**

The next meeting was set for Thursday, 19 October, 1972 at 10.30 a.m. at Putaruru.

Mr. Walker requested, and was granted, leave of absence from this meeting.

10 The following meeting was set for Thursday, 23 November at Putaruru. It should be noted that this is the fourth Thursday of November.

**MATAKANA ISLAND:**

The Managing Director reported that a draft plan for the resort area development should be available at the next meeting.

**LOG PRICES:**

It was noted that the six-monthly review of the log prices was now required and it was agreed that the Managing Director should accompany Mr. Walker to Japan, as requested.

**SEAL REGISTER:**

20 The action of Messrs. Rowe, Haylock and Capamagian in the signing of documents as listed was approved.

The meeting closed at 12.40 p.m.

CONFIRMED

O. F. Haylock, Chairman

19.10.72 Date

**EXTRACT FROM MINUTES OF A MEETING OF THE BOARD OF  
DIRECTORS OF THE TAUPO TOTARA TIMBER COMPANY LIMITED  
HELD AT PUTARURU ON MONDAY, 16 JULY, 1973 AT 11.55 A.M.**

**MANAGING DIRECTOR:**

The Chairman advised the Board that by letter dated 28 May, 1973, addressed to Dr. O. F. Haylock, Mr. D. K. Rowe had submitted his resignation, to take effect as at 31 August, 1973, as Managing Director of The Taupo Totara Timber Company Limited and as a Director of its subsidiary companies. Mr. Rowe's letter of resignation was read.

**EXHIBITS 1E  
Relevant Min-  
utes of Defen-  
dant 23rd  
February, 1965  
to 16th July,  
1973 and Seal  
Register of 28th  
January, 1972**

10 Dr. Haylock had acknowledged receipt of Mr. Rowe's letter of resignation.

The Chairman advised that an opinion had been sought from Queens Counsel as to Mr. Rowe's entitlement to receive a lump sum payment on resignation in terms of Clause 7 of his service agreement with the company. This opinion stated that Mr. Rowe's notice of resignation did not comply with the terms of the agreement as to the time of giving of notice in order to entitle him to such a payment.

The Board resolved, after full discussion, that Mr. Rowe's resignation be accepted with regret.

20 Dr. Haylock considered that Mr. Rowe should be given the opportunity to reconsider his notice of resignation and asked that his vote against the resolution be recorded.

Subsequently the Chairman advised that the matter had been considered by the Board of N.Z. Forest Products Limited which had noted the opinion given by Legal Counsel.

The General Manager and Secretary, at the request of the Chairman, were not present during the above discussion.

It was resolved:

30 "That this Board record its appreciation of the services rendered to the company by Mr. D. K. Rowe during the twenty-four years that he has been with the company and that it be noted that his work and enthusiasm had made a very great contribution to the growth of the company during this period."

The Chairman suggested that a message should be sent to Mr. D. K. Rowe expressing the Board's sympathy at his illness and its hope for an early and complete recovery.

**EXHIBIT 1B****PREVIOUS SERVICE AGREEMENT**

AN AGREEMENT made this 26th day of June, 1969 BETWEEN THE TAUPO TOTARA TIMBER COMPANY LIMITED a duly incorporated company having its registered office at Putaruru (hereinafter called "the company") of the one part AND DARCY KEVIN ROWE of Putaruru, Company Manager (hereinafter called "the general manager") of the other part WHEREAS some years ago the general manager was appointed to and continues to hold that office with the company AND WHEREAS it is desired to reduce to writing the terms of his present employment with the company NOW IT IS HEREBY AGREED AND DECLARED as follows:-

**EXHIBITS 1B  
Previous Service  
Agreement  
26 June 1969**

10

1. THE general manager shall hold that office with the company at the head office of the company at Putaruru for a term of five years computed from the 28th day of March PROVIDED that the general manager shall be entitled to a renewal of such term for a further period of five years from the last-mentioned date unless he has, in the opinion of the directors of the company, failed to satisfactorily perform his duties as general manager of the company.

20

2. DURING the continuance of this agreement the general manager shall devote his whole time and attention to the business of the company and shall use his best endeavours to promote the interests and welfare of the company. He shall not either before or after the termination of this agreement disclose to any person whomsoever any information relating to the company or any particular secrets of which he shall become possessed while employed by the company.

3. THE general manager may resign his office upon giving to the company not less than six months notice in writing of his desire to do so.

30

4. THE general manager shall exercise and perform such duties as the Directors may from time to time give or impose and subject as aforesaid, the general manager shall be vested with the general control of the business of the company and shall have power to appoint and dismiss clerks and servants (other than the secretary) of the company and to enter into any trade or contracts on behalf of the company in the ordinary way of business and to do all other acts and things in the ordinary course of business which he may consider necessary or conducive to the interests of the company.

5. NOTWITHSTANDING that the term of employment of the general manager is for five years as aforesaid he shall be liable to be dismissed or removed by the directors for any cause whatsoever and the remedy for any breach of this agreement by the company shall be in damages only so that the general manager shall not continue in office contrary to the will of the directors of the company.

40

6. THE general manager shall be entitled by way of remuneration for his services to such annual salary as may be agreed upon from time to time by the parties hereto. In addition to the said salary the general manager shall be entitled to the use of a motor car to be provided by the company at its sole cost and all expenses in connection with the general managers' use of the said car while on the business

of the company shall be paid by the company. The general manager shall in addition be paid such annual sum as shall from time to time be agreed upon for and towards his general and entertainment expenses in connection with the company's business and he shall be entitled to all reasonable travelling expenses incurred while travelling on the business of the company.

10 7. NOTWITHSTANDING the foregoing provisions of this agreement in the event of any other company or companies or any person on their behalf acquiring by means of a take-over offer or otherwise not less than 50% of the issued capital of the company, the general manager shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid to resign his office upon giving to the company not less than three months notice in writing of his desire to do so. Should the general manager resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in this paragraph 7 hereof, or should he receive from the company at any time during the said period of twelve months notice of termination of his employment, then and in either such case the general manager shall be entitled to receive from the company (in addition to any superannuation benefits or other rights to which he is entitled) on the date on which he ceases to be employed by the company and the company shall pay to the general manager on that date, a sum of money equivalent to five times the gross annual salary being paid by the company to the general manager immediately prior to the date of the acquisition of such share capital of the company as aforesaid AND IT IS EXPRESSLY DECLARED that all income and other taxes on the sum of money to be paid to the general manager pursuant to this paragraph 7 shall be payable by the company to the end and intent that the said sum of money will not be taxable in the hands of the general manager at any time after the date of receipt thereof by him.

30 8. IN the event of the death of the general manager during the term of this agreement the company shall pay to his personal representatives the salary payable hereunder for the then current month and all other moneys which were due and payable by the company to the general manager at the time of his death.

IN WITNESS WHEREOF these presents have been executed the day and the year first hereinbefore written.

THE COMMON SEAL of THE TAUPO ) (signature illegible) Director  
TOTARA TIMBER COMPANY LIMITED ) (signature illegible) Director  
was hereunto affixed in the presence of:- ) "J. N. Thompson" Secretary

SIGNED by the said DARCY KEVIN )  
ROWE as General Manager in the ) "D. K. Rowe"  
presence of:- )

40 "J. N. Thompson",  
Company Secretary,  
Putaruru.

## EXHIBIT 1A

## SERVICE AGREEMENT

AN AGREEMENT made this twentieth day of January, 1972 BETWEEN THE TAUPO TOTARA TIMBER COMPANY LIMITED a duly incorporated company having its registered office at Putaruru (hereinafter called "the company") of the one part AND DARCY KEVIN ROWE of Putaruru, Managing Director (hereinafter called "the employee") of the other part WHEREAS for a number of years the employee was employed by the company as its general manager AND WHEREAS on the 9th day of December, 1971 the employee was duly appointed managing director of the company AND WHEREAS it is desired to record in writing the terms of his employment with the company NOW IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

EXHIBITS 1A  
Service Agree-  
ment  
20 January, 1972

1. THE employee shall for a term of five years computed from the said 9th day of December, 1971 be employed by the company as its managing director at the head office of the company at Putaruru.
2. DURING the continuance of this agreement the employee shall devote his whole time and attention to the business of the company and shall use his best endeavours to promote the interests and welfare of the company. He shall not, either before or after the termination of this agreement, disclose to any person whomsoever any information relating to the company or any particular secrets of which he shall become possessed while employed by the company.
3. THE employee may resign his office upon giving to the company not less than six months notice in writing of his desire to do so.
4. THE employee shall exercise and perform such of the powers and duties of the board of directors of the company as the Board shall from time to time delegate to him. Subject to such directions or restrictions as the Board of Directors may from time to time give or impose and subject as aforesaid, the employee shall be vested with the general control of the business of the company and shall have power to appoint and dismiss clerks and servants (other than the secretary) of the company and to enter into any trade contracts on behalf of the company in the ordinary way of business and to do all other acts and things in the ordinary course of business which he may consider necessary or conducive to the interests of the company.
5. NOTWITHSTANDING that the terms of employment of the employee is for five years as aforesaid the directors shall be entitled to give to him notice of termination of his employment (for any cause whatsoever) and the remedy for any breach of this agreement by the company shall be in damages only so that the employee shall not continue in office contrary to the will of the directors of the Company.
6. THE employee shall be entitled by way of remuneration for his services to such annual salary as may be agreed upon from time to time by the parties hereto. In addition to the said salary the employee shall be entitled to the use of a motor

car to be provided by the company at its sole cost and all expenses in connection with his use of the said car while on the business of the company shall be paid by the company. The employee shall in addition be paid such annual sum as shall from time to time be agreed upon for and towards his general and entertainment expenses in connection with the company's business and he shall be entitled to all reasonable travelling expenses incurred while travelling on the business of the company.

10 7. NOTWITHSTANDING the foregoing provisions of this agreement, in the event of any person or other company or companies or any person or organisation or group of persons on their behalf acquiring either by means of a take-over offer or otherwise not less than 50% of the issued capital of the company, the employee shall be entitled at any time within a period of twelve months from and after the date of acquisition of capital as aforesaid, to resign his office upon giving to the company not less than three months notice in writing of his desire to do so. Should the employee resign his office pursuant to the right conferred on him by, and in the circumstances as mentioned in this paragraph 7 hereof, or should he receive from the company at any time during the said period of twelve months, notice of termination of his employment for any cause whatsoever then and in 20 either such case the employee shall be entitled to receive from the company (in addition to any superannuation benefits or other rights to which he is entitled) on the date on which he ceases to be employed by the company and the company shall pay to the employee on that date, a sum of money equivalent to five times the gross annual salary being paid by the company to the employee immediately prior to the date of the acquisition of such share capital of the company as aforesaid AND IT IS EXPRESSLY DECLARED that all income and other taxes on the sum of money to be paid to the employee pursuant to this paragraph 7 shall be payable by the company TO THE END AND INTENT that the said sum of money will not be taxable in the hands of the employee at any time after the 30 date of the receipt thereof by him.

8. IN the event of the death of the employee during the term of this agreement the company shall pay to his personal representatives the salary payable hereunder for the then current month and all other moneys which were due and payable by the company to the employee at the time of his death.

IN WITNESS WHEREOF these presents have been executed the day and the year first hereinbefore written.

THE COMMON SEAL of THE TAUPO	)	"O. F. Haylock" Director
TOTARA TIMBER COMPANY LIMITED	)	"G. L. Pulham" Director
was hereunto affixed in the presence of:-	)	"J. N. Thompson" Secretary

40 SIGNED by the said DARCY KEVIN	)	"D. K. Rowe"
ROWE as employee in the presence of:-	)	

"J. N. Thompson",  
Company Secretary, Putaruru.

## EXHIBIT 1F

**DEFENDANTS STATEMENT REQUIRED BY THE SECOND SCHEDULE OF  
THE COMPANIES AMENDMENT ACT 1963 IN RESPECT OF TAKE-OVER  
OFFER FROM N.Z. FOREST PRODUCTS LIMITED  
THE TAUPO TOTARA TIMBER COMPANY LIMITED**

Take-over Offer from  
N.Z. FOREST PRODUCTS LIMITED

Statement required by the Second Schedule of the  
Companies Amendment Act, 1963.

## 1. DIRECTORS' RECOMMENDATION:

10 The Directors of The Taupo Totara Timber Company Limited recommend to Shareholders and Noteholders that they accept the offer of N.Z. Forest Products Limited for their shares and notes.

## 2. (a) DIRECTORS' SHARE AND NOTE HOLDINGS:

Name of Director	Number of Ordinary \$0.50 Shares held in The Taupo Totara Timber Co. Ltd.	Number of Unsecured Convertible Notes in The Taupo Totara Timber Co. Ltd.
20 Owen Fillbridge Haylock	8,222	1,027
Peter Watson Grayburn	8,500	—
John Kelvin Cameron	1,084	—
Charles Alfred Hagop Capamagian	2,746	3,787
Vivian Taiaroa Fail	1,710	213
Murdoch John Theodore Fraser	1,000	140
Graham Leonard Pulham	800	100
Darcy Kevin Rowe	4,256	532
Harold Bruce Woollett	4,700	—
Herbert Keith Bunn	5,500	2,000

30 (b) Directors in The Taupo Totara Timber Company Limited hold the following shares in N.Z. Forest Products Limited:

	6¼% Cumulative Preference \$1 Shares	Ordinary \$1 Shares
J. K. Cameron	8	66
V. T. Fail	—	411
H. K. Bunn	4,000	2,000

40 (c) All the Directors intend to accept this offer in respect of the shares and notes held by them.

EXHIBITS 1F  
Defendant's  
Statement re-  
quired by the  
Second Schedule  
of the Companies  
Amendment Act  
1963 in respect  
of take-over  
offer from N.Z.  
Forest Products  
Limited  
26th April 1972

(d) It is not proposed in connection with the offer that any payment or other benefit shall be made or given to any Director by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(e) There is no other agreement or arrangement made between any Director and any other person in connection with, or conditional on the outcome of the offer.

(f) No Director has any interest in any contract entered into by the offeror.

10

(g) (i) In respect of the shares in The Taupo Totara Timber Company Limited the latest available sale price before the date on which notice of the take-over scheme was given was \$2.01 (N.B. The date of the notice was 12th April, 1972).

(ii) A preliminary public announcement was published on 20th March, 1972. Immediately before that announcement the latest available sale price was \$1.46.

(iii) The highest and lowest available sale prices during each of the three years immediately preceding the date on which notice of take-over scheme was given by the offeror are:-

20

Year Ended	Highest Price	Lowest Price
12th April, 1970	\$2.00	\$1.00
12th April, 1971	\$1.96	\$1.18
12th April, 1972	\$2.02	\$1.03

(h) The Directors estimate that the rate of tax-paid profit of The Taupo Totara Timber Group for the year ended 31st March, 1972 will be similar to the rate achieved during the previous year.

(i) The capital value, according to the latest available Government valuations, of land and buildings forming part of the group's assets is \$2,844,490 (Note: standing timber is not included).

30

(j) The Directors have been informed:-

(i) that the present Board of Directors will continue in office for a period of two years from April, 1972.

(ii) that no major changes in management or staffing of The Taupo Totara Timber Group of Companies are envisaged by the offeror in the event of the take-over being successful.

For the Directors of The Taupo Totara Timber Company Limited  
O. F. HAYLOCK  
CHAIRMAN

Putaruru. 26th April, 1972

EXHIBITS 1F  
Defendant's  
Statement re-  
quired by the  
Second Schedule  
of the Companies  
Amendment Act  
1963 in respect  
of take-over  
offer from N.Z.  
Forest Products  
Limited  
26th April 1972

## EXHIBIT 3

## LETTER TO SHAREHOLDERS/NOTEHOLDERS BY DR. O. F. HAYLOCK

THE  
 TAUPO TOTARA TIMBER COMPANY  
 LIMITED

Head Office:  
 Princes Street,  
 Putaruru.  
 26th April, 1972

Dear Shareholder or Noteholder,

10 After long and careful examination of the offer made by N.Z. Forest Products Limited for the shares and convertible notes of The Taupo Totara Timber Company Limited, the Directors of The Taupo Totara Timber Company Limited recommend to their shareholders and to noteholders that they accept the offer of N.Z. Forest Products for their shares and notes.

In evaluating the offer, consideration was given to many factors reflecting both the long term and the short term interests of the Company as they will affect both the shareholders and the staff of the Company.

20 The Directors are well aware that, in recommending this offer, their action represents a major change in the policy of the Company. This policy has been to develop within its sector of industry a vigorous, expanding and profitable independent Company. Your Directors consider by continuing with this policy that over a period of years, shareholders would have benefitted materially from increased dividends and from "rights" issues of shares.

30 However, it is their opinion that the offer of two shares in N.Z. Forest Products for each three Taupo Totara shares or notes should provide equal or greater benefit for the Taupo Totara shareholders or noteholders. For example, on the basis of current market prices, last year's results and distribution of dividends, there will be an immediate increase in the market value of shareholdings of approximately 50% and of 75% for holdings of convertible notes. In addition, in 1973, provided the N.Z. Forest Products dividend is maintained at 11%, there will be an increase of 33-1/3% in dividends received by Taupo Totara shareholders and virtually a 100% increase in the return for the convertible noteholders.

In the long term, it appears probable that the expansion programme embarked upon by N.Z. Forest Products should provide a sound basis for steady growth in value of shareholdings. In the timber and wood fibre fields, the economies associated with large scale operations have forced and will continue to force companies to combine to counter the impact of ever increasing costs. Your Directors see the proposed move as part of this phenomenon.

40 One of the conditions under which the convertible notes were issued was that in the event of the majority of the shares in the Company being acquired by a single owner, the notes would be converted into shares. A proviso covering this requirement has been incorporated into the offer by N.Z. Forest Products; therefore in the event of their offer being successful, the notes will be converted into shares following the declaration of the dividend on the existing shares.

EXHIBITS 3  
 Letter to Share-  
 holders/Note-  
 holders by Dr.  
 O.F. Haylock  
 26 April, 1972

Interest on notes will be paid to 31st March, 1972.

Under the terms offered to Shareholders and to the holders of convertible notes, your Directors consider this to be a reasonable offer and, therefore, recommend that you accept the offer of N.Z. Forest Products Limited in respect of your shares and convertible notes.

EXHIBITS 3  
Letter to Share-  
holders/Note-  
holders by Dr.  
O.F. Haylock  
26 April, 1972

Yours faithfully,  
for the Board of Directors

“O. F. Haylock,”  
Chairman.

**EXHIBIT 4**

**N.Z. FOREST PRODUCTS LIMITED TAKE-OVER OFFER**

**N.Z. FOREST PRODUCTS LIMITED**

Private Bag,  
Auckland.  
26th April, 1972

To:  
The Shareholders and Noteholders,  
THE TAUPO TOTARA TIMBER COMPANY LIMITED.

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

**TAKE-OVER OFFER**

10 N.Z. FOREST PRODUCTS LIMITED a duly incorporated Company having its registered office at O'Rorke Road, Penrose, Auckland HEREBY OFFERS TO PURCHASE:-

(a) such of the issued ordinary shares in The Taupo Totara Timber Company Limited it does not already own (this being 5,173,417 fully paid ordinary shares of 50 cents each) and

20 (b) all 654,890 of the 7½% unsecured convertible notes of 50 cents each which have been issued by The Taupo Totara Timber Company Limited and which are due for conversion on 31st August, 1976, or such shares as may be issued in any conversion of the notes prior to this offer being declared unconditional,

upon and subject to the following terms and conditions:-

(1) The consideration offered for such purchase is:-

The allotment of two fully paid \$1 ordinary shares in the capital of N.Z. Forest Products Limited for:-

(a) every three fully paid 50 cent ordinary shares in the capital of The Taupo Totara Timber Company Limited.

(b) every three fully paid 50 cent 7½% unsecured convertible notes issued by The Taupo Totara Timber Company Limited.

30 If the number of shares or notes held by a shareholder or noteholder in The Taupo Totara Timber Company Limited does not divide by three then the entitlement for the resulting fraction will be one of cash payment equal to the cash equivalent of such fraction at the last selling price of N.Z. Forest Products Limited \$1 ordinary shares on the Auckland Stock Exchange on 12th April, 1972, the date on which Notice of the Take-over Scheme was given to your Company.

(2) Acceptance of this offer may be made by completing the enclosed Form of

Acceptance and Conditional Transfer and posting it together with the relevant share certificate and/or unsecured convertible note certificate to N.Z. Forest Products Limited, Private Bag, Auckland as soon as possible, but in any event so as to be received by N.Z. Forest Products Limited not later than 7th June, 1972. Except so far as this offer and all other Take-over Offers made under the Take-over Scheme are totally withdrawn and every person is released from every obligation incurred thereunder this offer remains open for acceptance by shareholders and noteholders until 7th June, 1972.

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

10 Should this offer not be declared to have become unconditional by 14th June, 1972 as required by clause (6) hereof, all forms of acceptance and conditional transfer, together with share certificates and unsecured convertible note certificates shall be returned by N.Z. Forest Products Limited to the respective shareholders and noteholders entitled to them.

20 Should this offer be declared unconditional by 14th June, 1972 then N.Z. Forest Products Limited shall with all reasonable despatch send all forms of acceptance and transfer, share certificates and unsecured convertible note certificates to The Taupo Totara Timber Company Limited which company, however, shall be entitled to withhold registration of the transfers for such reasonable time, not exceeding four weeks, as may be required to enable that company to pay the dividend and interest referred to in clause (5) hereof.

30 (3) This offer is conditional on acceptance being received by 7th June, 1972 in respect of any combination of issued ordinary shares of 50 cents each and 7½% unsecured convertible notes of 50 cents each in The Taupo Totara Timber Company Limited amounting to not less than 4,413,746 in number which must include a minimum of 3,699,916 ordinary shares. It is further conditional that upon the aforementioned condition being met The Taupo Totara Timber Company Limited, at the request of N.Z. Forest Products Limited will convert the notes into shares PROVIDED that any such request shall be in such terms that upon such conversion being made this offer shall be deemed to have become unconditional.

(4) Without the consent of N.Z. Forest Products Limited and until all transfers of shares and notes to N.Z. Forest Products Limited pursuant to this offer have been registered in the books of The Taupo Totara Timber Company Limited:-  
(a) No dividend, bonus or other distribution or interest shall, except as provided in clause (5) hereof, be declared, paid or made upon or in respect of any of the capital and convertible note issue of The Taupo Totara Timber Company Limited.

40 (b) No further share capital, no loan capital and no further convertible notes of The Taupo Totara Timber Company Limited shall be issued or agreed to be issued or made the subject of an option.

(c) None of the assets of The Taupo Totara Timber Company Limited shall

otherwise than in the normal course of business, be disposed of or made the subject of any option nor shall any contract (otherwise than aforesaid) be entered into by The Taupo Totara Timber Company Limited.

**EXHIBITS 4**  
**N.Z. Forest**  
**Products Ltd.**  
**Take-over offer**  
**26 April 1972**

Notwithstanding anything to the contrary hereinbefore contained N.Z. Forest Products Limited may at its absolute discretion waive all or any of the foregoing conditions.

- 10 (5) Shareholders in The Taupo Totara Timber Company Limited shall be entitled to a further dividend of 7% in respect of the year ended 31st March, 1972 making a total dividend for the year of 11%. All outstanding interest due on convertible notes up to 31st March, 1972 shall be paid by The Taupo Totara Timber Company Limited.

The shares to be allotted by N.Z. Forest Products Limited under clause (1) hereof shall not rank for any dividend declared on other ordinary shares in N.Z. Forest Products Limited in respect of profit earned for the year ended 31st March, 1972.

- (6) The latest date on which N.Z. Forest Products Limited may declare the offer to have become unconditional is 14th June, 1972.

- (7) A copy of the Notice of Take-over Scheme dated 12th April, 1972 is attached hereto.

20 **MATTERS WHICH ARE REQUIRED TO BE SPECIFIED BY PART B OF THE FIRST SCHEDULE TO THE COMPANIES AMENDMENT ACT, 1963, ARE AS FOLLOWS:-**

- (a) The offeror is N.Z. Forest Products Limited a duly incorporated Company having its registered office at O'Rorke Road, Penrose, Auckland.

The names, addresses and occupations of all the Directors of N.Z. Forest Products Limited are:-

- 30 Austin George Wilson, O.B.E., Chairman of Directors, 87 St. Andrew's Road, Epsom, Auckland, 3.  
 Sir Reginald Harry Smythe, K.B.E., Managing Director and Deputy Chairman of Directors, 178 Remuera Road, Auckland, 5.  
 Alan William Mackney, Deputy Managing Director, 146 Clovelly Road, Bucklands Beach.  
 Gordon Sidney Crimp, Chartered Accountant, Flat 3C, Herbert Gardens, The Terrace, Wellington.  
 James Richard Cropper, M.B.E., Company Director, 722 Remuera Road, Auckland, 5.  
 James Thomas Currie, Resident Director, Kinleith, Muirend Avenue, Tokoroa.  
 Arnold Fielder Downer, C.B.E., Company Director, 18 Lower Watt Street, Wadestown, Wellington.  
 40 Percy Lyndon Laing, C.M.G. Company Director, 124 Trelissick Crescent, Ngaio, Wellington.

Sir William Calder Mackay, O.B.E., Company Director, 11 Victoria Avenue, Auckland, 5.

Selwyn John Robinson, Company Director, 147 Mountain Road, Auckland, 3.

Lewis Nathan Ross, Company Director, 11 Rewiti Street, Orakei, Auckland.

Douglas Owen Walker, Marketing Director, 10 Burford Place, Howick.

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

- 10 (b) This offer is conditional on acceptance being received by 7th June, 1972 in respect of any combination of issued ordinary shares of 50 cents each and 7½% unsecured convertible notes of 50 cents each in The Taupo Totara Timber Company Limited amounting to not less than 4,413,746 in number which must include a minimum of 3,699,916 ordinary shares. It is further conditional that upon the aforementioned condition being met The Taupo Totara Timber Company Limited, at the request of N.Z. Forest Products Limited, will convert the notes into shares PROVIDED that any such request shall be in such terms that upon such conversion being made this offer shall be deemed to have become unconditional.
- (c) Payment under clause (1) of this offer for any fractions of shares shall be made by N.Z. Forest Products Limited by cheque within one month after receipt by that Company of notice from The Taupo Totara Timber Company Limited of registration of transfers pursuant to this offer.
- 20 (d) N.Z. Forest Products Limited shall within one month after receipt by it of notice of registration of transfers hereunder allot to the transferors the shares due to them respectively.
- (e) A total of 65,700 shares of 50 cents each in The Taupo Totara Timber Company Limited is held by or on behalf of N.Z. Forest Products Limited.

ADDITIONAL MATTERS WHICH ARE REQUIRED TO BE SPECIFIED BY PART C OF THE FIRST SCHEDULE TO THE COMPANIES AMENDMENT ACT, 1963.

Clause 3:

- 30 (a) The name of the Company whose securities are offered as consideration to the offerees is N.Z. Forest Products Limited, which Company was incorporated in New Zealand as a public company on the 24th day of December, 1935, with the registered office at O'Rorke Road, Penrose, Auckland.
- (b) The names, addresses and occupations of The Directors of N.Z. Forest Products Limited are set out earlier in this offer.
- (c) N.Z. Forest Products Limited is primarily a forest utilisation and manufacturing company. Its principal products are logs, timber, veneers, cases, pulp, paper and paper-boards, wood fibre wallboards, multi-ply paper bags and chemicals.
- (d) (i) The net profits as disclosed in the Annual Accounts of N.Z. Forest

Products Limited together with the corresponding consolidated results of N.Z. Forest Products Limited and Subsidiary Companies for the five years to 31st March, 1971 were:

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

	1967 \$	1968 \$	1969 \$	1970 \$	1971 \$
N.Z. Forest Products Ltd.	4,131,506	4,442,000	5,526,997	7,500,147	9,760,927
Consolidated	4,155,346	4,511,789	5,524,966	7,539,949	8,508,935

- 10 Sales made by the group for the year ended 31st March, 1972 are approximately \$103,000,000 – an increase of \$5 million on those for the previous year. Consolidated profit is expected to be at about the same level as for the year ended 31st March, 1971. (These figures exclude results from the recently acquired Australian subsidiary, Paperboard Packaging Pty. Limited).

(ii) The rates of dividend paid by N.Z. Forest Products Limited and the amounts distributed by way of dividend in respect of each class of its shares during each of the five preceding financial years were:-

	1967	1968	1969	1970	1971
20 Cumulative Preference Shares					
Rate:	5¾%	5¾%	6¼%	6¼%	6¼%
Amt.: \$	319,956	319,956	347,779	347,779	347,779
Ordinary Shares					
Rate:	9%	9%	10%	10%	11%
Amt.: \$	1,917,244	1,918,390	2,154,710	2,762,309	3,174,700

(iii) The Capital of N.Z. Forest Products Limited at the end of each of the last five financial years was:-

	Paid Up
30 31st March, 1967	
5,564,462 5¾% Cumulative Preference Shares of \$1.00 each fully paid	5,564,462
21,315,434 Ordinary Shares of \$1.00 each fully paid	21,315,434
	<u>\$26,879,896</u>
40 31st March, 1968	
5,564,462 5¾% Cumulative Preference Shares of \$1.00 each fully paid	5,564,462
22,705,434 Ordinary Shares of \$1.00 each fully paid	22,705,434
	<u>\$28,269,896</u>

	31st March, 1969	
	5,564,462 6¼% Cumulative Preference Shares of \$1.00 each fully paid	5,564,462
	23,309,429 Ordinary Shares of \$1.00 each fully paid	<u>23,309,429</u>
		<u>\$28,873,891</u>
	31st March, 1970	
	5,564,462 6¼% Cumulative Preference Shares of \$1.00 each fully paid	5,564,462
10	29,014,655 Ordinary Shares of \$1.00 each fully paid	29,014,655
	3,967,103 Ordinary Shares of \$1.00 each paid to 50 cents	<u>1,983,552</u>
		<u>\$36,562,669</u>
	31st March, 1971	
	5,564,462 6¼% Cumulative Preference Shares of \$1.00 each fully paid	5,564,462
20	33,701,727 Ordinary Shares of \$1.00 each fully paid	<u>33,701,727</u>
		<u>\$39,266,189</u>

The cumulative preference shares carry the right to a fixed cumulative preferential dividend of 6¼% per annum in priority to any dividend on the ordinary shares, and in the event of the winding up of the Company, the right to a return of the capital then paid up or deemed to be paid up in priority to the ordinary shares. There is no right to participate further in any distribution of profit or surplus assets.

30 The ordinary shares carry the right to a dividend when this is recommended by the Directors and confirmed by the Company in General Meeting. No larger dividend may be declared than that recommended by the Directors, but the Company in General Meeting may declare a smaller dividend.

All preference and ordinary shareholders present at a meeting of the Company have a right to one vote on a show of hands. In the event of a poll, every member has the right to:

- (i) One vote for every \$2.00 of nominal capital held up to \$200.
- (ii) An additional vote for every \$4.00 of such nominal capital beyond the first \$200 up to \$400.
- (iii) An additional vote for every \$10.00 of such nominal capital beyond the first \$400 but limited to a maximum entitlement of 15,000 votes.

40 The ordinary shares carry the right to a pro-rata distribution of capital in the event of a winding-up after payment of all secured and unsecured liabilities of

the Company and of all dividends and capital due to the holders of preference shares.

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

(iv) The alterations in the capital structure of the Company during the preceding five financial years and in the period since 31st March, 1971, are:-

Year ended 31st March, 1967: 12,736 ordinary shares of \$1.00 each were issued in terms of the 1966 Employee Share Option Plan.

Year ended 31st March, 1968: 1,390,000 ordinary shares of \$1.00 each, were issued in payment of purchase consideration for shares in B.J. Ball (N.Z.) Limited.

10 Year ended 31st March, 1969: 16,741 ordinary shares of \$1.00 each were issued in terms of the 1966 Employee Share Option Plan. 12,000 Ordinary Shares of \$1.00 each were issued in payment of purchase consideration for shares in Nelson Pine Forest Limited. 575,254 ordinary shares of \$1.00 each were issued in payment of purchase consideration for shares in Bartholomew Timbers Limited.

Year ended 31st March, 1970: 9,672,329 ordinary shares of \$1.00 were issued:-

16,963 in terms of the 1966 Employee Share Option Plan.

20 642,821 in payment of purchase consideration for shares in Hutt Timber Holdings Limited.

86,000 in payment of purchase consideration for shares in Russell & Somers Limited.

14,000 in payment of purchase consideration for shares in A.E. Thorpe Limited.

7,070 in payment of purchase consideration for shares in Bartholomew Timbers Limited.

4,795,256 as bonus shares.

4,110,219 by way of cash issue – 50% payable after 31st March, 1970.

Authorised Ordinary Capital was increased by \$50,000,000 to \$90,000,000.

30 Year ended 31st March, 1971: The second instalment of the 1970 cash issue was received. 699,714 ordinary shares of \$1.00 each were issued in part payment for the purchase of shares in New Zealand Paper Mills Limited and 20,255 Ordinary Shares of \$1.00 each were issued in terms of the 1966 Employee Share Option Plan.

Since 31st March, 1971: 4,831,352 ordinary shares of \$1.00 each have been issued:-

15,612 in terms of the 1966 Employee Share Option Plan.

96,516 to overseas companies for the supply of patent rights and know-how on a new process.

40 3,821,871 by way of private placement issues.

897,353 in part payment for the purchase of shares in Paperboard Packaging

Pty. Limited, Australia.

EXHIBITS 4  
N.Z. Forest  
Products Ltd.  
Take-over offer  
26 April 1972

- (v) (a) There are unexercised options under the 1966 Employee Share Option Plan in respect of 136,226 ordinary shares. These options may be exercised up to 1st April, 1975 at a price of \$2.22 per share. The options carry the right to participate in the 1970 bonus and cash issues and, if all these options are exercised, a further 27,302 ordinary shares of \$1.00 each will be issued as bonus shares and up to 23,782 ordinary shares of \$1.00 each will be issued at a price of \$2.50 per share.
- 10 (b) There are no convertible notes outstanding and no other options to subscribe for shares at the date of this offer.
- (e) The ordinary shares to be issued in terms of this offer will be issued as fully paid shares.
- (f) The shares to be issued in terms of this offer will rank pari passu with the existing ordinary shares of N.Z. Forest Products Limited except as detailed in (g) below.
- 20 (g) (i) The shares to be issued in terms of this offer will not rank for any dividend declared on other ordinary shares out of profits earned for the year ending 31st March, 1972 (normally payable in September, 1972) but will rank in full for any subsequent dividends declared on other ordinary shares.
- (ii) The shares to be issued in terms hereof shall confer the same voting rights as apply to other shares of N.Z. Forest Products Limited as detailed in Part C3 (d) (iii) hereof.
- (iii) Application will be made for listing of the shares to be issued hereunder on the Stock Exchanges of New Zealand and Australia. Such application will be made to the Auckland and Melbourne Stock Exchanges respectively.
- 30 (h) Since the end of the previous financial year on 31st March, 1971, unsecured loans arranged to assist with the financing of the current major expansion programme have been taken up to the extent of \$25,983,000 and a further \$2,600,000 of Debenture monies has been uplifted. Other liabilities of N.Z. Forest Products Limited have reduced by approximately \$4,500,000 during the same period.
- (i) Not Applicable.
- (j) (i) The shares and 7½% unsecured convertible notes to The Taupo Totara Timber Company Limited and the shares of N.Z. Forest Products Limited are quoted on the official lists of the New Zealand Stock Exchanges. The latest available sale prices before Notice of the Scheme was given

to The Taupo Totara Timber Company Limited were:-

**EXHIBITS 4**  
**N.Z. Forest**  
**Products Ltd.**  
**Take-over offer**  
**26 April 1972**

N.Z. Forest Products Limited fully paid \$1.00  
ordinary shares: \$3.16 each

The Taupo Totara Timber Company Limited  
fully paid 50 cent ordinary shares: \$2.01 each

The Taupo Totara Timber Company Limited  
50 cent unsecured convertible notes: \$2.02 each

(ii) The latest rates of annual dividend for the respective Shares involved  
in this offer are:

10 N.Z. Forest Products Limited fully paid \$1.00  
ordinary shares: 11%

The Taupo Totara Timber Company Limited  
fully paid 50 cent ordinary shares: 11%

(iii) The dividend yields for the respective Shares involved in this offer, cal-  
culated on the basis of the latest available sale prices and the latest rates  
of dividend are:

N.Z. Forest Products Limited fully paid \$1.00  
Ordinary Shares: 3.48%

20 The Taupo Totara Timber Company Limited  
fully paid 50 cent ordinary shares: 2.74%

(k) Not Applicable.

Clause 4.

(a) A copy of the latest accounts and reports of N.Z. Forest Products Limited for  
the year ended 31st March, 1971 which were required to be laid before the  
company in general meeting in September, 1971 is attached hereto.

(b) Not Applicable.

Clause 5.

Not Applicable.

30

Signed on behalf of  
N.Z. Forest Products Limited.

“Reginald H. Smythe,”

Reginald H. Smythe, K.B.E.  
MANAGING DIRECTOR.

**EXHIBIT 5**  
**COVERING LETTER QUESTIONNAIRE AND PAGE 29 OF COMPILED ANSWERS**

10.7.72 COPIES: Messrs. Currie, Walker, Budd, Mackney.

N.B.: Date of Meeting now MONDAY, 16th JULY, 1972 AT 10.00 A.M.

Copies: Messrs. D. Rowe, Putaruru.  
P. W. Grayburn, Auckland.

EXHIBITS 5  
Covering Letter  
Questionnaire  
and Page 29 of  
Compiled  
Answers  
7 July, 1972

7th July, 1972

10 Mr. O. F. Haylock,  
Chairman of Directors,  
The Taupo Totara Timber Company Limited,  
"Lethenty",  
BULLS.

Dear Mr. Haylock,

It is timely that we secure such information as we require in relation to the T.T.T. Company, and to that end I enclose a statement setting out the information which we require about the operations of the T.T.T. Company, its subsidiaries and associated companies. I am not suggesting that this comprehends all the information which we desire, and any additional information will be requested by me at a later date.

20 I understand that you have a Committee of Directors which deals with important matters between Board Meetings, and I suggest that this Committee – the personnel of which I will be pleased to be advised – should meet Mr. J. T. Currie, Mr. D. G. Walker, myself and possibly our secretary, Mr. A. C. Budd at our office at 10 a.m. on Wednesday next, 12th July, if this is convenient to all concerned.

This will enable us to secure, or put in train, the securing of the information we are seeking. It will also enable us to take care of any immediate decisions which may be required and generally enable the smooth integration of the operations of the T.T.T. enterprise with that of our own.

At the time of writing this letter I have been endeavouring to contact you by telephone to ascertain if the suggested date is suitable to all concerned.

30 Yours sincerely,

"R. H. Smythe"

Reginald H. Smythe,  
MANAGING DIRECTOR.

**TAUPO TOTARA TIMBER COMPANY LIMITED**

**Information required by N.Z. FOREST PRODUCTS LIMITED**

**1. SUBSIDIARY COMPANIES**

Particulars of subsidiary companies including location, activities, capitalisation, control, reasons for existence and profitability. Details of the manner in which the operations of these subsidiaries tie in with the main operations of the Company and how they are controlled.

Details of personnel involved (as in 3 below).

Are all subsidiaries subsisting companies?

**EXHIBITS 5  
Covering Letter  
Questionnaire  
and Page 29 of  
Compiled  
Answers  
7 July, 1972**

**10 2. ASSOCIATE COMPANIES**

Companies, if any, in which T.T.T. have less than 50% ownership and the association was undertaken for other than direct investment as such.

Particulars of associate companies including location, activities, capitalisation, control, reasons for existence and profitability. Details of the manner in which the operations of these associate companies tie in with the main operations of the company and how they are controlled. Details of personnel involved (as in 3 below).

Are all associates subsisting companies?

**3. MANAGEMENT & STAFF ASPECTS**

**20 (a) Board of Directors**

i Composition of the Boards of Directors of the parent and subsidiary companies.

ii Do T.T.T. have any Directors on the Boards of any Associate company – if affirmative provide details.

iii How often do the various Boards meet, where and nature of business.

iv Remuneration of Directors.

**(b) Executive Officers**

i A list of Executive Officers of T.T.T. showing:  
Status.

**30** Remuneration and other emoluments, direct and indirect.

Line of responsibility through to the Chief Executive Officer.

Responsibility of Chief Executive Officer to the Board of Directors.

ii The same information in respect of subsidiary companies.

iii Any special situations with Executive Officers participation in Associate companies.

**(c) Service Contracts**

Details of any service contracts between Executive and other officers with the Company showing full details of same.

**(d) Committees**

**40** Particulars of any Committees which may be used in assisting Company Management – personnel involved and responsibilities.

**(e) Superannuation**

Details of any existing superannuation schemes.

**(f) Salary Policy**

Are regular reviews carried out? If so when and by whom.

**EXHIBITS 5**  
**Covering Letter**  
**Questionnaire**  
**and Page 29 of**  
**Compiled**  
**Answers**  
**7 July, 1972**

**4. COMMITMENTS**

Details of commitments entered into in respect of existing mills, plants and other existing or planned operations, including commercial premises, land development and land sales.

**5. LOAN MONEYS**

10 Details required on existing loans and provision for future finance – if any.

**6. SALES & PURCHASING**

Details of contracts or other arrangements for the sale of the Company's products.

Selling arrangements.

Purchasing arrangements – especially for bulk supplies.

Any agencies held or commercial agreements.

**7. PRICING POLICY**

Are any lines subject to price control? General policy.

**8. STATISTICAL DATA**

20 For timber operations – annual usage of forests, output of mills, sales details.

**9. COST, PROFIT & FINANCIAL INFORMATION**

What details are prepared, how frequently and to whom is the information supplied?

**10. FORWARD PLANNING**

Is a system of budgetting in use and to what extent are control and reporting measures in use?

**11. LAND OWNERSHIP**

30 (i) Details of land owned, leased or otherwise held, including forest lands – location, area, type of holding, purpose, latest Government valuation – book value.

(ii) Details of any current negotiations to purchase, lease or otherwise obtain additional land and the purpose of same.

**12. FORESTS & FOREST LANDS**

(i) Details of exotic forests – Location, area, species, age, yields, silviculture practised, re-established, not re-established.

(ii) Details of Indigenous Forests – Location, area, standing volume by species.

(iii) What is current annual volume and area being logged both exotic and

indigenous – where, end use. Details if available of forward annual requirements.

(iv) Details of any cutting rights.

(a) T.T.T. to others.

(b) Others to T.T.T.

(v) Cost and Book value of forests – excluding land.

(vi) Annual costs of forest maintenance, fire protection, silviculture, re-establishment.

10 (vii) Details of programme to extend exotic forests by planting new areas including costs.

(viii) Are logging, log cartage and other forest activities carried out by T.T.T. or contractors – details required.

### 13. CONSULTANTS

If any consultants are employed details of arrangement and purpose.

### 14. DEBTORS

Schedule of debtors showing those current 1 month and 2 months and more overdue.

If extended credit has been given with whom and terms and conditions.

### 15. HOUSING

20 Does T.T.T. provide rental housing for employees – if affirmative number and location and conditions.

RHS:PMP

7.7.72

RHS:PMP  
7th July, 1972.

**ADDITIONAL INFORMATION REQUIRED FROM TAUPO TOTARA  
TIMBER COMPANY LIMITED**

Executive Officers – Retirement Dates.

Status of        K.D.V. Box Company.  
                      Matakana Island.

EXHIBITS 5  
Covering Letter  
Questionnaire  
and Page 29 of  
Compiled  
Answers  
7 July, 1972

Are these comprehended in the overall accounts of the T.T.T. Company?

If not, details are required as to assets, liabilities, land holdings, tenancies.

- 10        Similar information is required for these companies as that requested in respect of T.T.T.

Silvicultural policy in regard to afforestation activities.

Bankers – What is Overdraft limit?

How far have discussions gone in relation to additional loan monies?  
With whom    and    by whom?

By how much have the forest assets been written up from time to time?

Which assets?

When writing-up occurred?

By what amount?

- 20        Reasons for same.

Appointment to Board of N.Z.F.P. nominees.

Chairmanship – Is there any period involved or is it an annual appointment?

21st June, 1972

**INFORMATION REQUIRED FROM TAUPO TOTARA TIMBER COMPANY  
LIMITED**

Audited Accounts for Parent Company.

Audited Accounts for Subsidiary Companies together with all supporting schedules.

**EXHIBITS 5  
Covering Letter  
Questionnaire  
and Page 29 of  
Compiled  
Answers  
7 July, 1972**

Schedule for all land owned distinguishing between –

Planted Land.

Land for Planting.

10 Industrial land.

Status of Matakana Island requires to be established.

What has been acquired.

What cutting right arrangements exist and when do they expire.

Service Contracts with Executives.

Board to continue as at present for two years, with two N.Z.F.P. nominees joining Board.

List of employees –

Where located.

Remuneration.

20 Expenses.

Car Allowances.

Location of various merchandising outlets.

3(c)

**SERVICE CONTRACTS**

**EXHIBITS 5  
Covering Letter  
Questionnaire  
and Page 29 of  
Compiled  
Answers  
7 July, 1972**

Contracts are currently in force with the following officers:

D. K. Rowe	Managing Director
D. G. Gibb	General Manager
J. N. Thompson	Secretary
R. H. Pilcher	Forest Manager
J. H. Lonergan	Wiri Branch Manager
D. J. Parker	Group Chief Accountant

Copies of the contracts are submitted.

**EXHIBIT B**  
**LETTER TO SHAREHOLDERS AND FORMER SHAREHOLDERS**  
**BY DR. O. F. HAYLOCK**  
**THE**  
**TAUPO TOTARA TIMBER**  
**COMPANY LIMITED**

P.O. Box 190,  
Putaruru,  
New Zealand.  
21st July, 1972.

**EXHIBITS B**  
**Letter to Share-**  
**holders and**  
**former share-**  
**holders by Dr.**  
**O. F. Haylock**  
**21 July, 1972**

**TO SHAREHOLDERS AND FORMER SHAREHOLDERS**

10 The Directors of The Taupo Totara Timber Company Limited report to you in this last letter that the year's trading was at an all-time high for both sales volume and for profits earned.

Because of the effects on trading results of the mergers with K.D.V. Industries Limited in 1970 and with Matakana Milling & Export Corporation Limited in 1971, direct comparisons between years are not possible. However, this year's profit of \$614,441 after tax exceeded the combined profits of the three companies for the 12 months ended 31st March, 1971.

20 Earlier this year, the offer by N.Z. Forest Products Limited for the shares and convertible notes in The Taupo Totara Timber Company Limited was accepted by virtually all of our shareholders and noteholders, thereby terminating 71 years of independent activity based principally on sawmilling in the area north of Lake Taupo. One provision in the take-over offer was that a dividend of 7% would be paid to all shareholders, including those who have accepted the N.Z. Forest Products Limited offer. In order that the Directors could do this, it was necessary to make this dividend a second interim dividend and to recommend that no final dividend be paid. It will also be noted that this dividend is being paid from non-taxable profit reserves and will not attract income tax.

30 On behalf of the Board of Directors, I wish to thank all shareholders, past and present, who have supported the company throughout its long and varied history. Your loyalty, in some cases going back to the foundation of the company has enabled us with the help of our staff to develop the company of which we were so proud.

O.F. HAYLOCK.

Chairman of Directors

**EXHIBIT C**

**LETTER TO NOTEHOLDERS BY SECRETARY**

**THE  
TAUPO TOTARA TIMBER COMPANY  
LIMITED**

Head Office:  
Princes Street,  
Putaruru.  
25th July, 1972.

**EXHIBITS C  
Letter to Note-  
holders by  
Secretary  
25 July, 1972**

**TO: NOTEHOLDERS**

10 You are registered as the holder of 7½% Unsecured Convertible Notes in this Company. These notes were issued by the Company on the 1st day of September, 1971, under the conditions set out in the trust deed which provided that they would be exchanged for an equal number of ordinary shares in the Company not later than 31st day of August, 1976.

20 Under its recent take-over offer N.Z. Forest Products Limited has acquired most of the ordinary shares in the Company and it has also acquired a substantial number of the unsecured convertible notes of the Company. The Directors of the Company have accordingly considered it advisable, pursuant to the terms of the trust deed, to fix a date earlier than the 31st day of August, 1976, as the date of conversion of the convertible notes and notice is hereby given to you that the Directors have fixed the 2nd day of August, 1972, as the date of conversion of all of the notes. On that day the Company will allot at par to those noteholders whose names appear in the register on the date of conversion one ordinary share of 50 cents each in the capital of the Company, credited as fully paid up, for every one convertible note held. Interest on the convertible notes has already been paid on the 31st day of March, 1972.

In order to proceed with conversion of the notes the Company will require you to forward your note certificate(s) and we ask that you post these to the Company as soon as possible. An addressed envelope is enclosed for this purpose.

30 for THE TAUPO TOTARA TIMBER COMPANY LTD.

“J. N. Thompson”,  
SECRETARY.

**EXHIBIT 1C**  
**LETTER OF RESIGNATION**  
**THE**  
**TAUPO TOTARA TIMBER COMPANY**  
**LIMITED**

**EXHIBITS 1C**  
**Letter of**  
**resignation**  
**28 May, 1973**

Head Office:  
Princes Street,  
Putaruru, N.Z.  
28th May, 1973.

10 Dr. O. F. Haylock,  
Chairman of Directors,  
The Taupo Totara Timber Co. Ltd.,  
"Lethenty",  
Bulls.

Dear Sir,

I wish to tender my resignation as Managing Director of this Company and as a Director of Subsidiary Companies under its control to take effect as at the 31st August, 1973, in terms of my service agreement duly executed under the Seal of the Company, a copy of which is held by N.Z. Forest Products Ltd.

I tender my resignation for strictly personal reasons and with regret.

20 In doing so I wish to place on record my appreciation for the assistance and co-operation that has been offered by yourself, members of the Board and senior executives of this company and its subsidiaries.

I wish also to place on record the excellent co-operation I have received from the Directorate and Management of N.Z. Forest Products Ltd., and feel the groundwork has been established to ensure a long and enjoyable future as part of the group.

Would you please acknowledge receipt of my resignation in order that I can advise Mr. Currie for further action.

30 Please treat this letter with confidence until such time as Mr. Currie is advised or until such time that any announcement be deemed appropriate.

Yours sincerely,

"D. K. Rowe"  
Managing Director,  
THE TAUPO TOTARA TIMBER CO. LTD.

**EXHIBIT 1D (a)**

**DOCUMENTS ARISING OUT OF LETTER OF RESIGNATION:  
DR. O. F. HAYLOCK LETTER TO PLAINTIFF**

Lethenty,  
BULLS.  
1st June, 1973.

Mr. D. K. Rowe,  
Taupo Totara Timber Co. Ltd.,  
Box 190  
PUTARURU.

EXHIBITS 1D(a)  
Documents  
arising out of  
letter of  
resignation:  
Dr. O. F. Haylock  
letter to  
Plaintiff  
1 June 1973

Dear Darcy,

10 It was with regret that I received your letter of resignation from your position as Managing Director and as a Director of subsidiary companies to take effect on 31st August, 1973.

During the 25 years you have served the Company so ably, you have built up a reputation which is hard to equal. Your co-operation and devotion to duty have been an example for all to follow.

At a later date, I shall express more fully my gratitude to you for all you have done for the Company and the timber industry.

Yours sincerely,

“Owen Haylock.”

**EXHIBIT 1D (b)**  
**DOUMENTS ARISING OUT OF LETTER OF RESIGNATION;**  
**PLAINTIFF'S LETTER TO J. T. CURRIE**  
**THE**  
**TAUPO TOTARA TIMBER COMPANY**  
**LIMITED**

Head Office:  
Princes Street,  
Putaruru.  
5th June, 1973.

**EXHIBITS 1D(b)**  
**Documents**  
**arising out of**  
**letter of**  
**resignation:**  
**Plaintiff's**  
**letter to J. T.**  
**Currie**  
**5 June, 1973**

10 Mr. J. T. Currie,  
Resident Director,  
N.Z. Forest Products Ltd.,  
Kinleith.

Dear Sir,

I enclose herewith a copy of my resignation which has now been acknowledged by Dr. O. F. Haylock as Chairman of Directors of this company.

20 In doing so I reiterate that my decision has been made for personal reasons and thank you, Sir Reginald Smythe, the Directors and Management of your Company for the very sincere manner in which the take-over of our Company was carried out and for the very considerate and helpful assistance that has been given to me personally and to members of my staff over the past year.

I will not be accepting any other position in the foreseeable future so will be able to carry out my duties without any fear of conflict and with the same enthusiasm as in the past.

I do not propose making any announcement either within or outside the company until you consider it appropriate.

Yours faithfully,

"D. K. Rowe"

Managing Director,  
The Taupo Totara Timber Co. Ltd.

**EXHIBIT 1D (c)**  
**DOCUMENTS ARISING OUT OF LETTER OF RESIGNATION:**  
**DEFENDANT COMPANY TO PLAINTIFF**

**THE**  
**TAUPO TOTARA TIMBER COMPANY**  
**LIMITED**

Head Office:  
Princes Street,  
Putaruru.  
25th July, 1973.

**EXHIBITS 1D(c)**  
**Documents**  
**arising out of**  
**letter of**  
**resignation:**  
**Defendant**  
**Company to**  
**Plaintiff**  
**25 July, 1973**

10 Mr. D. K. Rowe,  
32 Overdale Street,  
PUTARURU.

Dear Mr. Rowe,

Your letter of 28th May, 1973 addressed to the former Chairman of Directors of the Company, Dr. Haylock, and acknowledged by him on 1st June, 1973, giving notice of your resignation from your position as Managing Director of the Company and as a Director of its subsidiary Companies, was placed before the Board as its meeting on 16th July, 1973.

20 I have to advise you that the Board has, with regret, accepted your resignation to take effect as at 31st August, 1973 as requested by you in your letter giving notice of resignation.

The Board has noted that you have submitted your resignation for personal reasons and wishes you well in any future activity in which you may engage.

I must, however, advise you that the Board has noted that the terms of your notice of resignation preclude you from entitlement to receive the lump sum payment on resignation which is provided for in Clause 7 of your service contract with the Company dated 20th January, 1972 in the event of resignation taking place in accordance with the conditions contained in the clause. This interpretation may well conflict with your expectation in the matter so that I must inform you that Queens Counsel's opinion has been secured confirming this view.

30 c.c.  
Sir Reginald Smythe.  
Messrs. A. W. Mackney.  
D. O. Walker.  
J. B. Henry.  
D. G. Gibb (T.T.T.).

Yours faithfully,

"J. T. Currie"

CHAIRMAN

**EXHIBIT 1D (d)**

**DOUMENTS ARISING OUT OF LETTER OF RESIGNATION:  
PLAINTIFF'S MEMORANDUM TO DEFENDANT'S SECRETARY**

**THE TAUPO TOTARA TIMBER COMPANY LIMITED**

Date: 9 August, 1973.

To: SECRETARY.

From: D. K. Rowe.

Subject:

**EXHIBITS 1D (d)  
Documents arising  
out of letter of  
Resignation:  
Plaintiff's  
Memorandum to  
Defendant's  
Secretary  
9 August, 1973**

10 Attached is a notice concerning a change in management which will take place at the end of the month.

This is sent to you for your information and you are asked to bring it to the attention of your senior staff.

"D. K. Rowe"

Managing Director.

Encl.

**EXHIBIT 1D (e)**

**DOCUMENTS ARISING OUT OF LETTER OF RESIGNATION:  
J. T. CURRIE'S NOTICE TO DEFENDANT'S STAFF**

**THE  
TAUPO TOTARA TIMBER COMPANY  
LIMITED**

Head Office:  
Princes Street,  
Putaruru.  
6th August, 1973.

**EXHIBITS 1D(e)  
Documents arising  
out of letter of  
Resignation:  
J. T. Currie's  
Notice to  
Defendant's  
staff  
6 August, 1973**

**NOTICE**

Mr D. K. Rowe, Managing Director of The Taupo Totara Timber Company  
limited has for personal reasons submitted his resignation from the Company  
its subsidiaries, effective from 31st August, 1973.

Mr. Rowe's resignation has been accepted with regret.

As from 1st September, 1973 the management of the Company and its  
subsidiaries will be the responsibility of Mr. D. G. Gibb, the General Manager  
of the Company, who will be located at the Company's Head Office in Putaruru.

"J. T. Currie"

CHAIRMAN

**EXHIBIT 1G (a)**

**PLAINTIFF'S LETTER OF DEMAND**

**McCAW SMITH AND ARCUS BARRISTERS AND SOLICITORS**

N.Z.I. Building,  
Garden Place,  
Hamilton.  
8th August, 1973

**EXHIBITS 1G (a)  
Plaintiff's letter  
of demand  
8 August, 1973**

J. T. Currie, Esq.,  
Chairman of Directors,  
The Taupo Totara Timber Co. Ltd.,  
10 P.O. Box 190,  
PUTARURU.

re: D. K. Rowe

Your letter of 25.7.73 addressed to Mr. Rowe has been handed to the writer for consideration and reply. We have had an opportunity of considering the service agreement dated 20.1.72 together with Mr. Rowe's letter of resignation and your letter.

20 We have advised Mr. Rowe that since his letter of resignation did not give at least 6 months notice then such could not be regarded as an effective notice pursuant to clause 3 of the service agreement. We have also advised Mr. Rowe that the notice of his resignation could only be regarded by the company as notice of resignation pursuant to Clause 7 of the service agreement. It is obvious from your reply to Mr. Rowe of 25.7.73 that the resignation has been accepted and that your letter is effective notice of termination of Mr. Rowe's employment received by Mr. Rowe during the period of 12 months as prescribed in Clause 7 of the said agreement.

30 Accordingly we suggest that either Mr. Rowe has given the notice as required by clause 7 or alternatively, the company has given notice as required by clause 7. We have advised Mr. Rowe that the argument as to these two alternatives is purely an academic one and that in either event he is entitled to receive the lump sum payment provided for in clause 7 on 31.8.73.

We have advised Mr. Rowe that the total figure of his entitlement as at such date is the sum of \$67,500 free of income and other taxes.

As Mr. Rowe is anxious to finalise his position with the company in an amicable way we would be pleased to receive your early confirmation that the sum notified will be paid to Mr. Rowe on 31.8.73.

**McCAW, SMITH & ARCUS**

"J. G. Dillon."

**EXHIBIT 1G (b)**  
**DEFENDANT'S REPLY**  
**N.Z. FOREST PRODUCTS LIMITED**

Head Office, Smythe House,  
O'Rorke Rd., Penrose, Auckland.

EXHIBITS 1G(b)  
Defendant's  
reply  
21 August, 1973

21st August, 1973.

Attention Mr. J. G. Dillon

Messrs. McCaw, Smith & Arcus,  
Solicitors,  
P.O. Box 471,  
HAMILTON.

10 Dear Sirs,

re: Mr. D. K. Rowe & Taupo Totara Timber Co. Ltd.

Your letter of 8th instant addressed to J. T. Currie Esquire, Chairman of Directors of the above Company, which as you know is a wholly-owned subsidiary of N.Z. Forest Products Limited has been referred to me for reply.

As was explained to your client in the Company's letter of 25th July, 1973 Counsel's opinion was obtained concerning the effect of your client's notice of resignation with reference to Clause 7 of the Service Agreement dated 20th January, 1972. Your letter under reply has also been referred to Counsel.

20 It is Counsel's opinion that Mr. Rowe did not give a notice of resignation under either Clause 3 or Clause 7 of the Agreement. It is denied that Mr. Rowe's notice of resignation could only be regarded by the Company as a notice pursuant to Clause 7 of the Agreement. The position is that Mr. Rowe offered to resign his position as Managing Director to take effect as at 31st August, 1973. This offer was contained in Mr. Rowe's letter addressed to Dr. O. F. Haylock dated 28th May, 1973. The offer was accepted by the Board at its meeting on the 16th July, 1973 and acceptance was communicated to Mr. Rowe in the Company's letter of 25th July, 1973.

30 The Company does not agree that the Company's letter of 25th July, 1973 was a notice of termination by the Company of Mr. Rowe's employment. It was no such thing. It was an acceptance of Mr. Rowe's offer to resign.

I therefore re-affirm the advice given by the Company to Mr. Rowe in its letter of 25th July, 1973 that Mr. Rowe is not entitled to receive the lump sum provided for in Clause 7 of his Service Agreement.

Yours faithfully,  
N.Z. FOREST PRODUCTS LIMITED

"T. F. Andrews"

COMPANY SOLICITOR